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**ANNUAL REPORT OF THE
INTER-AMERICAN COMMISSION ON
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**REPORT OF THE SPECIAL RAPPORTEUR FOR
FREEDOM OF EXPRESSION**

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FREEDOM OF EXPRESSION
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TABLE OF CONTENTS

TABLE OF ACRONYMS AND REFERENCES	6
INTRODUCTION	1
CHAPTER I GENERAL INFORMATION	5
A. Creation of the Office of the Special Rapporteur for Freedom of Expression and Institutional Support	5
B. Mandate of the Office of the Special Rapporteur	8
C. Principal Activities of the Office of the Special Rapporteur.....	9
1. Individual Case System: Strategic Litigation on Freedom of Expression within the inter-American System	9
2. Precautionary Measures	12
3. Public Hearings	13
4. Official Visits	13
5. Seminars and Workshops with Strategic Actors in the Region.....	14
6. Annual Report and development of expertise	18
7. Special statements and declarations: using the bully pulpit	18
D. Staff of the Office of the Special Rapporteur	20
E. Funding.....	21
CHAPTER II EVALUATION OF THE STATE OF FREEDOM OF EXPRESSION IN THE HEMISPHERE..	22
A. Introduction and methodology.....	22
B. Evaluation of the state of freedom of expression in the Member States.....	23
1. Antigua y Barbuda	23
2. Argentina	23
3. Barbados	33
4. Bolivia	34
5. Brazil	41
6. Canada.....	48
7. Chile	50
8. Colombia	53
9. Costa Rica	67
10. Cuba.....	69
11. Ecuador	75
12. El Salvador	86
13. United States	86
14. Grenada	90
15. Guatemala	91
16. Guyana	95
17. Haiti.....	96
18. Honduras.....	97
19. Jamaica	123
20. Mexico	125
21. Nicaragua	140
22. Panama	146

23.	Paraguay	148
24.	Peru.....	150
25.	Dominican Republic	157
26.	Saint Lucia	159
27.	Suriname.....	159
28.	Uruguay	160
29.	Venezuela.....	163

CHAPTER III INTER-AMERICAN LEGAL FRAMEWORK OF THE RIGHT TO FREEDOM OF EXPRESSION	225
A. Importance and function of the right to freedom of expression.....	225
1. Importance of freedom of expression within the Inter-American legal framework.....	225
2. Functions of freedom of expression	226
B. Main characteristics of the right to freedom of expression	228
1. Entitlement to the right to freedom of expression	228
2. Dual dimension – individual and collective – of freedom of expression	229
3. Duties and responsibilities contained within freedom of expression.....	230
C. Types of speech protected by freedom of expression.....	230
1. Types of protected speech according to form	230
2. Types of speech protected according to content	234
3. Speech not protected by freedom of expression	243
D. Limits on freedom of expression.....	245
1. Admissibility of limitations under the American Convention on Human Rights.....	245
2. Conditions that limitations must meet in order to be legitimate under the American Convention	247
3. Stricter standards of control for certain limitations due to the type of speech they address	256
4. Means of limitation of freedom of expression in order to protect the rights of others to honor and reputation.....	257
E. The prohibition against censorship and indirect restrictions to freedom of expression	273
1. The prohibition against direct prior censorship.....	273
2. The prohibition against indirect restrictions to freedom of expression by the authorities	276
3. The prohibition against indirect restrictions to freedom of expression by causes other than the abuse of State restrictions	279
F. Journalists and the social communications media	281
1. Importance of journalism and the media for democracy; characterization of journalism under the American Convention	281
2. Responsibility inherent in the practice of journalism	283
3. Rights of journalists and State duties to protect the safety and independence of journalists and media outlets.....	283
4. Journalists who cover armed conflict or emergency situations	290
5. Conditions inherent in the functioning of the media	291
G. The exercise of freedom of expression by public officials	293
1. General duties of the exercise of freedom of expression by public officials.....	293
2. The duty of confidentiality which may apply to certain information controlled by the State.....	297

3.	The right and duty of public officials to denounce human rights violations.....	297
4.	The particular situation of members of the Armed Forces.....	297
H.	Freedom of expression in the electoral context.....	298
I.	Pluralism, diversity and freedom of expression.....	300
CHAPTER IV THE RIGHT OF ACCESS TO INFORMATION		304
A.	Introduction.....	304
B.	Guiding Principles of the Right of Access to Information.....	306
C.	Content and scope of the right of access to information.....	308
1.	Every person has the right of access to information.....	308
2.	Subjects with obligations under the right of access to information.....	308
3.	Object of the right.....	309
4.	State obligations in the right of access to information.....	309
5.	Limitations to the right of access to information.....	314
D.	Specific Applications of the Right of Access to Information.....	319
1.	Restriction of access to official sources of information in the form of public events or acts.....	319
2.	Access to information and indigenous peoples' right to consultation.....	319
3.	Access to information and the creation and preservation of police archives.....	323
4.	Access to information and the creation of historic archives on gross violations of human rights.....	323
E.	National jurisprudence and access to information best practices in domestic law.....	326
1.	Jurisprudence on the right of access to information as a fundamental autonomous right.....	327
2.	Jurisprudence on the universal nature of access to information.....	329
3.	Jurisprudence on the principle of maximum disclosure.....	329
4.	Jurisprudence on the obligation to respond in a timely, thorough and accessible manner.....	339
5.	Jurisprudence on the right of access to information of personal information.....	344
6.	Jurisprudence regarding restrictions on access to information.....	351
CHAPTER V NATIONAL INCORPORATION OF THE INTER-AMERICAN STANDARDS ON FREEDOM OF EXPRESSION DURING 2009		358
A.	Implementation of the legal standards of the inter-American system in national legal systems.....	358
B.	Incorporation of standards on freedom of expression through legislative reform ..	364
1.	The decriminalization of speech concerning matters of public interest in Uruguay.....	365
2.	Amendments to the Criminal Code and the Press Law of Argentina to decriminalize speech in the public interest.....	366

C.	Decisions of national courts that incorporate inter-American standards on freedom of expression	367
1.	Judgment of the Federal Supreme Court of Brazil on the requirement of a professional degree for the practice of journalism.....	367
3.	Judgment T-298/09 of the Constitutional Court of Colombia, on confidentiality of sources.....	370
7.	Judgment C-417/09 of the Constitutional Court of Colombia over the truth exception (<i>exceptio veritatis</i>)	385
D.	Conclusions	388
CHAPTER VI FREEDOM OF EXPRESSION AND BROADCASTING		391
A.	Introduction	391
B.	General aims and limits of State broadcasting regulation	393
1.	Nature of broadcasting regulation	393
2.	General requirements for broadcasting regulation compatible with the provisions for limiting freedom of expression found in Article 13.2 of the American Convention.....	394
3.	Regulation of radio must be prescribed by law with clear and precise language	395
4.	When it can affect the right to freedom of expression, regulation of broadcasting is only legitimate if it pursues an aim set forth in the American Convention.....	397
5.	Broadcasting regulation should include only restrictions that are necessary, adequate, and proportional for achieving their desired purpose.....	402
C.	On the enforcement and oversight authority in charge of broadcasting.....	403
1.	The enforcement and oversight authority must be independent and autonomous of political and economic power.....	405
2.	The enforcement and oversight authority must proceed with transparency and respect for due process.....	406
D.	On assigning and renewing frequency concessions	407
1.	Assignment criteria and procedure	407
2.	Recognition of the different sectors	409
3.	Conditions of use required	409
4.	On the renewal of licenses.....	410
E.	Digital transformation.....	411
F.	Public media	412
1.	Mandate set by law	412
2.	Independence.....	413
3.	Universal access and adequate funding	414
4.	Transparency and accountability	414
G.	Community broadcasting	415
1.	Importance and characteristics	415
2.	Legal recognition	418
3.	Reservation of spectrum and equality of access and use of licenses	418
H.	Private commercial broadcasting	420
I.	The duty of the State to prevent monopolies or oligopolies in broadcasting	420
J.	Government advertising and other forms of broadcast funding	422

K.	The sanctions regime	425
1.	Legitimacy of sanctions.....	425
2.	Due process.....	427
CHAPTER VII CONCLUSIONS Y RECOMMENDATIONS		429
A.	Violence against journalists and media outlets.....	429
B.	Criminalization of expression and promotion of proportionality in subsequent liability.....	429
C.	Statements of high-level State authorities based on editorial positions	430
D.	Prior censorship.....	431
E.	Discriminatory distribution of official advertising.....	431
F.	Progress on access to information	431
G.	Allocation of radio frequencies	432
APPENDIX.....		433

TABLE OF ACRONYMS AND REFERENCES

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

INTRODUCTION

1. The Office of the Special Rapporteur for Freedom of Expression (hereinafter, "Office of the Special Rapporteur") was created in October of 1997 by the Inter-American Commission on Human Rights (hereinafter, "IACHR") during its 97th Period of Sessions. Since its establishment, the Office of the Special Rapporteur has had the support of not only the IACHR, but also Member States of the Organization of American States (OAS), civil society organizations, communications media, journalists, and, particularly, the victims of violations of the right to freedom of expression. Indeed, those who have turned to the inter-American system for the protection of human rights as a mechanism for the protection and guarantee of their right to freedom of expression have found that the Office of the Special Rapporteur offers decisive support for reestablishing the guarantees necessary for exercising their rights and for insuring that the damage from the violation of those rights is repaired.

2. During its 11 years of operation, the Office of the Special Rapporteur has worked for the promotion of the right to freedom of expression through technical assistance in individual cases before the inter-American system for the protection of human rights. With the same objective, and in the framework of the IACHR, the Office of the Special Rapporteur has prepared thematic and country reports, carried out official visits and promotional trips, and participated in dozens of conferences and seminars that have sensitized and trained hundreds of public officials, journalists, and defenders of the right to free expression.

3. The Annual Report of 2009 follows the basic structure of previous annual reports and fulfills the mandate established by the IACHR for the work of the Office of the Special Rapporteur. The report begins with a general introductory chapter that explains in detail the office's mandate, the most important achievements of the Office of the Special Rapporteur in its 11 years of operation, and the activities carried out in 2009.

4. Chapter II presents the now-customary evaluation of the situation of freedom of expression in the hemisphere. In 2009, the Office of the Special Rapporteur received information from multiple sources about situations that could affect the exercise of the right to freedom of expression as well as progress in the effort to guarantee this right. Following the methodology of previous reports, this information was evaluated in light of the Declaration of Principles on Freedom of Expression (hereinafter, "Declaration of Principles"), approved by the IACHR in 2000. The Declaration of Principles constitutes an authorized interpretation of Article 13 of the American Convention on Human Rights (hereinafter, "American Convention") in the region and an important instrument to help States to resolve problems and promote, guarantee, and respect the right to freedom of expression.

5. Based on the analysis of the situations reported in the hemisphere, the Office of the Special Rapporteur highlights some challenges facing the States in the region. In particular, this report places emphasis on the murders, attacks, and threats against journalists. States have the obligation to investigate, try, and punish those responsible for these acts, not only to repair the victims and their families, but also to prevent future occurrences of violence and intimidation. Additionally, the Office of the Special Rapporteur considers it important to call attention to other aspects of freedom of expression in the Americas, such as: the important advances and the challenges presented by the right to access to information; the use of the penal system, in some places, to inhibit or sanction critical or dissident expression; the advances and setbacks in promoting diversity and pluralism in the communication process; and the importance of reforming mechanisms that may be employed as a means of indirect censorship, among other topics.

6. Chapter III continues the practice of the Office of the Special Rapporteur of presenting a study of the jurisprudence on the subject of freedom of expression. The objective of this chapter is to present the inter-American jurisprudence that defines the scope and content of the right to freedom of expression in a systematic manner. This year, it updates the report on inter-American standards prepared for the 2008 annual report, which systemized the jurisprudence that established the significance, function, characteristics, and limitations of the exercise of the right to freedom of expression, as well as the different kinds of speech protected. In accordance with the mandate given to the Office of the Special Rapporteur in the resolutions of the General Assembly of OAS,¹ the chapter also develops other important themes within the exercise of the right to freedom of expression, such as: the prohibition of censorship and indirect restrictions, journalists and communications media, freedom of expression on the part of public functionaries, and freedom of expression in the ambit of electoral processes. The systematization of the jurisprudence constitutes an important tool to enable judges, public officials, social organizations, and journalists to understand and apply the standards of the inter-American system.

7. Chapters IV through VI present the theoretical development of subjects that are of particular relevance for the Office of the Special Rapporteur and regarding which the OAS General Assembly has established specific mandates. Chapter IV explains the inter-American legal framework of the right to access to information and includes jurisprudence from various States on the matter. Chapter V looks at the various ways that the region's courts and legislative bodies have incorporated inter-American standards on freedom of expression into their domestic legislation. Chapter VI addresses the implications of the right to freedom of expression in broadcasting regulation frameworks, a topic of special importance for the region.

8. Finally, Chapter VII offers recommendations that the Office of the Special Rapporteur considers essential for adequately protecting, guaranteeing, and promoting the right to free thought and expression throughout the hemisphere.

9. The intense efforts of the Office of the Special Rapporteur have allowed it to become the expert office within the OAS charged with promoting and monitoring respect for freedom of expression in the hemisphere. This standing has generated, in turn, a substantial increase in the expectations by the hemispheric community about the work of the Office of the Special Rapporteur. In order to meet this demand, it is necessary to pay attention not only to the institutional and political support of the Office of the Special Rapporteur, but also its financial support, since without this support it cannot function and carry out the activities required by its mandate. The Office of the Special Rapporteur does not directly receive resources from the regular fund of the OAS. For that reason, its sustenance largely depends on the voluntary contributions made by some States and the contributions of foundations and international aid agencies for specific projects. It is important to once more urge the Member States to follow those countries that have responded to the call of the hemispheric summits to support the Office of the Special Rapporteur. The Plan of Action approved by the Heads of State and Government at the Third Summit of the Americas, held in Quebec in April of 2001, establishes that "[t]o strengthen democracy, create prosperity and realize human potential, our Governments will...[c]ontinue to support the work of the inter-American human rights system in the area of freedom of expression through the Special Rapporteur for Freedom of Expression of the IACHR[.]"

¹ In Resolutions 1932 (XXXIII-O/03) of 2003, 2057 (XXXIV-O/04) of 2004, 2121 (XXXV-O/05) of 2005, 2252 (XXVI-O/06) of 2006, 2288 (XXXVII-O/07) of 2007, 2434 (XXXVIII-O/08) of 2008, and 2523 (XXXIX-O/09) of 2009, the OAS General Assembly has urged the Office of the Special Rapporteur to continue advancing activities in the area of access to information.

10. The Office of the Special Rapporteur is grateful for the financial contributions received during 2008 from Costa Rica; the United States of America; the United Kingdom; Ireland; Sweden, through the Swedish International Development Cooperation Agency (SIDA); Switzerland; and the European Commission. Once more, the Office of the Special Rapporteur invites other States to add to this necessary support.

11. The Special Rapporteur for Freedom of Expression, Catalina Botero Marino, is grateful for the confidence of the IACHR and highlights the work of her predecessors in the consolidation of the Office of the Special Rapporteur. In particular, the Special Rapporteur expresses her gratitude towards her staff for the committed and exemplary work that they have carried out. This annual report is the product of their effort, teamwork, and dedication.

12. This annual report intends to contribute to the establishment of a better environment for the exercise of freedom of expression in the region, and in this way ensure the strengthening of democracy, wellbeing, and progress for the hemisphere's inhabitants. Its objective is to collaborate with OAS Member States in raising awareness about the problems that we all wish to resolve and in formulating viable proposals and recommendations based on regional doctrine and jurisprudence. To achieve this aim, it is necessary that the work of the Office of the Special Rapporteur be understood as a useful tool for responding to the challenges we face and for generating a broad and fluid dialogue not only with the Member States, but also with civil society and social communicators from all regions.

CHAPTER I GENERAL INFORMATION

A. Creation of the Office of the Special Rapporteur for Freedom of Expression and Institutional Support

1. The Inter-American Commission on Human Rights, by the unanimous decision of its members, created the Office of the Special Rapporteur for Freedom of Expression during its 97th period of sessions, held in October 1997. This Special Rapporteurship was created as a permanent office with functional autonomy and its own operational structure. Through the Office of the Special Rapporteur, the Commission sought to encourage the defense of the right to freedom of thought and expression in the hemisphere, given the fundamental role this right plays in consolidating and developing the democratic system and in protecting, guaranteeing, and promoting other human rights. During its 98th period of sessions, held in March 1998, the IACHR defined in general terms the characteristics and functions of the Office of the Special Rapporteur and decided to create a voluntary fund to provide it with economic assistance.

2. The Commission's initiative to create a permanent Office of the Special Rapporteur for Freedom of Expression found full support among the OAS Member States. Indeed, during the Second Summit of the Americas, the hemisphere's Heads of State and Government recognized the fundamental role of freedom of thought and expression, and noted their satisfaction over the creation of the Special Rapporteurship. In the Declaration of Santiago, adopted in April 1998, the Heads of State and Government stated the following:

We agree that a free press plays a fundamental role [in protecting human rights] and we reaffirm the importance of guaranteeing freedom of expression, information, and opinion. We commend the recent appointment of a Special Rapporteur for Freedom of Expression, within the framework of the Organization of American States.¹

3. The Heads of State and Government of the Americas likewise expressed their commitment to support the Office of the Special Rapporteur for Freedom of Expression. On this point, the Summit Plan of Action recommended the following:

To strengthen the exercise of and respect for all human rights and the consolidation of democracy, including the fundamental right to freedom of expression, information and thought, through support for the activities of the Inter-American Commission on Human Rights in this field, in particular the recently created Special Rapporteur for Freedom of Expression.²

4. During the Third Summit of the Americas, held in Quebec City, Canada, the Heads of State and Government ratified the mandate of the Office of the Special Rapporteur, adding that their governments would:

Continue to support the work of the inter-American human rights system in the area of freedom of expression through the Special Rapporteur for Freedom of Expression of the IACHR, as well as proceed with the dissemination of comparative jurisprudence, and seek to

¹ Declaration of Santiago, Second Summit of the Americas, April 18-19, 1998, Santiago, Chile, in "Official Documents of the Summit Process from Miami to Santiago," Volume I, Office of Summit Follow-up, Organization of American States.

² Plan of Action, Second Summit of the Americas, April 18-19, 1998, Santiago, Chile, in "Official Documents of the Summit Process from Miami to Santiago," Volume I, Office of Summit Follow-up, Organization of American States.

ensure that national legislation on freedom of expression is consistent with international legal obligations.³

5. The OAS General Assembly has on various occasions expressed its support for the work of the Office of the Special Rapporteur and entrusted it with follow-up or analysis of some of the rights that comprise freedom of expression. Thus, for example, in 2005 the OAS General Assembly approved Resolution 2149 (XXXV-O/05), in which it reaffirms the right to freedom of expression, recognizes the important contributions made in the Office of the Special Rapporteur's 2004 Annual Report, and urges follow-up on the issues included in that report, such as the evaluation of the situation regarding freedom of expression in the region; indirect violations of freedom of expression; the impact of the concentration in media ownership; and the treatment of hate speech in the American Convention.⁴ The Office of the Special Rapporteur has analyzed these issues in different annual reports, in the context of its evaluation of the state of freedom of expression in the region and in fulfillment of its task of creating expertise and promoting regional standards in this area.

6. In 2006, the OAS General Assembly reiterated its support for the Office of the Special Rapporteur in its Resolution 2237 (XXXVI-O/06). In this resolution, the General Assembly reaffirmed the right to freedom of expression, recognized the important contributions made in the Office of the Special Rapporteur's 2005 Annual Report, and urged follow-up on the issues mentioned in the report. These included, among others, public demonstrations as an exercise of freedom of expression and freedom of assembly, as well as freedom of expression and the electoral process.⁵ As in the previous case, the Office of the Special Rapporteur has followed up on these issues in its annual evaluation of the situation regarding freedom of expression in the region. In the same resolution, the General Assembly called for convening a special meeting of the Committee on Juridical and Political Affairs to delve deeper into existing international jurisprudence regarding the subject matter of Article 13 of the American Convention, and to specifically address issues such as public demonstrations and freedom of expression, as well as the development and scope of Article 11 of the American Convention. That meeting was held on October 26-27, 2007.

7. In 2007, the OAS General Assembly approved Resolution 2287 (XXXVII-O/07), in which it invited the Member States to consider the Office of the Special Rapporteur's recommendations on the matter of defamation laws. In that resolution, the General Assembly reiterated its request to convene a special meeting in the Committee on Juridical and Political Affairs to delve deeper into existing international jurisprudence regarding Article 13 of the American Convention. That meeting was held on February 28-29, 2008.

8. On the subject of access to information, the General Assembly has made several statements supporting the work of the Office of the Special Rapporteur and urging the adoption of its recommendations. In its Resolution 1932 (XXXIII-O/03) in 2003, reiterated in 2004 in Resolution 2057 (XXXIV-O/04), and in 2005 in Resolution 2121 (XXXV-O/05), the General Assembly asked the Office of the Special Rapporteur to continue reporting on the situation regarding access to public information in the region in its annual reports. In 2006, through Resolution 2252 (XXVI-O-06),

³ Plan of Action, Third Summit of the Americas, April 20-22, 2001, Quebec, Canada. Available at: http://www.summit-americas.org/iii_summit/iii_summit_poa_en.pdf.

⁴ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2004. OEA/Ser.L/V/II.222. Doc. 5 rev. 23 February 2005. Chapters II, V and VII. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=459&IID=1>

⁵ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2005. OEA/Ser.L/V/II.124. Doc. 7. 27 February 2006. Chapter V and VI. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=662&IID=1>

among other points, the Office of the Special Rapporteur was instructed to provide support to the Member States that request assistance in the development of legislation and mechanisms on access to information. The IACHR was also asked to conduct a study on the various forms of guaranteeing that all persons have the right to seek, receive, and disseminate public information based on the principle of freedom of expression. As a follow-up to this resolution, the Office of the Special Rapporteur in August 2007 published the *Special Study on the Right of Access to Information*.⁶

9. In the same regard, in 2007 the General Assembly approved Resolution 2288 (XXXVII-O/07), which highlights the importance of the right of access to public information, takes note of the Office of the Special Rapporteur's reports on the situation regarding access to information in the region, urges the States to adapt their legislation to guarantee this right, and instructs the Office of the Special Rapporteur to offer advisory support to the Member States in this area. It also requests that different bodies within the OAS, including the Office of the Special Rapporteur, prepare a basic document on best practices and the development of common approaches or guidelines to increase access to public information. This document, developed in conjunction with the Inter-American Juridical Committee, the Department of International Legal Affairs, and the Department of State Modernization and Good Governance, as well as with input from delegations of the Member States, was approved in April 2008 by the Committee on Juridical and Political Affairs.

10. In 2008, the General Assembly approved Resolution 2434 (XXXVIII-O/08), which reaffirms the right to freedom of expression and requests once again that the IACHR conduct appropriate follow-up on compliance with standards in this area and deepen its study of the issues addressed in its annual reports. The resolution invites the Member States to consider the recommendations of the Office of the Special Rapporteur regarding defamation, namely by repealing or amending laws that criminalize *desacato*, defamation, slander, and libel, and in this regard, to regulate these conducts exclusively in the area of civil law. That same year, the OAS General Assembly also approved Resolution 2418 (XXXVIII-O/08), which highlights the importance of the right of access to public information, urges the States to adapt their legislation to meet standards in this area, and instructs the Office of the Special Rapporteur to offer advisory support, as well as to continue including a report on the situation regarding access to public information in the region in its Annual Report.

11. In 2009, in its Resolution 2514 (XXXIX-O/09), the General Assembly once again reiterated the importance of the right of access to public information and recognized that the full respect for freedom of expression, access to public information, and the free dissemination of ideas strengthens democracy, contributes to a climate of tolerance of all views, fosters a culture of peace and non-violence, and strengthens democratic governance. It also instructs the Office of the Special Rapporteur to support the Member States of the OAS in the design, execution, and evaluation of their regulations and policies with respect to access to public information and to continue to include in its Annual Report a chapter on the situation regarding access to public information in the region.

12. Also in 2009, in its Resolution 2523 (XXXIX-O/09), the General Assembly underscored the importance of the Office of the Special Rapporteur's recommendations contained in the 2004, 2005, 2006, 2007, and 2008 annual reports. It also requested once again that the IACHR follow up on the recommendations included in these reports and in particular invited the Member States to take into consideration the Office of the Special Rapporteur's recommendations,

⁶ IACHR, Office of the Special Rapporteur for Freedom of Expression. Estudio Especial sobre el Derecho de Acceso a la Información. August, 2007. Available at: <http://www.cidh.oas.org/relatoria/section/Estudio%20Especial%20sobre%20el%20derecho%20de%20Acceso%20a%20la%20Informacion.pdf>

namely by repealing or amending laws that criminalize *desacato*, defamation, slander, and libel, as well as by regulating this conduct exclusively in the area of civil law.

13. Since its beginnings, the Office of the Special Rapporteur has also had the support of civil society organizations, the media, journalists and, most importantly, individuals who have been victims of violations of the right to freedom of thought and expression. They, in turn, have viewed the Office of the Special Rapporteur as an important source of support to reestablish the guarantees necessary for the exercise of their rights or to ensure just reparations as warranted by their particular situation.

B. Mandate of the Office of the Special Rapporteur

14. The Office of the Special Rapporteur for Freedom of Expression is a permanent office with its own operative structure and functional autonomy, which operates within the legal framework of the IACHR.⁷

15. The Office of the Special Rapporteur has a general mandate to carry out activities for the protection and promotion of the right to freedom of thought and expression, including the following:

- a. Advise the IACHR in evaluating cases and requests for precautionary measures, as well as in preparing reports.
- b. Carry out promotional and educational activities on the right to freedom of thought and expression.
- c. Advise the IACHR in conducting on-site visits to OAS member countries to expand the general observation of the situation and/or to investigate a particular situation having to do with the right to freedom of thought and expression.
- d. Conduct visits to the different OAS member countries.
- e. Prepare specific and thematic reports.
- f. Promote the adoption of legislative, judicial, administrative, or other types of measures that may be necessary to make effective the exercise of the right to freedom of thought and expression.
- g. Coordinate with public defender's offices or national human rights institutions to verify and follow up on conditions involving the exercise of the right to freedom of thought and expression in the Member States.
- h. Provide technical advisory support to the OAS bodies.
- i. Prepare an annual report on the situation regarding the right to freedom of thought and expression in the Americas, which will be considered by the full Inter-American Commission for its approval and inclusion in its Annual Report to the General Assembly.
- j. Gather all the information necessary to prepare the aforementioned reports.

16. In 1998, the Commission announced a public competition for the post of Special Rapporteur. Once the process was completed, the IACHR decided to designate as Special Rapporteur the Argentine attorney Santiago A. Canton, who assumed the post on November 2, 1998. In March 2002, the IACHR named Argentine attorney Eduardo A. Bertoni as Special Rapporteur. Bertoni occupied this position from May 2002 to December 2005. On March 15, 2006, the IACHR chose Venezuelan attorney Ignacio J. Alvarez as Special Rapporteur. In April 2008, the IACHR announced a competition to select Álvarez's successor. During the period in which the post was vacant, the Office of the Special Rapporteur was under the responsibility of then-Commission

⁷ See Articles 40 and 41 of the American Convention and Article 18 of the Statute of the IACHR.

Chairman Paolo Carozza. The competition was closed on June 1, and the pre-selected candidates to occupy this post were interviewed in July, during the IACHR's 132nd period of sessions. Following the round of interviews, on July 21, 2008, the IACHR selected Colombian attorney Catalina Botero Marino as Special Rapporteur.⁸ The new Special Rapporteur assumed the post on October 6, 2008.

C. Principal Activities of the Office of the Special Rapporteur

17. During its 11 years of existence, the Office of the Special Rapporteur has carried out in a timely and dedicated manner each of the tasks assigned to it by the IACHR and by other OAS bodies such as the General Assembly.

18. This part of the report summarizes very generally the tasks that have been accomplished, with particular emphasis on the activities carried out in 2009.

1. Individual Case System: Strategic Litigation on Freedom of Expression within the inter-American System

19. One of the most important functions of the Office of the Special Rapporteur is to advise the IACHR in the evaluation of individual petitions and prepare the corresponding reports.

20. The appropriate advancement of individual petitions not only provides justice in the specific case, but also helps call attention to landmark situations that affect freedom of thought and expression, and creates important case law that can be applied in the inter-American human rights system itself as well as in courts in countries throughout the region. The individual case system also constitutes an essential factor within the broad strategy of promoting and defending the right to freedom of thought and expression in the region, a strategy that the Office of the Special Rapporteur carries out through various mechanisms offered by the inter-American human rights system.

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

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

- *Case of Ivcher-Bronstein v. Peru*. Judgment of February 6, 2001. The petitioner was a naturalized citizen of Peru who was a majority shareholder in a television channel that aired a program that was severely critical of certain aspects of the Peruvian government, including cases of torture, abuse and acts of corruption committed by the Peruvian Intelligence Services. As a result of these reports, the State revoked the petitioner's Peruvian citizenship and removed his shareholding control of the channel. The judgment of the Inter-American Court found that the government's actions had violated the right to freedom of expression through indirect restrictions and ordered the State to restore the victim's rights.

- *Case of Herrera-Ulloa v. Costa Rica*. Judgment of July 2, 2004. This case involved a journalist who had published several articles reproducing information from various

⁸ IACHR Press Release No. 29/08. Available at: <http://www.cidh.org/Comunicados/English/2008/29.08eng.htm>.

European newspapers on alleged illegal conduct by a Costa Rican diplomat. The State convicted the journalist on four defamation charges. The Inter-American Court found that the conviction was disproportionate and that it violated the right to freedom of expression, and ordered, among other things, the nullification of criminal proceedings against the journalist.

- *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. During the 1993 presidential campaign in Paraguay, candidate Ricardo Canese made statements to the media against candidate Juan Carlos Wasmosy, whom he accused of being involved in irregularities related to the construction of a hydroelectric plant. Canese was prosecuted and sentenced to four months in prison, among other restrictions to his basic rights. The Inter-American Court found that the conviction was disproportionate and violated the right to freedom of expression. The Court also underscored the importance of freedom of expression during election campaigns, in the sense that people should be fully entitled to raise questions about candidates so that voters can make informed decisions.

- *Case Palamara-Iribarne v. Chile*. Judgment of November 22, 2005. Palamara, a former military official, had written a book that was critical of the National Navy. The book gave rise to a military criminal trial for "disobedience" and "breach of military duties," and led the State to withdraw from circulation all existing physical and electronic copies. The Court ordered a legislative reform that would ensure freedom of expression in Chile, as well as publication of the book, restitution of all copies that had been seized, and reparation of the victim's rights.

- *Case Claude-Reyes et al. v. Chile*. Judgment of September 19, 2006. In this judgment, the Court recognized the scope and content of access to information as a human right contained in Article 13 of the American Convention.

- *Case Kimel v. Argentina*. Judgment of May 2, 2008. The decision refers to the conviction of a journalist who in a book had criticized the conduct of a criminal judge in charge of investigating a massacre. The judge initiated a criminal proceeding in defense of his honor. The Inter-American Court found that the punishment was disproportionate and violated the victim's right to freedom of expression. In its decision, the Inter-American Court ordered the State, among other things, to reform its criminal legislation on the protection of honor and reputation, finding that it violated the principle of criminal definition or strict legality.

- *Case of Tristán Donoso v. Panama*. Judgment of January 27, 2009. This judgment refers to the proportionality of the sanctions imposed on a lawyer convicted of the crimes of defamation and slander for having declared during a press conference that a State official had recorded his private telephone conversations and had disclosed them to third parties. The Inter-American Court concluded that the State violated the lawyer's right to freedom of expression, since the criminal conviction imposed as a form of subsequent liability was unnecessary. The Inter-American Court also established criteria on the intimidating and inhibiting nature of disproportionate civil sanctions.

- *Case Ríos et al. v. Venezuela*. Judgment of January 28, 2009. The judgment refers to different public and private acts that limited the journalistic endeavors of the workers, management, and others associated with the RCTV television station, as well as to certain speeches by agents of the State against the station. The Inter-American Court found that such speeches were incompatible with the freedom to

seek, receive, and impart information “since they could have resulted intimidating for those linked with that communication firm.” The Inter-American Court also found that the State’s responsibility for the other acts that were alleged had not been proven, but reiterated its doctrine on indirect restrictions to freedom of expression. Finally, the Inter-American Court ordered the State to diligently conduct investigations and criminal proceedings for acts of violence against journalists and to adopt “the necessary measures to avoid illegal restrictions and direct or indirect impediments to the exercise of the freedom to seek, receive, and impart information.”

- *Case of Perozo et al. v. Venezuela*. Judgment of January 28, 2009. This judgment involved statements by public officials and other alleged hindrances to the exercise of freedom of expression, such as acts of violence by private actors against individuals linked to the Globovisión television station. The Inter-American Court found that statements made by high-level public officials and State authorities’ omissions in terms of their obligation to act with due diligence in investigating acts of violence against journalists constituted violations of the State’s obligation to prevent and investigate the facts. The Inter-American Court found that the State’s responsibility for the other acts that were alleged had not been proven, but reiterated its doctrine on indirect restrictions to freedom of expression. Finally, the Court ordered the State to diligently conduct investigations and criminal proceedings for acts of violence against journalists and to adopt “the necessary measures to prevent the undue restrictions and direct and indirect impediments to the exercise of the freedom to seek, receive, and impart information.”

- *Case Usón Ramírez v. Venezuela*. Judgment of November 20, 2009. Usón, a retired military officer, was convicted of the crime of “slander against the National Armed Forces,” after appearing on a television program and expressing critical opinions regarding the institution’s reaction in the case of a group of soldiers who had been severely injured while in a punishment cell. The Inter-American Court found that the criminal law used to convict Usón did not comply with the principle of legality because it was ambiguous, and concluded that the application of the criminal law in the case was not appropriate, necessary and proportional. The Inter-American Court ordered the State, *inter alia*, to vacate the military justice proceedings against the victim and modify, within a reasonable time, the criminal law employed in his case.

22. The Office of the Special Rapporteur advanced new individual petitions and cases whose reports on admissibility and merits were presented during the Commission’s sessions in 2009. A detailed report of the petitions and cases is presented in Chapter III of the IACHR’s Annual Report.

23. With the preparation and advancement of these cases, the Office of the Special Rapporteur helps make it possible for the Commission and the Inter-American Court of Human Rights to establish important case law on the guarantees necessary for the full exercise of freedom of expression. The standards achieved lend a greater dynamism to the work of the bodies of the inter-American system and make it possible to tackle new challenges in the effort to raise the level of protection for freedom of thought and expression throughout the hemisphere.

24. The aforementioned judgments helped to produce case law by the Inter-American Court in the area of freedom of expression. This has been summarized and systematized into rules and incorporated in this report, in the chapter having to do with the inter-American legal framework on freedom of expression.

2. Precautionary Measures

25. The Office of the Special Rapporteur has worked with the IACHR Protection Group regarding recommendations on the adoption of precautionary measures in the area of freedom of expression. In this regard, the IACHR has requested on multiple occasions that Member States adopt precautionary measures to protect the right to freedom of expression. It did so, for example, in the cases of (i) *Matus Acuña v. Chile*,⁹ (ii) *Herrera Ulloa v. Costa Rica*,¹⁰ (iii) *López Ulacio v. Venezuela*,¹¹ (iv) *Peña v. Chile*,¹² (v) *Globovisión v. Venezuela*,¹³ (vi) *Tristán Donoso v. Panama*,¹⁴ (vii) *Yáñez Morel v. Chile*,¹⁵ (viii) *Pellicó Pérez v. Guatemala*,¹⁶ and (ix) *Rodríguez Castañeda v. Mexico*.¹⁷ The granting of the precautionary measures does not constitute a prejudgment on the merits in question; rather, these measures are adopted out of a need to avert grave, imminent, or irremediable harm to one of the rights protected in the American Convention of Human Rights, or to maintain jurisdiction in the case and so the subject of the action does not disappear.

26. In 2009, the Office of the Special Rapporteur collaborated on, among other things, the study of the precautionary measures granted for journalist Félix Waldemar Maaz Bol of Guatemala and the members of the indigenous communities of the Ngöbe people and others in Panama. It also collaborated on the study of 35 precautionary measures for journalists, cameramen, photojournalists, announcers, and personnel from media outlets, in the context of the coup d'état in

⁹ IACHR decision issued June 18, 1999, and expanded on July 19, 1999, requesting that the Chilean government adopt precautionary measures for the benefit of Bartolo Ortiz, Carlos Orellana, and Alejandra Matus, in light of detention orders against the first two and an order prohibiting the distribution and sale of a book, stemming from the publication of the *Libro Negro de la Justicia Chilena* [*Black Book of Chilean Justice*], written by Mrs. Matus.

¹⁰ IACHR decision of March 1, 2001, requesting that the State of Costa Rica adopt precautionary measures for the benefit of journalist Mauricio Herrera Ulloa and the legal representative of the newspaper *La Nación*, who had received criminal and civil convictions due to the publication of reports against an official in the Costa Rican Foreign Service, with the sentences not having fully materialized at the time the measures were adopted.

¹¹ IACHR decision of February 7, 2001, requesting that the State of Venezuela adopt precautionary measures for the benefit of journalist Pablo López Ulacio, who had accused a businessman of benefiting from state insurance contracts in the context of a presidential campaign. The journalist was ordered detained and prohibited from publicly mentioning the businessman in the daily *La Razón*.

¹² IACHR decision of March 2003, requesting that the State of Chile adopt precautionary measures, for the benefit of writer Juan Cristóbal Peña, by lifting the judicial order seizing and withdrawing from circulation a biography of a popular singer who sought the order on the grounds that the account was considered grave slander.

¹³ IACHR decisions of October 3 and October 24, 2003, requesting that the State of Venezuela suspend administrative decisions to seize operating equipment from the Globovisión television station and that it guarantee an impartial and independent national trial in this case.

¹⁴ IACHR decision of September 15, 2005, requesting that the State of Panama suspend a detention order against Santander Tristán Donoso, stemming from his failure to comply with a monetary fine imposed for the alleged commission of the crime of libel and slander, after Mr. Tristán Donoso denounced that the Prosecutor General of the Nation had intercepted, taped, and published his telephone calls.

¹⁵ IACHR decision adopted following the presentation of an individual petition in 2002, in the name of Eduardo Yáñez Morel, who was prosecuted for committing the crime of *desacato*, having severely criticized the Supreme Court of Justice on a television program in 2001.

¹⁶ IACHR decision of November 3, 2008, in which the IACHR requested that the State of Guatemala take the measures necessary to guarantee the life and humane treatment of Pellicó and his family, because of the grave and constant threats received by the journalist as a result of his investigations and publications on drug trafficking.

¹⁷ IACHR decision adopted on July 3, 2008, for the purpose of preventing the destruction of electoral ballots from the 2006 presidential elections in Mexico.

Honduras.¹⁸ A more detailed description of these measures is available for consultation in the IACHR Annual Report.

3. Public Hearings

27. The IACHR received various requests for hearings on matters involving freedom of expression during its most recent periods of sessions. The Office of the Special Rapporteur participates actively in the hearings on freedom of expression, preparing the reports and handling the corresponding interventions and follow-up.

28. During the Commission's 134th period of sessions, which took place in March 2009, four thematic hearings were held on freedom of expression. The subject matters were: freedom of expression in Jamaica; the state of freedom of the press in Colombia; private broadcasting; and the situation of freedom of expression in Venezuela.

29. The 137th period of sessions, held from October 28 through November 6, 2009, included, among others, the following hearings on freedom of expression: criminalization of social protest in Venezuela; Case 12.128, Horacio Verbitsky et al. v. Argentina; right to freedom of expression, participation, assembly, and protest in Nicaragua; right to freedom of expression in Peru; and freedom of expression and broadcasting regulation in the Americas.

4. Official Visits

30. On-site visits to countries of the region are one of the main tools the Office of the Special Rapporteur uses to gather information about the situation regarding freedom of expression in a particular country, to advance international standards on the exercise of this right, and to promote the existence of the Office of the Special Rapporteur and the use of the inter-American human rights system to protect freedom of expression.

31. Official visits allow the Rapporteur and her team to meet with the principal actors working to improve the situation regarding freedom of expression in a country. The work agendas include meetings with government authorities, members of the legislature, and representatives of the justice system, as well as nongovernmental organizations and social communicators, among others. There are also meetings with potential beneficiaries of the inter-American human rights system or with individuals who already benefit from it. These visits also actively advocate for the strengthening of legislation on issues related to freedom of thought and expression and corresponding policies or practices to implement existing regulations that protect and guarantee this right.

32. On August 17-21, 2009, the Office of the Special Rapporteur participated in the official visit to Honduras following the coup d'état in that country. During the visit, the Office of the Special Rapporteur met with directors of media outlets, journalists, social communicators, representatives of organizations working to defend freedom of expression, representatives of the Association of Journalists, human rights defenders, and correspondents with international news agencies. The Office of the Special Rapporteur also participated in meetings that the IACHR held with officials of the *de facto* government, such as the minister of defense, the high command of the military and police, and the board of the National Telecommunications Commission. She also met with a congressional delegation, the human rights commissioner, and members of the Prosecutor General's Office and the Office of the Human Rights Prosecutor. At the end of the visit, the IACHR

¹⁸ Chapter III of the IACHR 2009 Annual Report describes each of these measures. They can also be consulted at: <http://www.cidh.oas.org/medidas/2009.eng.htm>

produced a press release.¹⁹ By mandate of the IACHR, the Office of the Special Rapporteur prepared a report on the state of the right to freedom of thought and expression in Honduras, which was incorporated into the IACHR's general report regarding the human rights situation in Honduras. It is also included in Chapter II of this report.

5. Seminars and Workshops with Strategic Actors in the Region

33. Seminars are another critical tool the Office of the Special Rapporteur uses to promote the inter-American system for the protection of human rights and the right to freedom of expression. In the last 11 years, the Office of the Special Rapporteur has organized seminars throughout the region, in many cases with the cooperation of universities, government institutions, and nongovernmental organizations.

34. Hundreds of journalists, attorneys, university professors, judges, and journalism and law students, among others, have attended the training sessions. These are offered by staff members of the Office of the Special Rapporteur not only in country capitals but also in more remote regions where there is often no access to information on the guarantees that can be sought to protect the right to freedom of thought and expression.

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

36. What follows is a summary of the principal seminars and workshops the Office of the Special Rapporteur held in 2009.

37. On January 25-29, 2009, the Special Rapporteur attended the Regional Meeting of Latin American Organizations on Freedom of Expression, organized by the International Freedom of Expression Exchange (IFEX) in Guatemala. She gave various workshops and talks there, both for the invited international organizations and for journalists, the media, and local organizations.

38. The Special Rapporteur also participated in the Inter-American Press Association's Mid-Year Meeting, held on March 13-16, 2009, in Asunción, Paraguay.

39. On April 13-15, 2009, the Special Rapporteur was in Panama to participate in the *Forum on Freedom of Expression and Protection of Honor*, organized by the Office of the People's Defender. On April 14, the Special Rapporteur gave a keynote speech on *Inter-American Standards in the Area of Freedom of Expression: Achievements and Challenges*.

40. On April 16-22, 2009, the Special Rapporteur conducted an academic visit to Mexico, where in addition to meeting with different actors involved in the exercise of freedom of thought and expression, she participated in various seminars. On April 16, the Special Rapporteur participated in the forum on *Freedom of Expression, Democratic Processes, and Human Rights*, organized by Article 19, the Autonomous University of Mexico City, the World Association of Community Radio Broadcasters, the Mexican Association for the Right to Information, and the Office of the United Nations High Commissioner on Human Rights in Mexico. On April 18, the Office

¹⁹ IACHR. August 21, 2009. IACHR Press Release No. 60/09. Available at: <http://www.cidh.oas.org/Comunicados/English/2009/60-09eng.htm>.

of the Special Rapporteur gave a seminar at the Ibero-American University, geared toward journalists, on the inter-American system and freedom of expression, with an emphasis on the right of access to information. On April 20, the Office of the Special Rapporteur organized a workshop for journalists in Oaxaca on the same topics, in coordination with the Oaxaca State Institute on Access to Public Information. The following day, staff attorney Alejandra Negrete Morayta represented the Office of the Special Rapporteur at the forum on *The Right of Access to Information: The Inter-American System, International Standards, and an Overview*, organized in conjunction with the State Institute on Access to Public Information and Article 19.

41. On April 23-24, 2009, the Office of the Special Rapporteur participated in the organization of a special meeting on freedom of expression held before the Committee on Juridical and Political Affairs of the Organization of American States. Specialists in the area of freedom of expression and representatives of certain Member States participated in the meeting.

42. On April 29, the Special Rapporteur participated in a seminar on the right of access to information, held in Bogotá and organized by the Embassy of Great Britain in Colombia, in the context of the campaign entitled "More information, more rights."

43. On April 28-30, the *Americas Regional Conference on the Right of Access to Information* was held in Lima, Peru. It was organized by the Carter Center, in collaboration with the OAS and the Knight Center for Journalism in the Americas. Staff attorney Carlos J. Zelada of the Office of the Special Rapporteur attended the workshops held over those days. The Special Rapporteur participated in a panel at the close of the conference, along with former U.S. President Jimmy Carter and the Vice President of the Inter-American Court of Human Rights, Diego García-Sayán.

44. On May 4, 2009, the Special Rapporteur attended the mid-year meeting of the International Association of Broadcasters, held in Washington, D.C., which OAS Secretary General José Miguel Insulza also attended.

45. On May 6, 2009, the Special Rapporteur gave a presentation to the OAS Permanent Council in commemoration of World Press Freedom Day.

46. On May 7, 2009, the Special Rapporteur participated in the presentation to the OAS Permanent Council of the 2008 Annual Report of the IACHR, which includes the Annual Report of the Office of the Special Rapporteur for Freedom of Expression.

47. On May 27, 2009, in Washington, D.C., the Special Rapporteur gave a presentation on issues related to access to information and freedom of expression at the organization Inter-American Dialogue, along with other experts on the subject.

48. On June 1-3, 2009, the Special Rapporteur attended the OAS General Assembly held in San Pedro Sula, Honduras.

49. On June 8 and 12, 2009, the Special Rapporteur participated in various academic activities organized by American University as part of the annual Interdisciplinary Course on Human Rights. On June 8, the Special Rapporteur gave a presentation on international standards in the area of freedom of expression. On June 12, she participated on a panel entitled *Freedom of Expression: A Key Issue on the Agenda of the Inter-American Commission on Human Rights*. Other distinguished speakers who participated on the panel included Herman Schwartz, professor of law at the American University Law School; Leo Zwaak, senior researcher at the Netherlands Institute of Human Rights at Utrecht University; and Christof Heyns, professor at the University of Pretoria. This

event also included the awards ceremony for the winner of an essay contest on freedom of expression organized by American University. The prize was awarded to Julio José Rojas Baez.

50. On July 24, 2009, the Special Rapporteur gave a seminar on *The Protection of Investigative Journalism in the Inter-American System of Human Rights* in La Jolla, California, an event geared toward investigative reporters from around the region. The activity was organized in coordination with the Institute of the Americas and funded by the Swedish International Development Cooperation Agency.

51. On August 6 and September 29, 2009, the Special Rapporteur gave a training session on the Office of the Special Rapporteur's mandate and inter-American standards on freedom of expression to two groups of 13 and 10 Latin American journalists, respectively, who visited Washington on those dates at the invitation of the U.S. State Department's International Visitor Leadership Program.

52. On October 2, 2009, the Rapporteur offered a training session on the Office of the Special Rapporteur's mandate and inter-American standards on freedom of expression to a group of 10 journalists from Latin America and to a number of correspondents who were taking a training course at the Washington Post.

53. From August 30 to September 2, 2009, the Special Rapporteur conducted an academic visit to Chile which included meetings with and presentations to members of civil society organizations and public entities such as the Transparency Council. In addition, she attended a September 1, 2009 workshop discussion on broadcasting principles, at Diego Portales University, and on September 2 a seminar on the protection and strengthening of freedom of expression, at the University of Chile, as well as a seminar on the inter-American human rights system, at Adolfo Ibáñez University. These academic seminars were geared toward students and professors of law and journalism, as well as members of the media.

54. On September 3-4, 2009, the Special Rapporteur accompanied the IACHR on its visit to Santiago, Chile. On September 5, she participated in the various events held to commemorate the IACHR's 50th anniversary. One of these was a seminar on September 4 organized by the Human Rights Center at Diego Portales University, in which the Special Rapporteur gave an address on the IACHR and the protection of fundamental rights, with particular emphasis on the right to freedom of thought and expression.

55. The Special Rapporteur accompanied the IACHR on its visit to Argentina, where she participated in the IACHR sessions held in that country. She also participated in protocolary activities with representatives of the State authorities and with members of civil society, as well as in the Commission's substantive sessions held in commemoration of the 30th anniversary of the IACHR's visit to Argentina.

56. On September 13-15, 2009, the Special Rapporteur carried out various events for dissemination of information and education, in addition to holding talks with key actors in the Republic of Argentina. The Rapporteur met with members of organizations that work in the defense of freedom of expression, such as the Association for Civil Rights (ADC), the Center for Legal and Social Studies, and the Argentine Forum for Journalism. She also participated in the *Regional Meeting on Official Advertising and Indirect Censorship: Toward a Definition of Regulation Standards*, organized by ADC with support from the Open Society Institute, which took place on September 14.

57. On September 16-17, 2009, the Special Rapporteur, in conjunction with the University of Palermo and the University of La Plata and with the support of the Swiss government,

gave two seminars in Argentina on the inter-American human rights system, with an emphasis on freedom of expression and access to public information. One of the seminars took place in Buenos Aires and the second in the city of La Plata. The seminars provided training for more than 50 law professionals, social communicators, journalists, members of social organizations, and State officials.

58. On September 18, 2009, the Special Rapporteur participated in the XXI Meeting of High-Level Authorities in Human Rights and Ministries of Foreign Affairs of MERCOSUR and affiliated States, giving a presentation on the inter-American human rights system and the scope of the right to freedom of expression.

59. On September 23-25, 2009, the Office of the Special Rapporteur—in collaboration with the Foundation for Press Freedom (FLIP), the National Association of Colombian Dailies, and Colombia's ICESI University, and with the support of the Swiss government—organized and gave two seminars in Colombia to train 80 journalists, lawyers, members of nongovernmental organizations, and State officials on the inter-American system's standards regarding freedom of expression and particularly access to public information. The seminars were offered in the cities of Bogotá and Cali.

60. From October 21 to 27, 2009, the Special Rapporteur visited Mexico to conduct academic and dissemination activities related to National Transparency Week, organized by the Federal Institute for Access to Public Information. In addition, the Office of the Special Rapporteur participated in a seminar on civil and political rights organized by the Secretariat of Foreign Affairs, the Federal Electoral Tribunal, and the Institute of Legal Research at the Autonomous University of Mexico. The Special Rapporteur also participated in a seminar on freedom of expression, at the Autonomous University of Guerrero. In addition, at the invitation of that country's Secretariat of Foreign Affairs, she met with various federal authorities and nongovernmental organizations to address various issues related to transparency and access to information, the protection of journalists, legislative reforms, community radio broadcasters, and legal investigations, among others.

61. On November 13, 2009, the Rapporteur gave a presentation to participants in the training course on *The Inter-American and International Systems for Human Rights Protection*, organized by the IACHR in conjunction with the Washington College of Law at American University and the Bernard and Audre Rapoport Center for Human Rights and Justice at the University of Texas. The course was geared toward representatives of various nongovernmental organizations interested in the inter-American and international human rights systems.

62. On December 1-2, 2009, the Special Rapporteur participated in discussions on the Model Inter-American Law on Access to Information, which the OAS is promoting through its Department of International Law and the Secretariat for Legal Affairs.

63. On December 4, 2009, the Special Rapporteur gave an address on *The Media and Information in a Democracy* at the Houston Series International Seminar held in Cartagena, Colombia. The seminar was organized by various media outlets in Colombia.

64. On December 8-9, 2009, the Special Rapporteur participated in the regional consultation on "the strengthening of cooperation between the international mechanism and regional mechanisms for the promotion and protection of human rights," held in Washington, D.C. The purpose of the consultation was to identify areas for cooperation and dialogue among national human rights actors, the inter-American human rights system, and the universal human rights system through the exchange of information, work methods, best practices, and lessons learned.

6. Annual Report and development of expertise

65. One of the main tasks of the Office of the Special Rapporteur is the preparation of the Annual Report on the state of freedom of expression in the hemisphere. Every year, this report analyzes the situation regarding this right in the OAS Member States, which includes noting the principal threats to ensuring the exercise of the right to freedom of expression and the advances that have been made in this area.

66. Besides its annual reports, the Office of the Special Rapporteur periodically produces specific reports on particular countries. For example, it has prepared and published special reports on the situation regarding the right to freedom of expression in Paraguay (2001), Panama (2003), Haiti (2003), Guatemala (2004), Venezuela (2004), and Colombia (2005). In 2009, the Office of the Rapporteur prepared special reports on the situation regarding the right to freedom of thought and expression in Honduras and Venezuela, which were incorporated into the IACHR reports.

67. In addition, the Office of the Special Rapporteur prepares thematic reports that have opened up important channels for discussion in the hemisphere and led to the implementation of legislative and administrative reforms in many States of the region. Thus, for example, the Office of the Special Rapporteur has published studies on the right of access to information; impunity in crimes against journalists; new technologies and freedom of expression; and poverty and freedom of expression, among other topics. In 2009, the Office of the Special Rapporteur worked on various special thematic reports, such as an update of inter-American standards on freedom of expression; the study on the right of access to information, which includes decisions by the various national courts on this issue; the systematization of best practices in the incorporation of inter-American standards into domestic law; and the formulation of principles for regulating broadcast frequencies. The results of these studies will be presented in Chapters III, IV, V, and VI of this report.

7. Special statements and declarations: using the bully pulpit

68. Through the daily monitoring of the state of freedom of expression in the region—conducted by means of an extensive network of contacts and sources—the Office of the Special Rapporteur issues statements such as press releases, reports, and opinions on specific cases or situations that are relevant to the exercise of this fundamental right. Press releases issued by the Office of the Special Rapporteur receive wide coverage and constitute one of its most important work mechanisms.

69. The Office of the Special Rapporteur receives an average of 2,250 e-mails per month. Of these, 75% refer to alerts, press releases, or requests for information and consultations on freedom of expression in the region, and receive a timely response; 10% refer to formal petitions to the IACHR's individual case system; and the remaining 15% have to do with issues that do not fall within the Office of the Special Rapporteur's area of competence. The Office of the Special Rapporteur reviews, culls, and sorts the information it receives to determine the course of action to take. Actions may range, *inter alia*, from directing letters to the States or issuing press releases²⁰ to advocating that the IACHR grant precautionary measures in serious situations that may so warrant.

²⁰ In 2009, the following press releases were issued: IACHR Special Rapporteur. January 22, 2009. Press Release No. R01/09; IACHR Special Rapporteur. February 9, 2009. Press Release No. R05/09; IACHR Special Rapporteur. April 3, 2009. Press Release No. R15/09; IACHR Special Rapporteur. April 29, 2009. Press Release No. R21/09; IACHR Special Rapporteur. May 7, 2009. Press Release No. R22/09; IACHR Special Rapporteur. May 7, 2009. Press Release No. R24/09; IACHR Special Rapporteur. May 15, 2009. Press Release No. R29/09; IACHR Special Rapporteur. May 22, 2009. Joint Press Release No. R33/09; IACHR Special Rapporteur. May 29, 2009. Press Release No. R34/09; IACHR Special Rapporteur. June 11, 2009. Press Release No. R36/09; IACHR Special Rapporteur. June 22, 2009. Press Release No. R38/09; IACHR Special Rapporteur. June 26, 2009. Press Release No. R41/09; IACHR Special Rapporteur. June 29, 2009. Press Release No. R44/09; IACHR Special Rapporteur. July 6, 2009. Press Release No. R48/09; IACHR Special Rapporteur. July 12, 2009.

70. In addition, since its creation the Office of the Special Rapporteur has participated in the drafting of joint declarations with the other regional rapporteurs and the UN rapporteur for freedom of expression. These joint statements are generally signed by the UN Special Rapporteur; the Representative on Freedom of the Media of the OSCE; the Special Rapporteur of the OAS; and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission. When the issues are regional in nature, the declarations are signed by the Rapporteurs for the UN and the OAS.

71. The joint declarations constitute an important tool for the work of the Office of the Special Rapporteur. In previous years, these statements have covered such subjects as: the importance of freedom of expression (1999); murders of journalists and defamation laws (2000); challenges to freedom of expression in the new century in areas such as terrorism, the Internet, and radio (2001); freedom of expression and the administration of justice, commercialization and freedom of expression, and criminal defamation (2002); media regulation, restrictions on journalists, and investigations into corruption (2003); access to information and secrecy legislation (2004); the Internet and anti-terrorism measures (2005); publication of confidential information, openness of national and international entities, freedom of expression and cultural-religious tensions, and impunity in cases of attacks against journalists (2006); and diversity in access, ownership, and content of the media, particularly radio and television (2007).²¹

72. In December 2008, the rapporteurs for freedom of expression of the UN, the OSCE, the OAS, and the African Commission issued the Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation, after holding a meeting on December 9 in Athens, Greece. The joint statement expresses the four rapporteurs' concern about resolutions on "defamation of religions" adopted by the UN Commission on Human Rights and then its Human Rights Council, and by that same organization's General Assembly since 2005. The Joint Declaration also notes the proliferation, particularly since the attacks of September 11, 2001, of anti-terrorism and anti-extremism laws that unduly restrict freedom of expression and access to information. In this regard, the joint declaration emphasizes that the concept of "defamation of religions" is incompatible with international standards on defamation, which refer to protecting the reputation of individuals and not of ideas or beliefs. In addition, the joint declaration recommends that international organizations desist from adopting statements on this notion. It also warns about the use of vague notions in seeking criminalization of expressions related to terrorism, and emphasizes the need for this type of anti-terrorism and anti-extremism legislation to respect the role of the media.²²

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Press Release No. R50/09; IACHR Special Rapporteur. July 21, 2009. Press Release No. R51/09; IACHR Special Rapporteur. July 30, 2009. Press Release No. R54/09; CIDH. August 3, 2009. Press Release No. R55/09; IACHR Special Rapporteur. August 5, 2009. Press Release No. R57/09; CIDH. August 21, 2009. Press Release No. R60/09; IACHR Special Rapporteur. September 4, 2009. Press Release No. R62/09; IACHR Special Rapporteur. September 24, 2009. Press Release No. R66/09; IACHR Special Rapporteur. September 25, 2009. Press Release No. R67/09; IACHR Special Rapporteur. September 29, 2009. Press Release No. R70/09; IACHR Special Rapporteur. September 29, 2009. Press Release No. R71/09; IACHR Special Rapporteur. October 1, 2009. Press Release No. R72/09; IACHR Special Rapporteur. November 4, 2009. Press Release No. R76/09; IACHR Special Rapporteur. November 26, 2009. Press Release No. R79/09; IACHR Special Rapporteur. December 9, 2009. Press Release No. R83/09; IACHR Special Rapporteur. December 29, 2009. Press Release No. R87/09; IACHR Special Rapporteur. December 31, 2009. Press Release No. R88/09.

²¹ The abovementioned joint declarations are available at: <http://www.cidh.oas.org/relatoria/docListCat.asp?catID=16&IID=1>.

²² Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation. December 9, 2008. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=735&IID=1>.

73. On May 15, 2009, the four rapporteurs for freedom of expression signed the Joint Declaration on the Media and Elections, in which they underscored the particular importance of open and robust debate and the right of access to information in the context of the electoral process, as well as the fundamental role of the communications media in raising relevant electoral issues and informing the electorate. The declaration urges the States to implement measures to create an environment that guarantees media pluralism; repeal laws that unduly restrict freedom of expression and regulations that hold the media liable for disseminating statements made directly by political parties or candidates; establish effective systems to prevent threats and attacks against the media; approve laws prohibiting discrimination in the allocation of official advertising, based on public opinion; create independent bodies for regulatory control related to the media and elections; and establish clear obligations for publicly owned media that include informing the electorate, respecting strict rules to ensure impartiality and balance, and ensuring equitable access to all political parties and candidates.²³

74. In 2009, the Office of the Special Rapporteur issued various press releases calling attention to events related to freedom of thought and expression. These statements call attention to issues of particular concern as well as to local best practices and explain the respective regional standards. The 2009 press releases can be consulted on the Office of the Special Rapporteur's Web page: <http://www.cidh.oas.org/relatoria/index.asp?IID=1>.

D. Staff of the Office of the Special Rapporteur

75. The Office of the Special Rapporteur has worked, under the coordination of the Special Rapporteur, with a team that fluctuates between two and three attorneys who are experts on freedom of expression issues, one expert in journalism and communications, one person who fulfills administrative assistant duties, and since July 2009, one person in charge of fundraising and follow-up on projects and donation agreements. The Office of the Special Rapporteur has had help from specialized external consultants in the preparation of some technical reports.

76. This team's expertise and professional commitment have enabled the Office of the Special Rapporteur to have advised the IACHR on the presentation of cases to the Inter-American Court. It has also made it possible for the Office of the Special Rapporteur to advise the IACHR with due timeliness on the potential adoption of precautionary measures in reference to the right enshrined in Article 13 of the American Convention. This legal team has also been essential in terms of the Office of the Special Rapporteur's capacity to respond to the inquiries made to the office on a daily basis. The person in charge of communications has served as an essential liaison with the press and has fulfilled the task of monitoring the information that arrives on freedom of expression in the region; this makes it possible to draft statements in a timely manner and to systematically monitor the alerts that are received, and constitutes one of the principal sources for the preparation of annual reports and thematic or national reports. The addition of the person in charge of fundraising and project follow-up has been essential in developing grant proposals and raising funds and in guaranteeing that commitments with donors are met.

77. The Office of the Special Rapporteur has also benefited from the presence of interns or scholarship recipients, who have been a vital part of the team that enables the Office to carry out its everyday tasks. Students of law, communications and political science, attorneys specialized in

²³ Joint Declaration on the Media and Elections. May 15, 2009. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=745&IID=1>.

freedom of expression, human rights or international law, and journalists have contributed their time, energy, and knowledge so that the Office of the Special Rapporteur can meet its objectives.²⁴

E. Funding

78. The Office of the Special Rapporteur is financed wholly through external funds specifically donated for such purpose by OAS Member States, observer countries, and international cooperation agencies and foundations. Each job position, including that of the Special Rapporteur, has been financed with funds from different countries and organizations. Out of the funds given by donors, the OAS retains a portion ranging from 11% (if the donation comes from a member country of the organization) to 12% (if that is not the case); this is designated to recover the indirect costs of managing these contributions.

79. The framework project of the Office of the Special Rapporteur is called the Project for Strengthening Freedom of Expression in the Americas, the development of which has made it possible to carry out the activities and achievements that have been described.

80. In 2009, the Project for Strengthening Freedom of Expression in the Americas received critical funding from Sweden in the amount of US\$208,500; from Ireland in the amount of US\$78,640; from Switzerland in the amount of US\$50,000; from the United States "OAS Democracy Unprogrammed Funds" in the amount of US\$250,000; and from Costa Rica in the amount of US\$2,500. In addition, in 2009 the Office of the Rapporteur raised significant cooperation funds that will be executed over the next three years: from Great Britain (US\$290,000), the Swedish International Development Cooperation Agency (US\$139,000), and the European Commission (US\$1.4 million). The funds obtained will enable the Office of the Special Rapporteur to increase its operating capacity and its impact throughout the region, as well as to fund 100% of the projects included in its plan of activities for 2010 and 70% of its activities for the following two years (2011 and 2012).

81. The Office of the Special Rapporteur would especially like to express its appreciation for the contributions received from the OAS Member States, observer countries, and international cooperation bodies. In 2009, the Office of the Special Rapporteur notes in particular the projects that were well executed thanks to the contributions of Costa Rica, the United States of America, Ireland, France, United Kingdom, Sweden, and Switzerland. This funding has enabled the Office of the Special Rapporteur to fulfill its mandate and continue to move forward in its efforts to promote and defend the right to freedom of expression.

²⁴ The Office of the Special Rapporteur appreciates the work and contributions of Tamara Carrera (Chile), Andre Marini (Brazil), and Citlalli Villanueva Amador (Mexico), who were interns in 2009.

CHAPTER II EVALUATION OF THE STATE OF FREEDOM OF EXPRESSION IN THE HEMISPHERE

A. Introduction and methodology

1. This chapter describes some of the most important aspects of freedom of expression in the hemisphere during 2009. Its objective is to begin a constructive dialogue with the Member States of the OAS, calling attention to the reported advances as well as the problems and challenges that have required action during this period. The Office of the Special Rapporteur has confidence in the will of the OAS Member States to promote decisively the right to freedom of expression and, to that end, to publicize their best practices, report the most serious problems observed, and formulate viable and practical recommendations based on the Declaration of Principles.

2. As in previous annual reports, this chapter exposes the aspects of the right to freedom of expression that merit greater attention and that have been reported to the Office of the Special Rapporteur during the year. Following the methodology of previous annual reports, this chapter is developed from the information received by the Office of the Special Rapporteur from various State and non-governmental sources. The information provided by States, presented during the hearings held by the IACHR, submitted by non-governmental organizations in the region, and contained in alerts sent by media and communicators is of particular importance to the Special Rapporteurship. In all cases, the information is contrasted and verified so that the only information that is published is that which will serve to assist the States to identify particularly problems or tendencies that must be addressed before they could cause irreparable effects.

3. The selected information is ordered and systematized in a manner so as to present the advances, setbacks, and challenges in various aspects of the exercise of the right to freedom of expression, including progress made in legal or legislative matters, as well as the most serious problems that arose throughout the year, such as murders, threats and attacks against journalists related to the exercise of their profession; the application of disproportionate subsequent imposition of liability; threats against the right to keep sources confidential; the progress and challenges in the right to access to information; and the problems detected in the allocation of official advertising, among others.

4. The cases selected in each topic seek to serve as paradigmatic examples that reflect the situation in each country in relation to the respect and exercise of freedom of expression. Sources are cited in all cases. It is pertinent to clarify that the omission of analysis of the situation of some cases or States is due to the fact that the Office of the Special Rapporteur has not received sufficient information. As such, these omissions should be interpreted only in this sense. In the majority of cases, the Office of the Special Rapporteur provides the direct source, citing the electronic address of the corresponding Web site. When the information is not published directly, the report cites the date the information was received in the electronic mailbox of the Office of the Special Rapporteur. This report does not include information that has been submitted to the Office of the Special Rapporteur through requests for precautionary measures, which has not been made public.

5. In preparing this chapter of its 2009 Annual Report, the Office of the Special Rapporteur took into account information available until November 30, 2009. Information regarding incidents that occurred after this date is available in the press release section of the websites of the Office of the Special Rapporteur (<http://www.cidh.org/relatoria>) and the IACHR (<http://www.cidh.org>).

6. Finally, the Office of the Special Rapporteur acknowledges the collaboration of the OAS Member States and the civil society organizations that contributed information about the situation of the exercise of freedom of expression in the hemisphere. The Office of the Special Rapporteur encourages the continuation of this practice, as it is fundamental for the enrichment of future reports.

B. Evaluation of the state of freedom of expression in the Member States

1. Antigua y Barbuda

7. The Office of the Special Rapporteur received information indicating that in January of 2009, in the context of a political campaign, Lester Bird, the leader of the Antigua Labor Party, filed a lawsuit against Information Minister John E. St. Luce, demanding that he ensure that the opposition had equal access to the transmission of messages through the state media outlets. The information submitted to the Office of the Special Rapporteur indicates also that as a result of the lawsuit, on February 9, 2009, representatives of the opposition and the government reached an agreement guaranteeing that the opposition party would have equal access to State media outlets.¹ The "Joint Statement on the Media and Elections" (2009) indicates that during elections, all public media outlets, including public broadcasters, have the obligation "[t]o grant all parties and candidates equitable access to the media to communicate their messages directly with the public, either for free or at subsidized rates. Equitable access means fair and non-discriminatory access allocated according to objective criteria for measuring overall levels of support, and includes factors such as timing of access and any fees."²

2. Argentina

8. The Office of the Special Rapporteur views positively the fact that on November 18, 2009, the Chamber of the Senate passed Law No. 26.551, which modifies articles 109, 110, 111, 113, and 117 of the Penal Code, and repeals Article 112. According to this legislative reform, expression or opinion on matters of public interest can no longer be grounds for a charge of libel or slander. Also, the new legislative text holds that publishing or reproducing information from third parties is no longer considered a crime against honor when the content is attributed to its source "in a substantially faithful way." The reform also allows those accused of slander and libel to be exempt from penalty if they publicly retract the libelous or slanderous material, either before answering the suit or in doing so.³

¹ Antigua Sun. January 7, 2009. *ALP files court action to gain access to ABS*. Available at: http://www.antiguasunonline.com/index.php?option=com_content&view=article&id=188940:ALP-files-court-action-to-gain-access-to-ABS-&catid=57:local&Itemid=54; Antigua Sun. February 9, 2009. *Access Granted ... Court resolves dispute over ALP's rights to national media*. Available at: http://www.antiguasunonline.com/index.php?option=com_content&view=article&id=188210:ACCESS-GRANTED...Court-resolves-dispute-over-ALP's-rights-to-national-media&catid=57:local&Itemid=54; Caribbean Net News. February 11, 2009. *Antigua-Barbuda opposition files law suit for equal media time*. Available at: http://www.caribbeanetnews.com/antigua/antigua.php?news_id=13420&start=160&category_id=4.

² Joint Statement of the rapporteurs for freedom of expression of the UN, the OSCE, the OAS, and the ACHPR on the Media and Elections. May 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=744&IID=1>.

³ Honorable National Senate. File 2750/08: Proyecto de Ley modificando el Código Penal respecto de los delitos de calumnias e injurias sobre la libertad de expresión. Available at: http://www.senado.gov.ar/web/proyectos/verExpe.php?origen=S&tipo=PL&numexp=2750/08&nro_comision=&tConsulta=1; Inter-American Press Association. November 23, 2009. *IAPA welcomes fact that libel and slander no longer criminal offenses in Argentina*. Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4294&idioma=us; Reporters Without Borders. November 19, 2009. *La calumnia y la injuria salen del terreno penal: 'Un gran avance legislativo.'* Available at: <http://www.rsf.org/La-calumnia-y-la-injuria-salen-del.html>; Asociación por los Derechos Civiles. November 19, 2009. *ADC*

9. This legislative modification constitutes a decisive step toward the incorporation of the freedom of expression standards of the inter-American system into Argentine law. Principle 10 of the Declaration of Principles holds that, “The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.” The Office of the Special Rapporteur observes, however, that the recent criminal reform should be complemented by a modification of the Civil Code. This would prevent the disproportionate use of financial punishment, which can also be used as a mechanism to censure the exercise of the right to freedom of expression.

10. It is worth noting that before this step forward, the Office of the Special Rapporteur received information on the November 21, 2008 ruling of the Correctional Court of Concepción del Uruguay, in the Entre Ríos province, in the case of *D’Acosta, María Inés; Marclay, Raúl Daniel – Querrela por injurias – Expediente No. 4.324/I*, which convicted Raúl Daniel Marclay for the crimes of libel and slander and sentenced him to 12 months in prison. The case originated in 2004, when Marclay published an article in daily newspaper *Urn* on the alleged abandonment of a minor by his father. According to the information received by the Office of the Special Rapporteur, on June 22, 2009, the Superior Court of Justice of the Province of Entre Ríos rejected the writ of annulment filed with the ruling of the correctional court, upholding the sentence and all it set forth. The journalist was to begin serving his sentence in October of 2009.⁴

11. In other developments, on October 10, 2009, Law No. 26.522 was promulgated. The law regulates “audio-visual communication services in all the territory of the Republic of Argentina.”⁵ The Office of the Special Rapporteur finds that this law represents important progress in comparison to Argentina’s previous situation. Effectively, the regulatory framework that was reformed had established an enforcement authority that was completely under the control of the Executive and did not establish clear, transparent, and equitable rules for the allocation of frequencies. Nor had it generated conditions appropriate for fostering the existence of broadcasting that was truly free of political pressure.

12. Law No. 26.522 holds that the guiding principles of its content are respect and the guarantee of the right to freedom of expression, a right according to which the law’s dispositions should be interpreted. Article 2 of Law No. 26.522 indicates that “activity carried out through audiovisual communication services [...] externalizes the inalienable human right to express, receive, distribute, and research information, ideas, and opinions” and that the “basic object of the activity of regulatory services [...] is the promotion of diversity, universal access, and participation, all of which implies the equal opportunity of all the Nation’s inhabitants to access the benefits thereof.” In

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celebra la despenalización de las calumnias e injurias para expresiones referidas a temas de interés público. Available at: http://www.adc.org.ar/sw_contenido.php?id=647.

⁴ *El País*. October 28, 2009. *Preso por calumnias*. Information received on November 5, 2009, by e-mail at the Office of the Special Rapporteur. Diario del Sur Digital. October 22, 2009. *Condenan por injuria al editor de un periódico*. Available at: <http://www.diariodelsurdigital.com.ar/Condenan-por-injurias-al-editor-de-un-periodico>.

⁵ Law No. 26.522 repeals Law No. 22.285 (Setting the objectives, policies, and foundations that radio broadcasters should abide by), passed on September 15, 1980. *Boletín Oficial de la República Argentina*. Year CXVII. Number 31.756. October 10, 2009. *Law 26.522. Regulating Audiovisual Communication Services in all the territory of the Republic of Argentina (Regúlense los Servicios de Comunicación Audiovisual en todo el ámbito territorial de la República Argentina)*. Available at: <http://www.comfer.gov.ar/web/blog/wp-content/uploads/2009/10/1010-ley.pdf>.

the same sense, Article 3 of Law No. 26.522 indicates that, among others, the objectives of audiovisual communication services should be: "(a) the promotion and guarantee to all individuals to freely research, seek out, receive, and distribute information, opinions, and ideas without being censored and in a framework of respect for human rights and the democratic rule of law, in keeping with the obligations derived from the American Convention on Human Rights [...]; [and] (l) The administration of the radio spectrum based on democratic and republican criteria that guarantee equal opportunities for all individuals accessing it through their respective allocations."

13. Also, Law No 26.522 reforms the institutional structure and includes the creation of new entities such as the Federal Authority of Audiovisual Communications Services,⁶ the Federal Council of Audiovisual Communication,⁷ the Advisory Council of Audiovisual Communication and Childhood,⁸ and the Ombudsman's Office for Audiovisual Communications Services.⁹ The Federal Authority of Audiovisual Communications has a pluralistic structure that differentiates it from the existing application authority.

14. Law 26.522 also establishes in Article 32 that the granting of licenses for the use of the radio spectrum will be carried out "through a permanent and open public tender." According to the law, licenses are granted for a period of 10 years and are subject to an extension "only once, for a period of ten (10) years, after holding a public hearing in the area where the service is provided."¹⁰ Once the extension has expired, another public tender must be held, in which the previous license-holder may participate.

⁶ Article 10 of Law No. 26.522 creates the Federal Authority of Audiovisual Communication Services (*Autoridad Federal de Servicios de Comunicación Audiovisual*), "as a decentralized and autonomous entity under the national Executive [...] as this law's enforcement authority." Article 14 of the law holds that the "management and administration of the Federal Authority of Audiovisual Communication Services will be carried out by a board of directors made up of seven (7) members named by the national Executive. The board of directors comprises one (1) president and one (1) director appointed by the national Executive; three (3) directors proposed by the Bicameral Commission for the Promotion and Monitoring of Audiovisual Communication, which will be selected by the Commission at the proposal of the corresponding parliamentary group: one (1) from the majority or first minority, one (1) from the second minority, and one (1) from the third parliamentary minority; two (2) directors at the proposal of the Federal Council on Audiovisual Communication, with one required to be an academic representative of the information science, communication science, or journalism schools or career tracks of the national universities."

It is worth noting that Article 157 of Law 26.522 holds that all personnel of the Federal Radio Broadcasting Committee (*Comité Federal de Radiodifusión*, COMFER) will be transferred to the Federal Authority of Audiovisual Communication Services. COMFER, in contrast to the Federal Authority, was under the authority of the Secretary of Media of the Cabinet Ministers Leadership.

⁷ Article 15 of Law No. 26.522 creates the Federal Council on Audiovisual Communication "under the Federal Authority of Audiovisual Communication Services" to, among other functions, "collaborate and advise on the design of public radio broadcasting policy." The Federal Council on Audiovisual Communication nominates two directors of the Federal Authority of Audiovisual Communication Services, to be named by the Executive. It is worth noting that the Federal Council on Audiovisual Communication will also be able to "remove the directors of the Federal Authority of Audiovisual Communication Services by a vote of two thirds (2/3) of its members through a procedure granting broad guarantees on the right to defense.

⁸ Article 17 of Law No. 26.522 indicates that the Advisory Council on Audiovisual Communication and Childhood is a "multidisciplinary, pluralist, and federal [entity] comprised of individuals and social organizations with acknowledged track records in its area and by representatives of boys, girls, and teenagers" for the "development of proposals on increasing the quality of programming for boys, girls, and teenagers," and "to establish criteria for recommended or priority content, as well as to indicate the content inappropriate for or damaging to boys, girls, and teenagers, based on theoretical arguments and empirical analysis."

⁹ Article 19 of Law No. 26.522 creates the Ombudsman's Office on Audiovisual Communication Services, which "receives and distributes the public's questions, demands, and complaints on radio, television, and other regulated services [...] holding judicial and extra-judicial standing to act *ex officio*, on its own, and/or representing third parties before any kind of administrative or legal authority."

¹⁰ Article 40 of Law No. 26.522 also holds that upon the "expiration of the extension, license holders can participate in the new tender or allotment process."

15. On the same topic, Law No. 26.522 lays out a mechanism to limit the concentration of licenses “to guarantee the principles of diversity, pluralism, and respect.”¹¹ With that same goal, the law recognizes the existence of three communication sectors, indicating that the “state, private for-profit, and private non-profit service providers may operate audiovisual communication services. They must have the ability to operate and have equal access to all available broadcasting equipment.”¹² Also, the law establishes equal criteria for assigning and administering the frequencies.

16. Though it is true that, in keeping with Argentina’s national jurisprudence and inter-American doctrine on the matter, official advertising must be regulated, Article 72 of Law 26.522 requires the license holders to “make a public access folder available with information easily accessible to the public, along with a digital version on the Internet.” The folder should, among other things, include “(viii) Details of any public or official advertising that the license holder received, from all national, provincial, and municipal jurisdictions, as well as from the Autonomous City of Buenos Aires.”

17. While the Office of the Special Rapporteur recognizes the important progress made when Law No. 26.522 entered into force, it also observes that some of its elements could be incompatible with the American Convention, while others could cause problems that must be adequately resolved from the onset of its implementation.

18. First of all, the law grants the Catholic Church special authorization to use a frequency permanently, with no need to submit itself to a bidding process under equal conditions.¹³ Principle 12 of the Declaration of Principles holds that, “The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”

19. On another topic, the Office of the Special Rapporteur is concerned at the vagueness of certain grounds and behavior that can lead to serious sanctions, such as “nudity and adult language out of context,” “previously edited material that emphasizes the cruel, morbid, or sordid,” and “the carrying out of acts against the constitutional order of the Nation or utilization of Audiovisual Communication Services to proclaim or incite such acts.” In this regard, it is important to mention that, at least as concerns the expiration of licenses, the filing of administrative and judicial actions against administrative decisions that impose said punishment will cause the punishment to be suspended until “the circumstances of the case are analyzed [by a judge].” However, as concerns the regime of serious sanctions, the Office of the Special Rapporteur reminds the State that in accordance with the principle of strict legality, applicable to those cases in which the right to freedom of expression can be seriously affected, conduct should be defined in a clear and precise manner. In an area as sensitive as freedom of expression, faced with such serious sanctions, vague or imprecise norms can give rise to arbitrary rulings that indirectly take media outlets or specific content off the air or censor them for the simple expression of speech that, though perhaps disturbing to public officials or to a segment of society, are still protected by the

¹¹ Article 45 of Law No. 26.522 establishes various limits in situations of multiple licenses. Article 161 of the law holds that license holders who do not meet the requirements under the new legal framework should adapt to them in a period of no less than one year from the date the enforcing authority establishes transitional mechanisms.

¹² Also see Articles 21-31 of Law No. 26.522.

¹³ Article 37 of Law 26.522 holds that the “granting of authorization to state legal entities, national universities, national university institutions, Original Peoples, and the Catholic Church is done directly and on demand according to spectrum availability, when relevant.”

American Convention.¹⁴ It is advisable as well to remind the State that the Inter-American Court has repeatedly held that the right to freedom of expression also includes the protection of statements that can be offensive, disturbing, or unpleasant for the State. Such are the requirements of democratic order based on diversity and pluralism.¹⁵

20. Likewise, the Office of the Special Rapporteur is concerned that the regulation of Law 26.522 as pertains to public media does not incorporate sufficient safeguards to insure that these media outlets can operate autonomously and independently of the government. It is true that the law, in contrast to similar laws throughout the region, establishes a fixed term of service for the authorities of the entity that oversees the public media (article 132), as well as a source of financing defined by law (article 136). However, the majority of the system's most important authorities are appointed by the Executive, and neither the appointment process nor institutional, organic, and functional conditions grant the guarantees sufficient for independent operation. In this respect, it is essential that the law's regulations and the decisions of the competent government bodies form mechanisms that guarantee the independence of public media and respect the purpose for which it was created.

21. As pertains to the allocation of licenses for services that use the radio spectrum, the Office of the Special Rapporteur finds that Article 32 represents an important step forward where it indicates that the licenses "will be awarded through public, open, and permanent tender." However, the same law holds that while licenses for open audiovisual communication services whose primary service area is greater than fifty (50) kilometers and are located in populations of more than 500,000 residents will be awarded after a tender by the national Executive, the licenses corresponding to the remaining open audiovisual communication services and subscription audiovisual communication services that use non-satellite radio spectrum connections and are in the planning stages "will be awarded by the enforcement authority." Although this could simply imply the formality of certifying the winners of a tender with clear, transparent, and egalitarian rules designed by the enforcement authority, the awarding of concessions through the Executive does not seem to be compatible with a law that creates a self-sufficient and independent entity in order to allow concessions to be awarded free of government interference. The Office of the Special Rapporteur notes this contradiction and urges the State to ensure that it does not translate into indirect ways of impacting freedom of expression. In this regard, Article 13.3 of the American Convention holds that, "The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions."

22. Finally, the Office of the Special Rapporteur takes note of the content of some of the Law's provisions – Articles 3, 17, and 70, among others – and calls upon the State and the authorities in charge of implementing the law to respect the State's obligation to not interfere in media content (obligation of neutrality). Likewise, the Office of the Special Rapporteur takes note of subparagraph (n) of Article 3, which mentions "the behavior of the media based on ethical principles." The Office of the Special Rapporteur understands this to refer exclusively to self-regulation which the media may provide. In this respect, Principle 6 of the Declaration of Principles

¹⁴ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter. III. paras. 65-66 Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

¹⁵ I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs.* Judgment of February 5, 2001. Series C No. 73. para. 69; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 2, 2004. Series C No. 107. para. 113.

holds that, “Journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State.”

23. The aforementioned issues require that the law’s implementation process, which is entrusted to the Federal Authority of Audiovisual Communication Services, as well as the other appropriate authorities, proceeds to minimize the risks warned of here, as well as maximize the opportunities that the law offers for strengthening guarantees to the exercise of the right to freedom of expression. For this to happen, it is essential that the relevant enforcement authority is composed in such a way that it grants guarantees of independence and impartiality to all groups. Also, when implementing the law, the authorities should take into account that, fundamentally, the most important aim of any law of this kind is to guarantee the greatest spread of freedom of expression, in keeping with the highest standards. On this point, the Office of the Special Rapporteur calls on the relevant authorities to look to inter-American standards as they implement Law 26.522.¹⁶

24. On the topic of official advertising, the Office of the Special Rapporteur notes with satisfaction the February 10, 2009 ruling of the Fourth Court of the Federal Chamber of Administrative Law in the case *Editorial Perfil S.A. y otro contra EN – Jefatura Gabinete de Ministros – SMC sobre amparo ley 16-986*, which ordered the State “to provide for the distribution of official advertising in the various publications” of Editorial Perfil S.A. and Diario Perfil S.A. In that case, the plaintiff corporations alleged that the Executive had launched a “discriminatory policy in relation to the *ex professo* exclusion of magazines *Noticias* and *Fortuna* from public advertising” due to their editorial slant against the government. In its ruling, the Fourth Court of the Federal Chamber of Administrative Law pointed to the September 5, 2007 judgment of the National Supreme Court of Justice in the case of *Editorial Río Negro S.A. c/Neuquén, Provincia de* in finding that “it is the State’s responsibility to prove the existence of sufficient motive to justify the abrupt interruption of the purchase of official advertising,” and that “The government should avoid taking actions that are intentionally or exclusively designed to limit the exercise of freedom of the press, including those actions that do so indirectly. That is, it is enough that government action has that intention to say that it forms a basis for affecting that freedom. Because of this, the economic suffocation or bankruptcy of a daily newspaper is not necessary [...] Moreover, the financial effects should be considered not only in the loss of public advertising, but also in the lower sales numbers as many readers will be forced to get information on public administration from other sources.”¹⁷

25. As it has on other occasions, the Office of the Special Rapporteur wishes to remind the State of its duty to establish clear, transparent, objective, and nondiscriminatory criteria for determining where to place official advertising.¹⁸ Principle 13 of the Declaration of Principles

¹⁶ In this regard, see Chapter III of the Annual Report 2009 of the Office of the Special Rapporteur for Freedom of Expression, in this same volume. Also see: IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter. III. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

¹⁷ Fourth Chamber of the Federal Court of Administrative Law. February 10, 2009. Causa No. 18.639/2006: *Editorial Perfil S.A. y otro contra EN – Jefatura Gabinete de Ministros – SMC sobre amparo ley 16-986*; Asociación por los Derechos Civiles. February 11, 2009. *Caso Perfil: un fallo en contra de la censura indirecta*. Available at: <http://www.adc.org.ar/sw contenido.php?id=513>; Committee for the Protection of Journalists. February 19, 2009. *Argentine court orders official ads into critical publications*. Available at: <http://cpj.org/2009/02/argentine-court-orders-official-ads-into-critical.php>; Inter-American Press Association. February 12, 2009. *IAPA welcomes Argentine court ruling on official advertising*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4136&idioma=us.

¹⁸ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter. III. paras. 65-66 Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf> In this context, a recent report on the distribution of official advertising in Argentina indicated that in 2008, the Executive spent

establishes that “the arbitrary and discriminatory placement of official advertising and government loans; [...] among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threatens freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.” In this regard, the Office of the Special Rapporteur urges the State to push for the approval of legislation to regulate the distribution of official advertising in keeping with its own jurisprudence and with the standards of the inter-American system.

26. On a different topic, the Office of the Special Rapporteur takes note of the September 24, 2009, ruling of the Second Court of the Cassation Tribunal of the Buenos Aires Province that rejected the motion for annulment filed by Gustavo Prellezo against the February 2, 2000 judgment that sentenced him to life in prison for the aggravated kidnapping and murder of photographer José Luis Cabezas.¹⁹ It is worth noting that in its Annual Report 2008, the Office of the Special Rapporteur expressed concern over the case of Gregorio Ríos, released on parole after receiving a life sentence as an accessory before the fact in the murder of the journalist, through the application of special benefits.²⁰ The Office of the Special Rapporteur reiterates to the State that it has “a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.”²¹

27. The Office of the Special Rapporteur regrets that during 2009 it continued to receive complaints about acts of violence against the media that were presumably related to journalism

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23% more than in 2007, and that during the first half of 2008 it spent 76.4% of the total budget for the year. The report found that direct ad spending (that is, advertising spending that goes directly to media outlets without passing through any intermediaries) was concentrated in the media outlets located in the City of Buenos Aires and with national distribution. Asociación por los Derechos Civiles. June 8, 2009. *Cómo fue la publicidad oficial del gobierno durante 2009*. Available at: http://www.censuraindirecta.org.ar/sw_contenido.php?id=511http://www.adc.org.ar/sw_contenido.php?id=499. The full text of the report is available at: http://www.censuraindirecta.org.ar/images/fck/file/Informes%20y%20publicaciones/ADC_Informe_Publicidad_Oficial_PEN_2008.pdf.

¹⁹ José Luis Cabezas was a photographer with the magazine *Noticias*. His charred body was found in the Pinamar area, Buenos Aires province, on January 25, 1997, with two bullet wounds in the head and his hands handcuffed. On February 2, 2000, the State reported to the Office of the Special Rapporteur that there was evidence indicating that the motive for the crime had to do with Cabezas’ work as a photographer. IACHR, Office of the Special Rapporteur for Freedom of Expression. Special Study on the Status of Investigations into the Murder of Journalists during the 1995-2005 Period for Reasons that may be related to their Work in Journalism. OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. p. 73. Available at: <http://www.cidh.oas.org/Relatoria/section/Asesinato%20de%20Periodistas%20INGLES.pdf>; *rimera Edición*. September 24, 2009. *Caso Cabezas: Confirman la condena contra Prellezo*. Available at: <http://www.primeraedicionweb.com.ar/index.php?idnoticia=11010&dgprincipal=nota&tipo=digital&idEdicion;Momento> 24. September 24, 2009. *Cabezas crime: Gustavo Prellezo’s life-imprisonment sentence was confirmed*. Available at: <http://momento24.com/en/2009/09/24/cabezas-crime-gustavo-prellezos-life-imprisonment-sentence-was-confirmed/#>; Foro de Periodismo Argentino. September 25, 2009. *Satisfacción de Fopea por el fallo que confirmó la condena al asesino de José Luis Cabezas*. Available at: [http://www.fopea.org/Comunicados/2009/Satisfaccion de Fopea por el fallo que confirmo la condena al asesino de Jose Luis Cabezas](http://www.fopea.org/Comunicados/2009/Satisfaccion%20de%20Fopea%20por%20el%20fallo%20que%20confirmando%20la%20condena%20al%20asesino%20de%20Jose%20Luis%20Cabezas).

²⁰ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter. III paras. 11. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>.

²¹ I/A Court H.R., *Case of Velásquez-Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4. para. 174. Emphasis added.

work.²² On January 12, 2009, unidentified individuals cut the steel cables that held up the radio antenna of broadcaster *Radio Goya*, in the Corrientes province. According to the information, the radio station was not able to broadcast after the antenna fell.²³ Similarly, on April 1, 2009, unknown individuals toppled the antenna of *Radio Mocoví* in the Chaco province. As result, the station could not continue broadcasting its programming.²⁴ Also, the Office of the Special Rapporteur received information indicating that between March 24 and 26, 2009, the signals of channels 13 and *Todo Noticias*, as well as that of *Radio Mitre*, suffered interference that blocked their broadcasts from being received inside and outside of the country for several hours.²⁵ Also, on June 1, 2009, a fire destroyed the facilities of radio broadcaster *FM Radio Activa* in El Bolsón, Río Negro province. According to the information received, the provincial prosecutor confirmed that preliminary results of the investigation indicate an intentional act. Reynaldo Rodríguez, director of the radio station, maintained that the attack could be connected to the radio station's negative opinion of a project to relocate the local airport.²⁶

28. The Office of the Special Rapporteur also received information indicating that on May 14, 2009, 11 of the Buenos Aires advertising offices of daily newspaper *Clarín* were spray-painted with the message, "*Clarín* lies," an allusion to public officials' statements to that effect. The Office of the Special Rapporteur also received information indicating that in August of 2009, the home of one of *Clarín*'s directors was attacked by unknown individuals who threw eggs and paint.²⁷

29. On a different topic, on September 10, 2009, dozens of agents with the Federal Administration of Public Revenue (*Administración Federal de Ingresos Públicos*, AFIP) appeared at *Grupo Clarín* headquarters in the Autonomous City of Buenos Aires to collect tax and welfare information in an inspection. Later, Ricardo Echegaray, head of the AFIP, said that he had not ordered the measure and that it had happened as the result of an "procedural error." The Office of the Special Rapporteur received information indicating that two AFIP officials had been fired for having carried out the inspection without authorization.²⁸ On September 14, 2009, the Office of the

²² IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter. II. para. 13 Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

²³ Reporters Without Borders. January 16, 2009. *Alterada gravemente la programación de una radio a causa del sabotaje de su antena*. Available at: <http://www.rsf.org/Alterada-gravemente-la.html>; Foro de Periodismo Argentino. January 14, 2009. *Repudia atentado a Radio Goya*. Available at: http://www.fopea.org/Comunicados/2009/Repudio_al_atentado_a_radio_Goya.

²⁴ Foro de Periodismo Argentino. April 3, 2009. *Fopea repudia atentado a Radio Mocoví*. Available at: http://www.fopea.org/Comunicados/2009/Fopea_repudia_atentado_a_Radio_Mocovi; Periodistas en Español. April 4, 2009. *Atentado en Argentina contra Radio Mocoví en El Chaco*. Available at: http://www.p-es.org/index.php?option=com_content&task=view&id=2913&Itemid=60.

²⁵ Inter-American Press Association. March 27, 2009. *Deplora la SIP interrupción a señal de medios audiovisuales de Grupo Clarín*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4158&idioma=sp; Foro de Periodismo Argentino. March 26, 2009. *Preocupación por interferencias a empresa de comunicaciones*. Available at: http://www.fopea.org/Comunicados/2009/Preocupacion_por_interferencias_a_la_empresa_de_comunicaciones_Artear.

²⁶ Foro de Periodismo Argentino. June 5, 2009. *FOPEA repudia el incendio que destruyó Radio Activa en El Bolsón*. Available at: http://www.fopea.org/Comunicados/2009/Fopea_repudia_el_incendio_que_destruyo_Radio_Activa_de_El_Bolson; Agencia Pulsar. June 3, 2009. *Radio de la Patagonia denuncia incendio intencional de sus instalaciones*. Available at: <http://www.agenciapulsar.org/nota.php?id=15135>.

²⁷ *Clarín*. May 15, 2009. *En una noche, atacaron 11 oficinas de avisos de Clarín en Capital y GBA*; *Clarín*. August 25, 2009. *Intimidaciones y ataques a directivos del grupo Clarín*; Information submitted in October of 2009 to the Office of the Special Rapporteur by representatives of *Clarín*.

²⁸ *Clarín*. September 11, 2009. *Insólito operativo: el Gobierno envió a Clarín 200 inspectores de la AFIP*. Available at: <http://www.clarin.com/diario/2009/09/11/elpais/p-01996758.htm>; Committee for the Protection of Journalists.

Special Rapporteur sent communication to the State requesting information on the incident. However, as of the publication of this report, the Office of the Special Rapporteur has not received information on the progress or results of any internal investigations into the operation.

30. The Office of the Special Rapporteur received information indicating that between November 4 and November 6, members of the transportation union blocked the Buenos Aires printing facilities of daily newspapers *Clarín* and *La Nación* for several hours, preventing the papers' distribution to the rest of the country. According to the information received by the Office of the Special Rapporteur, the transportation union took the measure in order to compel the drivers in charge of delivering newspapers and magazines in Buenos Aires – who currently form a cooperative – to join the union. Media organizations and local media indicated, however, that the union was looking particularly to affect media outlets critical of the government.²⁹

31. Regarding alleged assaults on and threats received by journalists during the course of their work, the Office of the Special Rapporteur received information indicating that on January 22, 2009, Gustavo Heredia, with *Radio Universidad de San Luis*, received telephoned threats in connection with his reporting on a trial pertaining to the military dictatorship.³⁰ Likewise, on April 29, 2009, Daniel Enz, director of weekly newspaper *Análisis* in Paraná, Entre Ríos province, was threatened via telephone after publishing an article reporting on alleged acts of corruption.³¹ Finally, on October 18, 2009, Viviana Villar, a journalist with *Canal CVI 5* in Puerto Iguazú, Misiones province, was physically and verbally assaulted by Puerto Iguazú's mayor, Claudio Raúl Filippa, while taking photographs in reporting on a show in a local neighborhood.³²

32. In this context, the Office of the Special Rapporteur urges the State authorities of Argentina to take all measures necessary to guarantee that social communicators and media outlets can exercise their right to freedom of expression. It also urges the State to identify, try, and punish those responsible for these incidents. Principle 9 of the Declaration of Principles indicates that, "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material

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September 11, 2009. *CPJ seeks comprehensive inquiry on Clarín tax raid*. Available at: <http://cpj.org/2009/09/cpj-seeks-comprehensive-inquiry-in-clarin-tax-raid.php>.

²⁹ Asociación de Entidades Periodísticas Argentinas. November 4, 2009. *ADEPA condena nuevo bloqueo a la distribución de diarios y revistas*. Available at: <http://www.adepa.org.ar/secciones/ldp/nota.php?id=285>; *Clarín*. November 4, 2009. *Fuerte repudio de la oposición al bloqueo de Camioneros contra diarios y revistas*. Available at: <http://www.clarin.com/diario/2009/11/04/um/m-02033817.htm>; *Clarín*. November 4, 2009. *Levantaron el bloqueo camionero sobre las distribuidoras de diarios*. Available at: <http://www.clarin.com/diario/2009/11/04/um/m-02033600.htm>; Inter-American Press Association. *65th General Assembly, November 6-10, 2009, Buenos Aires, Argentina. Country reports: Argentina*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=24&inford=363&idioma=us.

³⁰ Foro de Periodismo Argentino. January 27, 2009. *Preocupante amenaza a periodista que cubre juicio a represores en San Luis*. Available at: http://www.fopea.org/Comunicados/2009/Preocupante_amenaza_a_periodista_que_cubre_juicio_a_represores_en_San_Luis; Federación de Trabajadores de la Prensa. January 29, 2009. *Amenazan a periodistas en San Luis y Córdoba*. Available at: <http://www.fatpren.org.ar/Secciones/PartesNacionales705.htm>.

³¹ Foro de Periodismo Argentino. April 29, 2009. *Alerta por amenaza al periodista Daniel Enz, en Paraná*. Available at: http://www.fopea.org/Comunicados/2009/Alerta_por_amenaza_al_periodista_Daniel_Enz_en_Parana; La Nota Digital. April 30, 2009. *Investigan amenazas al periodista Daniel Enz y su familia*. Available at: <http://lanotadigital.com.ar/2009/04/30/investigacion-amenazas-al-periodista-daniel-enz-y-su-familia/>.

³² Línea Capital. October 18, 2009. *El intendente Filippa atacó a una periodista*. Available at: <http://www.lineacapital.com.ar/?noticia=46712>; Misiones OnLine. October 18, 2009. *El intendente de Iguazú fue denunciado por agredir a una periodista durante la madrugada*. Available at: <http://www.misionesonline.net/paginas/detalle2.php?db=noticias2007&id=144212>; Foro de Periodismo Argentino. October 22, 2009. *Fopea repudia agresiones e insultos del intendente de Iguazú a una periodista local*. Available at: http://www.fopea.org/Inicio/Fopea_repudia_agresiones_e_insultos_del_intendente_de_iguazu_a_una_periodista_local.

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.”

33. On another topic, the Office of the Special Rapporteur was informed that in February of 2009, the radio program hosted by journalist Nelson Castro and broadcast by *Radio Del Plata* was taken off the air. Non-governmental organizations indicated that the cancellation could be retaliation against the reporter for his work and because the program heaped criticism on the national government.³³ Principle 5 of the Declaration of Principles indicates that, “Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

34. As pertaining to the right to access to information, the Office of the Special Rapporteur views positively the April 13, 2009 ruling of the Second Court of Administration and Taxation of the Autonomous City of Buenos Aires in the case of *Martínez Diego v. GCBA et al. on Amparo (Art. 14 CCABA)*. The ruling ordered the relevant authorities to turn over information on the personnel of two Buenos Aires security companies to journalist Pedro Martínez. The information had been previously denied him by the General Direction of Private Security. Martínez made his request to find out if the agencies were under the control of former military officials accused of committing human rights violations during the dictatorship.³⁴

35. Also, the Office of the Special Rapporteur was informed of the March 17, 2009 ruling of the La Plata Appeals Chamber of Administrative Law in the case *Suárez Alejandro César c/ Municipalidad de Florencio Varela s/ Amparo*. The ruling confirmed the April 7, 2008 judgment by the First Quilmes Administrative Law Court that denied Alejandro César Suárez – director of daily newspaper *Mi Ciudad* – information on “the Florencio Varela Municipality employee payroll, the work those employees do, and the compensation they receive for it.” On September 15, 2005, the journalist filed a request with the local government for this information, but he did not receive a response. The Office of the Special Rapporteur expresses particular concern because in the appeals ruling, the court stated that “the plaintiff ha[d] not been able to demonstrate a specific interest” that would justify informing him on the information requested.³⁵

36. The Office of the Special Rapporteur further notes that in August of 2009 the Ministry of the Economy and Production finally published the information regarding the calculation

³³ Committee for the Protection of Journalists. February 2, 2009. *Radio show cancellation sparks controversy in Argentina*. Available at: <http://cpj.org/blog/2009/02/radio-show-cancellation-sparks-controversy-in-argentina.php>; Inter-American Press Association. *Argentina Report. Mid-Year Meeting, Asunción, Paraguay*. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=22&infoid=334&idioma=us; Inter-American Press Association. February 3, 2009. *Revenge against Argentine journalist raises IAPA concern*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4131&idioma=us; Foro de Periodismo Argentino. February 3, 2009. *Preocupación por levantamiento de programa radial de Nelson Castro*. Available at: http://www.fopea.org/Comunicados/2009/Preocupacion_por_levantamiento_de_programa_radial_de_Nelson_Castro.

³⁴ Centro de Estudios Legales y Sociales. April 17, 2009. *Un fallo judicial avaló el acceso a la información sobre agencias de seguridad privada en la ciudad de Buenos Aires*. Available at: <http://www.cels.org.ar/comunicacion/index.php?info=detalleDoc&ids=4&lang=es&ss=46&idc=1123>; Information received on November 5, 2009, by the Office of the Special Rapporteur via e-mail.

³⁵ Asociación por los Derechos Civiles. March 17, 2009. *La justicia provincial niega acceso a datos sobre el gasto público en Florencio Varela*. Available at: <http://www.periodismo-aip.org/noticia-detalle.php?id=45>; Foro de Periodismo Argentino. March 17, 2009. *Fopea expresa su preocupación por decisión de Tribunal de La Plata*. Available at: http://www.fopea.org/Comunicados/2009/Fopea_expresa_su_preocupacion_por_la_decision_de_un_Tribunal_de_La_Plata.

factors for the Consumer Price Index. As indicated in the 2008 Annual Report, in August of 2008 the Administrative Court of Appeals of the Federal Capital ordered the Ministry to turn over that information within twenty business days. The request was originally filed on July 18, 2007 before the National Census and Statistics Institute (INDEC) by a local organization to ascertain how Argentina's poverty index was calculated. In May of 2008, the INDEC's response was considered by the Third Federal Administrative Court of Appeals to be "insufficient and inadequate to satisfy the right to access to information and thereby enable effective citizen participation."³⁶

37. The Office of the Special Rapporteur reminds the State that in accordance with that held by the Inter-American Court, it is not necessary to establish either direct or personal interest to obtain information held by the State, except in cases where a legitimate restriction permitted in the American Convention applies. Such limitations, however, should strictly comply with the requirements found in Article 13.2 of the Convention – that is, exceptional, legally-enshrined conditions with legitimate objectives and to which the criteria of necessity and strict proportionality apply.³⁷ Principle 4 of the Declaration of Principles indicates that "Access to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right." The Office of the Special Rapporteur urges the State to push passage of a law on access to information in keeping with the standards of the inter-American system.

3. Barbados

38. The Office of the Special Rapporteur observes that as of the date of this report, the government of Barbados has not presented to Parliament the bill on access to information which in 2008 was presented to the public for comment. According to the information received by the Office of the Special Rapporteur, the presentation of the bill had been set for early 2009.³⁸ The Office of the Special Rapporteur invites the State to take up once again its intention to pass legislation on this matter and that the bill's parliamentary debate take into account the freedom of expression standards of the inter-American system.³⁹ Principle 4 of the Declaration of Principles indicates that, "Access to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right."

³⁶ Ministerio de Economía y Producción. Secretaría de Política Económica. Instituto Nacional de Estadística y Censos. *IPC-GBA base abril 2008 = 100. Actualización metodológica.* Available at: http://www.indec.gov.ar/nuevaweb/cuadros/10/ipc_metodologia_10_08.pdf; Asociación por los Derechos Civiles. August 12, 2009. *Pese a los anuncios de Boudou, el gobierno no cumple un fallo de la justicia sobre el INDEC.* Available at: http://www.adc.org.ar/sw_contenido.php?id=599; IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter II. pars. 12. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

³⁷ I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs.* Judgment of September 19, 2006. Series C No. 151. paras. 77, 87-90 and 137.

³⁸ The Barbados Advocate. April 4, 2009. *Freedom of Information Act Needed.* Available at: <http://www.barbadosadvocate.com/newsitem.asp?more=local&NewsID=2864>; The Barbados Advocate. December 8, 2008. *Promised legislation soon complete.* Available at: <http://www.barbadosadvocate.com/newsitem.asp?more=local&NewsID=766>; Barbados Integrated Government Portal. October 13, 2008. *Freedom of information legislation coming.* Available at: <http://www.gov.bb/portal/page/portal/GISMEDIA%20CENTRENEWS%20MANAGEMENT/News%20Composer%20Page/Freedom%20of%20Information%20Legislation%20Coming>; Inter-American Press Association. *Barbados Report. 64th General Assembly, Madrid, Spain.* Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=20&inforid=309&idioma=us.

³⁹ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter. III. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

39. The Office of the Special Rapporteur received information indicating that on August 22, 2009, journalist Carol Martindale of newspaper *Sunday Sun* received a phone call from Hartley Henry, political advisor to the Prime Minister of Barbados. During the phone call, Carol was warned “to do the right thing or face the destruction of your reputation.” According to the complaint, days earlier Harley Henry had pushed the journalist to publish a survey favorable to the government. Later, the daily newspaper had expressed its unease in a front-page editorial.⁴⁰ Principle 5 of the Declaration of Principles indicates that, “Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

4. Bolivia

40. The Office of the Special Rapporteur views positively the fact that the new Political Constitution of the State – passed in January of 2009 by referendum – enshrines the right to freedom of expression in its Articles 106 and 107.⁴¹ The Office of the Special Rapporteur takes note of the language of Article 107 of the Constitution, which indicates that, “The principles of truth and responsibility” are practiced “through ethical standards and the self regulation of

⁴⁰ Inter-American Press Association. *65th General Assembly, November 6-10, 2009. Buenos Aires, Argentina.* Country Reports: *The Caribbean.* Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=24&infoid=368&idioma=us; Association of Caribbean Media Workers. August 23, 2009. *Statement on threats to Sunday Sun Editor Carol Martindale.* Available at: <http://www.acmediaworkers.com/multimedia/pdf/Releases%20-%20PDF/2009/20090823-BAJonCarolMartindaleThreat.pdf>; Association of Caribbean Media Workers. August 26, 2009. *Editor threatened by prime minister's advisor.* Available at: http://www.ifex.org/barbados/2009/08/26/martindale_harassed/.

⁴¹ The text of the new Political Constitution of the State is available at: [http://www.vicepresidencia.gob.bo/Portals/0/documentos/NUEVA CONSTITUCION POLITICA DEL ESTADO.pdf](http://www.vicepresidencia.gob.bo/Portals/0/documentos/NUEVA%20CONSTITUCION%20POLITICA%20DEL%20ESTADO.pdf).

Articles 106 and 107 of the new Political Constitution of the State indicate that:

Article 106

- I. The State guarantees the right to communication and the right to information
- II. The State guarantees Bolivians the right to freedom of expression, opinion and information, to correction and reply, and the right to freely distribute ideas by any means of distribution without prior censorship.
- III. The State guarantees press workers freedom of expression, the right to communication, and the right to information.
- IV. The information workers conscience clause is recognized.

Article 107.

- I. Media outlets must contribute to the promotion of ethical, moral, and civil values of the country's different cultures with the production and distribution of programs that are educational, multilingual, and in an alternative language for the disabled.
- II. The information and opinions distributed through different media outlets should respect the principles of truth and responsibility. These principles will be exercised through ethical standards and the self regulation of organizations of journalists and the media, as well as by law.
- III. Media outlets may not form, either directly or indirectly, monopolies or oligopolies.
- IV. The State will support the creation of community media outlets under equal conditions and with equal opportunities.

Vice Presidency of the Plurinational State of Bolivia. Presidency of the National Congress. January 25, 2009. *Presidente celebra el triunfo del Sí.* Available at: <http://www.vicepresidencia.gob.bo/Inicio/tabid/36/ctl/noticia/mid/471/code/200901261/Default.aspx>.

organizations of journalists and the media, as well as *by law*." As mentioned in the Annual Report 2008, subjecting this to legal control could be interpreted as an illegitimate restriction on the exercise of the right to freedom of expression.⁴² The Office of the Special Rapporteur calls on the State to take into account Principle 7 of the Declaration of Principles, which indicates that, "Prior conditioning of expressions, such as truthfulness, timeliness or impartiality is incompatible with the right to freedom of expression recognized in international instruments."

41. The Office of the Special Rapporteur applauds the fact that on January 21, 2009, judicial authorities issued an arrest warrant for Adolfo Cerrudo, an activist accused in 2008 of having carried out attacks on media outlets and journalists. According to the information received by the office of the Special Rapporteur, Cerrudo was arrested in March of 2009 during a demonstration. He was charged with threatening a newspaper journalist and with attacking two television reporters. In relation to this last incident, the Office of the Special Rapporteur also received information indicating that Edgar Mora was arrested in connection with those attacks.⁴³

42. The Office of the Special Rapporteur also wishes to highlight the investigation into the September 4, 2008 attack on the broadcasting antenna of *Radio Rurrenabaque*, a community broadcaster affiliated with the state radio network *Patria Nueva*. According to the information received by the Office of the Special Rapporteur, on March 3, 2009, brothers Juan Carlos and Saúl Abrego were arrested after an investigation. They were arrested in the Rurrenabaque area in the Beni department. The information indicates that the authorities arrested the Abrego brothers for being the alleged perpetrators of the sabotage. It also indicates that both brothers are members of the Beni Civic Committee, which took part in violent incidents during 2008.⁴⁴

43. The Office of the Special Rapporteur notes that the President of Bolivia, Evo Morales, met with press representatives in the Palacio Quemado in La Paz on May 27, 2009. At the meeting were representatives of the Inter-America Press Association. Minister of the Presidency Juan Ramón Quintana, the Vice Minister for the Coordination of Social Movements Sacha Llorenti, and presidential spokesman Iván Canelas also participated in the meeting. During the meeting, the President of Bolivia indicated that his government would respect the freedom of the press. Likewise, the President of Bolivia expressed his support for investigations into attacks against journalists and media outlets. The President also announced that his government was working on a bill on access to information. On that same topic, a congresswoman with the party in power, Elizabeth Salguero, head of the Human Rights Commission in the Plurinational Legislative Assembly, indicated that she would present a bill on access to information that had already been discussed with representatives of civil society.⁴⁵ The Office of the Special Rapporteur urges the government to push this bill. In this

⁴² IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

⁴³ Reporters Without Borders. March 24, 2009. *Activist accused of assaulting journalists arrested at pro-government rally*. Available at: <http://ifex.org/bolivia/2009/03/24/activist-accused-of-assaulting/>; Inter-American Press Association. *Bolivia Report. Mid-Year Meeting, Asunción, Paraguay*. Available at http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=22&inforid=336&idioma=us.

⁴⁴ Reporters Without Borders. March 6, 2009. *Two individuals arrested following investigation into sabotage of radio station; mayor of Santa Cruz assaults journalist Marcia Cedeño* Available at: <http://www.ifex.org/bolivia/2009/03/09/two-individuals-arrested-following/>; FM Bolivia. March 4, 2009. *Campesinos de Rurrenabaque denuncian amenaza de unionistas*. Available at: <http://www.fmbolivia.com.bo/noticia9150-campesinos-de-rurrenabaque-denuncian-amenaza-de-unionistas.html>.

⁴⁵ Inter-American Press Association. May 28, 2009. *Preocupa a la SIP que polarización política afecte la libertad de prensa*. Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4194&idioma=sp; Medios Latinos. May 28, 2009. *La SIP pidió a Evo Morales que respete la libertad de prensa*. Available at: <http://www.medioslatinos.com/modules/news/article.php?storyid=2452>.

respect, Principle 4 of the Declaration of Principles holds that, "Access to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right.

44. On a different topic, the Office of the Special Rapporteur received information indicating that 2009 saw several incidents of attacks and threats supposedly linked to journalistic activity. On March 2, 2009, Percy Fernández, the mayor of the department of Santa Cruz, allegedly insulted Marcia Cerdeño, a journalist with private TV channel *Unitel*, during a press conference and expelled her because she asked him about the measures the authorities were taking against dengue. Months later, in September of 2009, Fernández again had confrontations with journalists.⁴⁶ Likewise, the Office of the Special Rapporteur received information according to which on July 21, 2009, journalist Juan Carlos Soto, with radio station *San Miguel*, was insulted and attacked by a member of Presidency Minister Juan Ramón Quintana's security team while covering the Minister's visit to the Riberalta area in the Beni department.⁴⁷

45. The Office of the Special Rapporteur received information according to which on September 3, 2009, a police patrol with the Tactical Crisis Resolution Unit (*Unidad Táctica de Resolución de Crisis*, UTARC), which was escorting the transportation of a businessman who had been arrested, intentionally collided with a vehicle owned by TV channel *Unitel*, which was following the operation through Santa Cruz. Journalist Alberto Ruth, cameraman Francisco Cuellar, and the vehicle's driver were forced to the ground by law enforcement personnel who – according to the information received – kicked them, destroyed their cameras with bullets, and took the material already filmed by the journalists. The information adds that the government has dissolved the UTARC so that the incident will not be repeated. As of the date of this report, however, the Office of the Special Rapporteur has not received information to the effect that those responsible for the attack have been punished.⁴⁸

46. The Office of the Special Rapporteur was also informed that on September 3, 2009, the police suppressed a march made up of journalists who were protesting in Murillo Plaza, in La Paz, against mass dismissals at a private TV channel. The demonstrators were also calling for an investigation into an attack against one of their colleagues.⁴⁹

⁴⁶ Reporters Without Borders. March 9, 2009. *Two individuals arrested following investigation into sabotage of radio station; mayor of Santa Cruz assaults journalist Marcia Cedeño*. Available at: <http://www.ifex.org/bolivia/2009/03/09/two-individuals-arrested-following/>; Diario La Prensa. September 24, 2009. *Alcalde de Santa Cruz llama 'maricas' a los periodistas*. Available at: http://www.laprensa.com.bo/noticias/24-09-09/noticias.php?nota=24_09_09_poli3.php&do=del&id=20090924202009&page=1; Bolivia-Red. April 26, 2009. *Percy Fernández Humillando a la prensa cruceña*. Video available at: <http://www.youtube.com/watch?v=99j11kRe9zg>.

⁴⁷ Instituto Prensa y Sociedad. July 28, 2009. *Journalist says he is receiving threats that are related to his work; minister's bodyguard assaults reporter*. Available at: <http://www.ifex.org/bolivia/2009/07/28/arandia-threatened-soto-harassed/>; *Noticias de Bolivia*. July 22, 2009. *Seguridad de ministro Quintana agrade físicamente a periodista de la Red Erbol en Riberalta*. Available at: <http://www.eabolivia.com/politica/1627-seguridad-de-ministro-quintana-agrede-fisicamente-a-periodista-de-la-red-erbol-en-riberalta.html>.

⁴⁸ Instituto Prensa y Sociedad. September 9, 2009. *Police vehicle crashes into television news team's car, officers destroy camera*. Available at: <http://www.ifex.org/bolivia/2009/09/09/unitel-journalists-attacked/>; *FM Bolivia*. September 25, 2009. *Policía admite uso de fuerza contra periodistas de Unitel*. Available at: <http://www.fmbolivia.com.bo/noticia17179-policia-admite-uso-de-fuerza-contra-periodistas-de-unitel.html>.

⁴⁹ Instituto Prensa y Sociedad. September 9, 2009. *Mayor of La Paz initiates legal action against magazine, police use violence to suppress protest march by journalists*. Available at: <http://www.ifex.org/bolivia/2009/09/09/hora-25-lawsuit-journalist-march-stopped/>; La Prensa. September 4, 2009. *La Policía reprimió en La Paz una protesta de los periodistas*. Available at: http://www.laprensa.com.bo/noticias/04-09-09/noticias.php?nota=04_09_09_alfi1.php.

47. The Office of the Special Rapporteur received information indicating that on February 6, 2009, supporters of Santos Ramírez Valverde, the former head of petroleum company Yacimientos Petrolíferos de Bolivia, violently attacked journalists in La Paz who were about to report on the supporters' participation in alleged acts of corruption. Among the journalists attacked were Daniel Romero, with daily newspaper *La Razón*, and Israel Gutiérrez, with the *Uno* television network.⁵⁰

48. On February 9, 2009, the head of the news department with *Canal 15RTV*, Pedro Pérez, and cameraman Erik Balcázar, as well as journalist William Wasase and his cameraman Mariano Delgado, with *Ángel TV*, were attacked by alleged illegal squatters while the journalists covered their eviction. Pérez handed a recording with the faces of the alleged assailants over to police. Pérez also complained of having received death threats by telephone and text message in March of 2009.⁵¹

49. On April 12, 2009, Rafael Ramírez, the editor of newspaper *La Prensa*, received anonymous telephone threats in his home. The callers threatened him with death if he did not cease publishing "lies." The following day, Carlos Morales, the head of the newsroom, received at least three phone calls threatening him with death if *La Prensa* did not change its editorial slant. Both journalists had received death threats in December of 2008, supposedly in connection with articles they published in the newspaper about a case in which more than 30 trucks appear to have been detected carrying contraband in the Pando department. It was for this reason, the journalists indicated, that they had had police protection for two months. In an e-mail sent to the Office of the Special Rapporteur on April 14, 2009, Morales indicated that the threats appear to be linked to articles written about the trucks with contraband in Pando, among other reporting on corruption. Likewise, on April 15, 2009, Andrés Rojas, the head producer with *Canal 57 Virgen de Copacabana*, in El Alto, quit, he says, after he received death threats. The journalist indicated that the threats are likely linked to criticisms he made against local social organizations.⁵²

50. The Office of the Special Rapporteur was informed that on July 22, 2009, John Arandia, a journalist with television channel *Red UNO*, revealed that he had been the subject of anonymous threats, including text messages such as, "we know where your children are." The information also indicated that his car had been keyed and his tires punctured several times as a result of his work as a journalist.⁵³

⁵⁰ Instituto Prensa y Sociedad. February 10, 2009. *Simpatizantes de ex funcionario agreden a reportero*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1736>; Fundamedios. February 17, 2009. *Simpatizantes de ex funcionario agreden a periodistas en La Paz*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=153&identificaArticulo=576>.

⁵¹ Inter-American Press Association. *Bolivia Report. Mid-Year Meeting, Asunción, Paraguay*. Available at http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=22&inford=336&idioma=us; Instituto Prensa y Sociedad. March 9, 2009. *Journalist Pedro Pérez receives death threats after being assaulted by individuals involved in illegal land sales, three others assaulted in same incident*. Available at: http://ifex.org/bolivia/2009/03/09/journalist_pedro_perez_receives/.

⁵² Committee for the Protection of Journalists. May 11, 2009. *Three journalists receive death threats in Bolivia*. Available at: <http://cpj.org/2009/05/three-journalists-receive-death-threats-in-bolivia.php>; Instituto Prensa y Sociedad. April 21, 2009. *Local TV station chief resigns because of death threats*. Available at: http://www.ifex.org/bolivia/2009/04/21/rojas_resigns/; Complaint of Carlos María Peña, submitted to the Office of the Special Rapporteur via e-mail on April 14, 2009.

⁵³ Instituto Prensa y Sociedad. July 28, 2009. *Journalist says he is receiving threats that are related to his work; minister's bodyguard assaults reporter*. Available at: http://www.ifex.org/bolivia/2009/07/28/arandia_threatened_soto_harassed/; Asociación Nacional de la Prensa. July 31, 2009. *La ANP denuncia nuevas amenazas y agresiones a la prensa*. Available at: http://anpbolivia.com/index.php?option=com_content&task=view&id=51&Itemid=1.

51. The Office of the Special Rapporteur received information according to which on July 18, 2009, Marcelo Lobo, a cameraman with television channel *Gigavisión*, was violently attacked by two unknown assailants in the city of La Paz. The attack occurred at six in the morning, when Lobo was leaving the television station. According to *Gigavisión* director Alex Arias, the attack could be linked to Lobo's work as a journalist. Lobo covers news on crime and terrorism.⁵⁴

52. The Office of the Special Rapporteur received information indicating that in the final days of August 2009, Alfonso Sandoval, Boris Ruiz, and Milton Bracamonte – journalists who cover the crime beat in the city of Potosí – were attacked at different times by individuals upset about some of the journalists' stories. Potosí police chief Colonel Oscar Muñoz indicated that the attacks could have been carried out by people upset at police operations against crime and irritated at the coverage the journalists were providing of it.⁵⁵

53. On October 8, 2009, a group of more than 50 people burst into the newsroom of newspaper *El Diario*, in La Paz, where they took a journalist hostage. The group had warned that it would serve the journalist with "community justice" if the newspaper did not correct an article published in its September 29, 2009, edition.⁵⁶

54. Also, the Office of the Special Rapporteur was informed that on October 5, 2009, Horacio Martínez, with state television channel *7-Bolivia TV*, complained that his work had been sabotaged by alleged supporters of Fernando Dips, former president of a telephone cooperative in La Paz. Martínez indicated that he could not broadcast live because unknown individuals had cut the microphone cable, leaving the feed to the station with no audio.⁵⁷

55. On October 19, 2009, a group assumed to be Cohoni miners allegedly set off dynamite in front of the offices of newspapers *La Razón* and *El Diario* in the center of La Paz, according to reporting in several print media outlets. The information received by the Office of the Special Rapporteur indicates that the miners set off the dynamite to signal their discontent with the newspapers, whom they accuse of acting in favor of the businessmen.⁵⁸

⁵⁴ Inter-American Press Association. July 30, 2009. *IAPA calls for investigation into incidents in Bolivia, El Salvador, Venezuela*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4227&idioma=us; *Diario La Prensa*. July 27, 2009. *Cortan la cara y la lengua a un periodista de Gigavisión*. Available at: http://www.laprensa.com.bo/noticias/27-07-09/ultimas.php?n_a_c=nacional_270709_153636.inc&seccion=0&titulo=Cortan la cara y lengua a un periodista de Giga visi%F3n.

⁵⁵ Instituto Prensa y Sociedad. September 14, 2009. *Journalists who cover police beat assaulted in Potosí*. Available at: http://www.ifex.org/bolivia/2009/09/14/potosi_journalists_beaten/; *Diario La Razón*. September 6, 2009. *Semana nefasta contra la prensa*. Available at: http://www.la-razon.com/Versiones/20090906_006842/nota_245_873978.htm.

⁵⁶ Instituto Prensa y Sociedad. October 14, 2009. *Journalist threatened by community members after reporting on municipal meeting*. Available at: http://www.ifex.org/bolivia/2009/10/14/nina_threatened/; Asociación Nacional de la Prensa. October 15, 2009. *La ANP contra agresiones e incumplimiento de compromisos*. Available at: http://anpbolivia.com/index.php?option=com_content&task=view&id=54&Itemid=1.

⁵⁷ Instituto Prensa y Sociedad. October 7, 2009. *Periodista de canal estatal denuncia amedrentamiento y sabotaje*. Available at: <http://www.ipys.org/alertas/atentado.php?id=2029>; Asociación Nacional de la Prensa. October 15, 2009. *La ANP contra agresiones e incumplimiento de compromisos*. Available at: http://anpbolivia.com/index.php?option=com_content&task=view&id=54&Itemid=1.

⁵⁸ Instituto Prensa y Sociedad. October 20, 2009. *Cooperativistas mineros detonan explosivos frente a diarios*. Available at: <http://www.ipys.org/alertas/atentado.php?id=2045>; *Diario La Razón*. October 20, 2009. *Mineros amedrentan en una oficina de La Razón*. Available at: http://www.la-razon.com/versiones/20091020_006886/nota_250_897217.htm.

56. As the Office of the Special Rapporteur has indicated repeatedly, diversity, pluralism, and respect for the distribution of all ideas and opinions are the basic conditions for the functioning of every democratic society. As a consequence, authorities should contribute decisively to the construction of an environment of tolerance and respect in which all people can express their thoughts and opinions, without fear of being assaulted, punished, or stigmatized for doing so. Likewise, the State's obligation to foster conditions that allow all ideas and opinions to be freely distributed includes the obligation to investigate and adequately punish those who use violence to silence communicators or media outlets. In this sense, the Office of the Special Rapporteur wishes to highlight Principle 9 of the Declaration of Principles, which indicates that, "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media, violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

57. The Office of the Special Rapporteur expresses concern regarding the problems in the trial of the alleged perpetrators of the murder of Carlos Quispe Quispe. Quispe Quispe, a journalist with *Radio Municipal Pucarini*, was murdered in March of 2008. According to the information received by the Office of the Special Rapporteur, the trial has been delayed three times and has been suspended since June 18, 2008.⁵⁹

58. The Office of the Special Rapporteur also received information indicating that on September 3, 2009, Nelson Vila Santos, editor of the biweekly publication *Hora 25*, reported that the mayor of La Paz, Juan del Granado, had filed a criminal complaint against his publication for the crime of *desacato*. According to Vila, the complaint is based on an article published by *Hora 25* that reported that the figure of executive secretary is illegal in the context of La Paz's local government. According to the information received by the Office of the Special Rapporteur, the Public Prosecutor rejected the *desacato* complaint on September 11, 2009, indicating that the case should be tried in the framework of the Print Law, which calls for the establishing of a special court for these trials.⁶⁰ The Office of the Special Rapporteur recalls that Principle 11 of the Declaration of Principles indicates that, "Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as 'desacato laws,' restrict freedom of expression and the right to information."

59. On a different topic, the Office of the Special Rapporteur has received information on statements by senior government officials that could have a chilling effect and contribute to a climate of social polarization. On October 31, 2009, in a press conference in La Paz, Bolivian President Evo Morales criticized two journalists with television networks *Gigavisión* and *Uno* when they asked him about an operation carried out against an armed group, in which a person linked to an illegal organization perished. The information received by the Office of the Special Rapporteur indicates that President Morales accused one of the journalists of trying to defend terrorism and separatism.⁶¹ The Office of the Special Rapporteur reiterates once again that state authorities have

⁵⁹ Reporters Without Borders. June 19, 2009. *Un riesgo real de impunidad en el asesinato del periodista Carlos Quispe Quispe*. Available at: <http://www.rsf.org/Un-riesgo-real-de-impunidad-en-el.html>; Sociedad Interamericana de Prensa. May 28, 2009. *Presidente Evo Morales se abre a diálogo con la SIP*. Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4194&idioma=sp.

⁶⁰ Instituto Prensa y Sociedad. September 9, 2009. *Mayor of La Paz initiates legal action against magazine, police use violence to suppress protest march by journalists*. Available at: http://www.ifex.org/bolivia/2009/09/09/hora_25_lawsuit_journalist_march_stopped/; La Prensa. September 12, 2009. *La Fiscalía rechaza demanda de la Alcaldía paceña contra Hora 25*. Available at: http://www.laprensa.com.bo/noticias/12-09-09/noticias.php?nota=12_09_09_alfi5.php.

⁶¹ According to the information received, Judith Prada, a reporter with the television network *Gigavisión*, asked President Evo Morales why the Executive had ordered an armed operation, in which the alleged head of an armed group died.

a duty to contribute decisively to the construction of an environment of tolerance and respect in which all individuals can express their thoughts and opinions without fear of being stigmatized for them.

60. The Office of the Special Rapporteur reiterates once again its concern over the considerations placed on the record by the IACHR in its *Follow-up Report – Access to Justice and Social Inclusion: the road towards strengthening democracy in Bolivia*, published in its Annual Report 2008. The report recalls that the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people indicated that racist content is “frequent in some mass media outlets.”⁶² It also highlights the paragraphs concerned with the so-called “lynchings” or “taking justice into one’s own hands” and warns that these incidents “continue to be mistaken by some sectors of society as forms of the application of indigenous justice. In particular, the media has reported these criminal acts as expressions of community justice.”⁶³ The IACHR and the Office of the Special Rapporteur value the measures of circulation of information and training adopted by the Ministry of Justice and the Defense of the People to educate on the nature, practice, and reach of indigenous justice, as well as what distinguishes it from “street justice” and “lynchings.”⁶⁴ At the same time, it condemns the racist messages that can incite discrimination or violence, especially when they come from social communicators or journalists, since they help form public opinion. The Office of the Special Rapporteur recalls that Article 9 of the Inter-American Democratic Charter indicates that, “The elimination of all forms of discrimination, especially gender, ethnic and race discrimination, as well as diverse forms of intolerance; the promotion and protection of human rights of indigenous peoples and migrants; and respect for ethnic, cultural and religious diversity in the Americas contribute to strengthening democracy and citizen participation.”

61. Finally, the Office of the Special Rapporteur notes with satisfaction the fact that in the hearing held on November 2, 2009, during the 137th Period of Ordinary Sessions of the IACHR,

...continuation

President Morales answered, “If you don’t believe me, become a prosecutor or judge and investigate. I’m telling the truth.” Later he added, “Any pretext for trying to cover up or defend separatism or terrorism, I don’t share it friend. What you’re doing with these questions is defending terrorism and defending separatism.” Later, María José Mollinedo, a journalist with the *Uno* television network, asked the President of Bolivia if his government knew about the infiltration of people into the alleged terrorist group. President Morales responded, “You, suspiciously, are trying to exaggerate things, nothing less than woman journalists. In fact, you should be doing your utmost to defend life, the fatherland. Right now, you should be condemning these terrorists.” Instituto Prensa y Sociedad. November 5, 2009. *President rebukes two journalists who questioned him about a terrorism case*. Available at: http://www.ifex.org/bolivia/2009/11/05/presidents_rebukes_journalists/; *La Prensa*. November 4, 2009. *Ana Mar critica a Evo por cómo trató a dos periodistas de la Tv*. Available at: http://www.laprensa.com.bo/noticias/04-11-09/noticias.php?nota=04_11_09_poli4.php; *La Razón*. November 4, 2009. *Ana María Romero critica al Presidente y a los periodistas*. Available at: http://www.la-razon.com/Versiones/20091104_006901/nota_250_904471.htm

⁶² IACHR, *Follow-up Report – Access to Justice and Social Inclusion: the road towards strengthening democracy in Bolivia*. OEA/Ser/L/V/II.135. Doc. 40. 7 August 2009. para. 138. Available at: <http://www.cidh.oas.org/annualrep/2009eng/Chap.V.Toc.htm>; Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen. Preliminary Note on the Mission to Bolivia, 25 November to 7 December 2007. A/HRC/6/15/Add.2. 11 December 2007, pp. 2 and 3.

⁶³ IACHR, *Follow-up Report – Access to Justice and Social Inclusion: the road towards strengthening democracy in Bolivia*. OEA/Ser/L/V/II.135. Doc. 40. 7 August 2009. para. 172. Available at: <http://www.cidh.oas.org/annualrep/2009eng/Chap.V.Toc.htm>

⁶⁴ IACHR, *Follow-up Report – Access to Justice and Social Inclusion: the road towards strengthening democracy in Bolivia*. OEA/Ser/L/V/II.135. Doc. 40. 7 August 2009. para. 173. Available at: <http://www.cidh.oas.org/annualrep/2009eng/Chap.V.Toc.htm>

the Vice-Minister of Coordination with Social Movements, Sacha Llorenti, invited the IACHR and the Office of the Special Rapporteur in the name of the government of Bolivia to visit the country.⁶⁵

5. Brazil

62. The Office of the Special Rapporteur views positively the ruling – dated April 30, 2009 – of the Federal Supreme Court that declared the 1967 Press Law unconstitutional according to the Federal Constitution. The Press Law, passed during the military dictatorship, established harsh punishment for crimes of defamation and libel, and allowed for prior censorship, among other measures that restricted the exercise of freedom of expression.⁶⁶ The Office of the Special Rapporteur also applauds the fact that on June 17, 2009, the Federal Supreme Court ruled that the requirements that journalists hold journalism degrees and register with the Labor Ministry in order to be able to work as journalists were unconstitutional. Expressly basing its ruling on current inter-American standards, the court stated that the requirements were contrary to Article 13 of the Inter-American Convention.⁶⁷ These judicial decisions represent exemplary progress in matters of freedom of expression and demonstrate the importance of bringing national legislation up to the standards of the inter-American system.

63. The Office of the Special Rapporteur was informed that in May of 2009, Cássio Santana was sentenced to 23 years in prison for his role in the murder of radio journalist Nicanor Linhares, which took place in the city of Fortaleza in 2003.⁶⁸ The Office of the Special Rapporteur urges the State to continue in its efforts to identify, try, and punish those responsible for this crime.

64. The Office of the Special Rapporteur has also learned that the Executive had sent a bill on access to information to the National Congress. According to the information received, this initiative, which fulfills a promise made by President Luiz Inacio Lula Da Silva, covers all public administration, from federal offices down to state and municipal offices.⁶⁹ The Office of the Special

⁶⁵ Statement of the Vice Minister for Social Movement Coordination, November 2, 2009, in the hearing: "Follow-up on the recommendations to the IACHR in the report on 'Access to Justice and Social Inclusion in Bolivia,'" held during the 137th Period of Ordinary Sessions of the IACHR. Available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=117>.

⁶⁶ Federal Supreme Court. April 30, 2009. *Supremo julga Lei de Imprensa incompatível com a Constituição Federal*. Available at: <http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=107402>; Reporters Without Borders. May 1, 2009. *O Supremo Tribunal Federal revoga a Lei de 1967: 'Uma grande vitória para a liberdade de imprensa.'* Available at: <http://www.rsf.org/O-Supremo-Tribunal-Federal-revoga.html>; Committee for the Protection of Journalists. May 7, 2009. *In victory for press, high court strikes down repressive law*. Available at: <http://cpj.org/2009/05/in-victory-for-press-brazils-high-court-strikes-do.php>; Inter-American Press Association. May 5, 2009. *IAPA hails elimination of university degree requirement in Brazil*. Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4203&idioma=us.

⁶⁷ Federal Supreme Court. June 17, 2009. *Supremo decide que é inconstitucional a exigência de diploma para o exercício do jornalismo*. Available at: <http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=109717>; Office of the Special Rapporteur - IACHR. June 22, 2009. Press Release No. R38/09. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=750&IID=2>; Inter-American Press Association. June 19, 2009. *Satisface derogación de exigencia de título universitario en Brasil*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4203&idioma=sp.

⁶⁸ Committee for the Protection of Journalists. May 28, 2009. *CPJ hails conviction in 2003 journalist murder in Brazil*. Available at: <http://cpj.org/2009/05/cpj-hails-conviction-in-2003-journalist-murder-in.php>; *TV Verde Mares*. May 27, 2009. *Cassio Santa e Condenado*. Available at: <http://tvverdesmares.com.br/bomdiaceara/cassio-santana-e-condenado/>; O Globo. May 27, 2009. *Pistoleiro acusado de matar radialista no Ceará é condenado a 23 anos de prisão*. Available at: <http://oglobo.globo.com/cidades/mat/2009/05/27/pistoleiro-acusado-de-matar-radialista-no-ceara-condenado-23-anos-de-prisao-756050595.asp>.

⁶⁹ Knight Center of Journalism. May 12, 2009. *After years of pressure, Brazilian government sends information access bill to Congress*. Available at: <http://knightcenter.utexas.edu/blog/?q=es/node/3996>; Article 19. May 13, 2009. *Brazil: Lula sends access to information bill to Congress*. Available at: <http://www.article19.org/pdfs/press/brazil-lula-sends->

Rapporteur urges the State to take the freedom of expression standards of the Inter-American system into account during parliamentary debate.⁷⁰ Principle 4 of the Declaration of Principles states that "Access to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right."

65. On March 25, 2009, the police detained five individuals suspected of taking part in a January 21, 2009 attack on the headquarters of media group RAC (*Red Anhanguera de Comunicações*). The media group publishes daily newspaper *Correio Popular*, distributed in Campinas, São Paulo. According to information received by the Office of the Special Rapporteur, the arrested individuals were charged with being linked to a criminal organization called *Primeiro Comando da Capital* (PCC). In the attack, aggressors threw two hand grenades at the RAC building, though they did not detonate.⁷¹

66. On August 12, 2009, former law enforcement personnel Odin Fernandes da Silva and Davi Liberato de Araújo were sentenced to 31 years in prison for forming part of a militia that in May of 2008 kidnapped and tortured a group of journalists with the daily newspaper *O Dia* in the *favela* Batan, in Rio de Janeiro. According to the information received by the Office of the Special Rapporteur, the team of *O Dia* reporters were kidnapped after embedding themselves in the *favela* for two weeks to report on the activities of the illegal group.⁷²

67. The office of the Special Rapporteur was informed that on September 21, 2009, the government of the State of Bahia announced that it would pay damages to the family of journalist Manoel Leal de Oliveira, who was murdered in the city of Itabuna on January 14, 1998, allegedly by law enforcement personnel. According to the information received by the Office of the Special Rapporteur, the governor of Bahia, Jaques Warner, announced that the family of the journalist would be compensated with a payment of 100,000 reales (approximately US\$57,600).⁷³

68. In 2009, the Office of the Special Rapporteur received information on threats and acts of violence against journalists carried out by law enforcement personnel, security guards, and other individuals, as well as attacks against media outlets. On February 12, 2009, journalist Robert

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[access-to-information-bill-to-congress.pdf](#); Periodismo por el Acceso a la Información. May 19, 2009. *Brasil: después de media década de movilización, el gobierno envió proyecto de ley de acceso a la información al Congreso*. Available at: <http://www.periodismo-aip.org/noticia-detalle.php?id=58>.

⁷⁰ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter. III. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

⁷¹ *Folha de S. Paulo*. March 25, 2009. *Polícia prende cinco suspeitos de jogar granadas em jornal de Campinas (SP)*. Available at: <http://www1.folha.uol.com.br/folha/brasil/ult96u539995.shtml>; JusBrasil. March 25, 2009. *Gaeco ajuda a prender suspeitos de atentado a jornal em Campinas*. Available at: <http://www.jusbrasil.com.br/noticias/962913/gaeco-ajuda-a-prender-suspeitos-de-atentado-a-jornal-em-campinas>.

⁷² ABRAJI (Associação Brasileira de Jornalismo Investigativo). August 18, 2009. *Justiça condena responsáveis por torturar equipe do O Dia*. Available at: http://www.abraji.org.br/?id=90&id_noticia=968; **Globo.com**. August 12, 2009. *Justiça condena acusados de torturar jornalistas na Favela do Batan*. Available at: <http://g1.globo.com/Noticias/Rio/0,,MUL1264580-5606,00.html>; *Comunique-se*. August 12, 2009. *Decretada prisão de acusados de torturar jornalistas na favela do Batan*. Available at: <http://g1.globo.com/Noticias/Rio/0,,MUL708101-5606,00-DECRETADA+PRISAO+DE+ACUSADOS+DE+TORTURAR+JORNALISTAS+NA+FAVELA+DO+BATAN.html>; Agência EFE. August 13, 2009. *Un ex policía brasileño es condenado a 31 años por secuestro y tortura a reporteros*. Available at: http://www.google.com/hostednews/epa/article/ALeqM5ik4IY3XNNpB-AD_4Ph9Jm18cD9iQ.

⁷³ ABRAJI. September 23, 2009. *Bahia vai indenizar família de jornalista assassinado*. Available at: http://www.abraji.org.br/?id=90&id_noticia=1015; Inter-American Press Association. September 18, 2009. *Medida de un gobierno estatal de Brasil fortifica lucha de la SIP contra la impunidad*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4260&idioma=us.

Gomes Barbosa, with *Canal TV Liberal* and *Rádio Continental*, was assaulted by Marcos Soraes, an official with the Government Secretariat of the Mayorality of Campo de Goytacazes, in Rio de Janeiro. According to the information received by the Office of the Special Rapporteur, the attack took place on the premises of the radio station, shortly after Gomes Barbosa revealed an alleged irregularity in the concession of a radio frequency and the alleged inappropriate use of several media outlets by the local mayorality. Barbosa lodged a complaint against Soraes at a local police station.⁷⁴

69. The Office of the Special Rapporteur also received information indicating that on March 11, 2009, Fabiano Rocha, a photographer with the daily newspaper *Éxtra*, was attacked by security guards working for the Municipality of São Gonçalo, in Rio de Janeiro, while he was taking photos of the street where that municipality's mayor lives.⁷⁵

70. During the final days of June 2009, Ronaldo Lázaro Tiradentes, a journalist with radio and television broadcaster *Tiradentes*, filed a complaint with the Federal Police of the Amazonas State against Transportation Minister Alfredo Nascimento, for an alleged assault that took place in the parking lot of the Manaus airport.⁷⁶

71. On July 16, 2009, Antonio Carlos Argemi, a photographer with newspaper *Centro dos Professores do Estado do Rio Grande do Sul* (CPERS), distributed in Porto Alegre, Rio Grande do Sul, was arrested by the Military Police while taking photos of a protest in front of the residence of State Governor Yeda Crusius.⁷⁷

72. During the final weeks of July 2009, Carlos Baía, a journalist and director of the Journalism Department at *Rádio Metropolitana* in Bacarena, Pará, received numerous death threats via telephone after he revealed alleged irregularities in the hiring of personnel by the local mayorality.⁷⁸

73. Also, on August 23, 2009, in the city of Coari in Amazonas State, Paula Litaiff and Arleson Sicsú, both journalists with daily newspaper *Diário do Amazonas*, were assaulted and received death threats while covering a convention of the political coalition "United for Coari."⁷⁹

⁷⁴ Instituto Prensa y Sociedad. February 23, 2009. *El periodista Roberto Gomes Barbosa agredido tras denunciar gestión irregular en municipio*. Available at: http://www.ifex.org/brazil/2009/02/23/journalist_roberto_gomes_barbosa/es/; ABRAJI. February 16, 2009. *Jornalista denuncia agressão por funcionário público no interior do RJ e pede proteção ao Ministério Público*. Available at: http://www.abraji.org.br/?id=90&id_noticia=834.

⁷⁵ Knight Center for Journalism. March 13, 2009. *Agreden a fotógrafo brasileiro durante reportaje*. Available at: <http://knightcenter.utexas.edu/blog/?q=es/node/3327>; Reporters Without Borders. March 18, 2009. *Photographer Fabiano Rocha attacked outside mayor's home in Rio de Janeiro suburb*. Available at: http://www.ifex.org/brazil/2009/03/18/photographer_fabiano_rocha_attacked/.

⁷⁶ ABRAJI. August 7, 2009. *A journalist from CBN Manaus was assaulted by the Transport Minister*. Available at: http://www.abraji.org.br/?id=90&id_noticia=936; Portal Imprensa. June 29, 2009. *Ministro dos Transportes agride jornalista da CBN de Manaus*. Available at: http://portalimprensa.uol.com.br/portal/ultimas_noticias/2009/06/29/imprensa29144.shtml.

⁷⁷ Committee for the Protection of Journalists. July 16, 2009. *Freelance photographer detained in southern Brazil*. Available at: <http://cpj.org/2009/08/freelance-photographer-detained-in-southern-brazil.php>; ABRAJI. July 22, 2009. *Fotógrafo é detido por PM de Porto Alegre ao cobrir protesto em frente à casa da governadora, Yeda Crusius*. Available at: http://www.abraji.org.br/?id=90&id_noticia=952.

⁷⁸ ABRAJI. August 3, 2009. *Director of radio journalism of Pará is threatened with death after denouncing irregularities involving the city hall*. Available at: http://www.abraji.org.br/?id=90&id_noticia=962; ABERT (Asociación Brasileña de Emisoras de Radio y Televisión). August 4, 2009. *Jornalista sofre ameaça de morte após denunciar prefeitura*. Available at: http://www.abert.org.br/D_mostra_clipping.cfm?noticia=128078.

⁷⁹ UNESCO. August 31, 2009. *Defourny condena ameaças a jornalistas no Amazonas*. Available at: <http://www.brasilia.unesco.org/noticias/ultimas/defourny-repudia-ameacas-a-jornalistas-no-amazonas>; ABRAJI. August 28,

74. On September 28, 2009, Rafael Dias, a journalist with *Diário de Pernambuco*, was beaten by two individuals who identified themselves as sons of city councilor Luis Vidal, of Recife, who had passed away on September 26, 2009. According to the information received by the Office of the Special Rapporteur, the alleged attackers beat the journalist in reaction to an article published about their father."⁸⁰

75. On October 5, 2009, Wellington Raulino, a journalist and owner of the television station *Integracao*, suffered an attempt on his life by several armed individuals in the city of Urucuí, Piauí State. According to the complaint, the attackers could be linked to the mayor of Urucuí, Valdir Soares da Costa, whom the journalist had accused of embezzlement of public money on several occasions.⁸¹

76. In January of 2009, alleged followers of the Church of the Rebirth (*Igreja Renascer*) attacked a team of journalists who were covering the collapse of the roof at the church's world headquarters, located in Cambuci, São Paulo.⁸²

77. The Office of the Special Rapporteur also received information indicating that on June 4, 2009, Laércio Ribeiro, police news editor of daily newspaper *O Diário*, distributed in Mogi das Cruzes, São Paulo State, received at least three death threats through anonymous phone calls. According to the information received by the Office of the Special Rapporteur, the authorities began an investigation into the matter after Ribeiro filed a complaint with the Public Prosecutor. According to the journalist, the threats might be linked to news articles on alleged acts of municipal corruption published by the newspaper.⁸³

78. On June 30, 2009, Fabricio Ribeiro Pimenta, a journalist specializing in coverage of environmental issues, was physically assaulted while taking photos of a marble quarry in the city of Serra, Espírito Santo State. According to information received by the Office of the Special Rapporteur, Ribeiro was struck in the head with a hydrant handle by the owner of the mine.⁸⁴

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2009. *Repórteres dizem ter sido agredidos por segurança de ex-prefeito cassado de Coari, no Amazonas*. Available at: http://www.abraji.org.br/?id=90&id_noticia=990.

⁸⁰ ABRAJI. October 1, 2009. *Repórter é agredido em Pernambuco*. Available at: http://www.abraji.org.br/?id=90&id_noticia=1019; Portal Comunique-se. September 29, 2009. *Repórter do Diário de Pernambuco é agredido dentro do jornal*. Available at: <http://www.comunique-se.com.br/conteudo/newsshows.asp?idnot=53663&editoria=8>.

⁸¹ ABRAJI. October 13, 2009. *Jornalista diz ter sofrido tentativa de homicídio no Piauí*. Available at: http://www.abraji.org.br/?id=90&id_noticia=1023; Cabeça de Cuia. October 6, 2009. *Jornalista Wellington Raulino sofre tentativa de homicídio no Piauí*. Available at: <http://www.cabecadecuia.com/noticias/56547/jornalista-wellington-raulino-sofre-tentativa-de-homicidio-no-piaui.html>.

⁸² ABRAJI. January 23, 2009. *Fiéis da Igreja Renascer agredem jornalistas que tentavam cobrir desabamento de teto*. Available at: http://www.abraji.org.br/?id=90&id_noticia=826; Inter-American Press Association. *Informe Brasil. Reunión de Medio Año, Asunción, Paraguay*. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=22&infoid=337&idioma=sp.

⁸³ ABRAJI. June 10, 2009. *Editor de jornal O Diário, de Mogi das Cruzes (interior de São Paulo), é ameaçado de morte por telephone*. Available at: http://www.abraji.org.br/?id=90&id_noticia=915; Portal Imprensa. June 4, 2009. *Editor de 'Polícia' do jornal O Diário, de Mogi das Cruzes, recebe ameaças de morte*. Available at: http://portalimprensa.uol.com.br/portal/ultimas_noticias/2009/06/04/imprensa28618.shtml; O Diário. June 4, 2009. *Jornalista é perseguido e recebe três ameaças*. Available at: http://www.odariodemogi.inf.br/policia/noticia_view.asp?mat=16792&edit=18.

⁸⁴ ABRAJI. August 24, 2009. *Jornalista é agredido enquanto fotografava marmoraria no Espírito Santo*. Available at: http://www.abraji.org.br/?id=90&id_noticia=982; Reporters Without Borders. September, 2009. *The dangers for journalist who expose environmental issues*. Available at: http://www.rsf.org/IMG/rapport_en_md.pdf.

79. On August 27, 2009, the headquarters of *Radio FM de Marília* in São Paulo was attacked by four individuals, who, after tying up the guards, destroyed the station's transmitters. According to the information received by the Office of the Special Rapporteur, the radio station was off the air for three hours. It later went back on the air with emergency broadcast equipment. José Ursillo, director of the radio station, has filed complaints with the local and federal police.⁸⁵

80. On October 20, 2009, Francho Barón, a Spanish journalist with *El País*, was assaulted and received death threats from supposed drug traffickers in a Rio de Janeiro *favela*. Barón was attacked while trying to cover confrontations between drug traffickers and the Morro dos Macacos police.⁸⁶

81. The Office of the Special Rapporteur wishes to express its concern about the aforementioned facts and remind the State that Principle 9 of the Declaration of Principles states that the "murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media, violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

82. During 2009, the Office of the Special Rapporteur continued to receive information regarding court rulings that banned the prior distribution of information in the public interest. On March 19, 2009, Benedito Helder Afonso Ibiapina, a judge in the Ceara State, temporarily banned daily newspaper *O Povo* from publishing information related a federal investigation into the financial operations of a businessman. According to the information received by the Office of the Special Rapporteur, the court order also applied to other radio stations, television channels, and Web sites linked to the *O Povo* media group.⁸⁷

83. On July 30, 2009, the Federal District Court of Brasília banned daily newspaper *O Estado de S. Paulo* and its Web site from publishing any information related to the federal investigation of an alleged case of corruption that involved Fernando Sarney, the son of Brazilian ex-president and current Senate head Senator José Sarney.⁸⁸

84. The Office of the Special Rapporteur wishes to remind the State that Article 13.2 of the American Convention states that the exercise of freedom of expression cannot be subject to

⁸⁵ ABRAJI. September 2, 2009. *Rádio de Marília sofre atentado e tem equipamento destruído*. Available at: http://www.abraji.org.br/?id=90&id_noticia=993; Portal Imprensa. August 28, 2009. *Emissora de rádio de Marília (SP) sofre atentado e tem equipamento de transmissão danificado*. Available at: http://portalimprensa.com.br/portal/ultimas_noticias/2009/08/28/imprensa30430.shtml.

⁸⁶ Instituto Prensa y Sociedad. October 26, 2009. *El País daily newspaper correspondent threatened*. Available at: http://www.ifex.org/brazil/2009/10/26/baron_threatened/; El País de Madrid. October 23, 2009. *Entrevista en Hora 25 al periodista Francho Barón atacado en una favela de Brasil*. Available at: http://www.elpais.com/audios/cadena/ser/Entrevista/Hora/25/periodista/Francho/Baron/atacado/favela/Brasil/22/2009/elpaud/20091023csrscr_1/Aes/.

⁸⁷ ABRAJI. March 26, 2009. *O Povo newspaper subject to temporary injunction*. Available at: http://www.ifex.org/brazil/2009/03/26/o_povo_newspaper_subject_to_temporary/; Associação Nacional de Jornais. March 20, 2009. *ANJ condena censura prévia a O Povo*. Available at: <http://www.anj.org.br/sala-de-imprensa/noticias/anj-condena-censura-previa-a-o-povo/>.

⁸⁸ Committee for the Protection of Journalists. July 31, 2009. *Judge orders censorship in Brazilian corruption case*. Available at: <http://cpj.org/2009/08/judge-orders-censorship-in-brazilian-corruption-ca.php>; Associação Nacional de Jornais. September 15, 2009. *Censura ao "Estado" faz 60 dias*. Available at: <http://www.anj.org.br/sala-de-imprensa/noticias/censura-ao-estado-faz-60-dias/>; ABRAJI. September 11, 2009. *Censura ao jornal O Estado de S. Paulo completa dois meses*. Available at: http://www.abraji.org.br/?id=90&id_noticia=1004.

prior censorship. Principle 5 of the Declaration of Principles states that "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

85. The Office of the Special Rapporteur takes note of the information related to the order of a lower court, dated March 29, 2009, ordering the newspaper *Estado de Minas* to publish the several-page response of the Federal University of Minas Gerais across from an article on alleged irregularities in a competition for teaching jobs. According to the information received by the Office of the Special Rapporteur, on March 28, 2009, the Regional Federal Tribunal of the First Region ruled to suspend the order of the lower court.⁸⁹

86. The Office of the Special Rapporteur also received information on the initiation of legal proceedings against journalists who have published information of public interest or have expressed their opinions on topics of public interest. On January 26, 2009, Renata Modesto and Marcos Junqueira, journalists with the daily newspaper *Comercio da Franca*, distributed in São Paulo State, were notified by the Court of Justice of the City of Franca that a criminal procedure against them for the crime of defamation had been reopened. The case had been launched in December 2007 when the two journalists were accused of offending the honor of a member of the Franca police force. The journalists had accused the official of abuse of authority.⁹⁰

87. The Office of the Special Rapporteur was also informed that around the middle of 2009, two newspapers in the interior of São Paulo were sued for faithfully reproducing information that had been published in other daily newspapers. The two newspapers are *Integracao*, of Tatuí, and *Jornal de Cidade*, of Adamantina. According to the information received by the Office of the Special Rapporteur, Carlos Balladas, president of the Association for São Paulo Interior Newspapers (Adjori-SP), the lawsuits are an attempt at intimidation. Balladas added that, "All newspapers, especially the little ones, are constantly threatened. In most cases, the lawsuits are baseless."⁹¹

88. On September 16, 2009, U.S. journalist Joe Sharkey was notified that an onerous civil suit has been brought against him for having written a commentary that he denies writing. According to the information received by the Office of the Special Rapporteur, a citizen of Paraná State filed a lawsuit seeking a public retraction from Sharkey and US\$280,000 for having offended Brazil's honor on his blog and in his coverage of a plane accident that took place in Brazil in 2006, which Sharkey survived. The plaintiff accuses Sharkey of stating that Brazil is an "archaic" country and that Brazilian nationals are "idiots."⁹²

⁸⁹ Inter-American Press Association. March 31, 2009. *La SIP califica de censura derecho a replica desproporcional en Brasil*. Available at: <http://www.ifex.org/brazil/2009/04/03/estado-de-minas-newspaper-ordered/es/>; ABRAJI. March 30, 2009. *Abraji considera que sentença contra "Estado de Minas" contraria a Constituição e a liberdade de expressão*. Available at: http://www.abraji.org.br/?id=90&id_noticia=861.

⁹⁰ Inter-American Press Association. February 4, 2009. *Reabren proceso por difamación contra los periodistas Renata Modesto y Marcos Junqueira*. Available at: <http://www.ifex.org/brazil/2009/02/04/defamation-case-against-journalists/es/>; ABI (Brazilian Press Association). February 6, 2009. *Comércio da Franca tem apoio da ABI*. Available at: <http://www.abi.org.br/primeirapagina.asp?id=2951>.

⁹¹ ABRAJI. June 30, 2009. *Two newspapers sued*. Available at: <http://www.ifex.org/brazil/2009/06/30/papers-fined/>; Estadão.com.br. 27 de junio de 2009. *A democracia e os jornais locais*. Available at: http://www.estadao.com.br/estadaoehoje/20090627/not_imp393828,0.php.

⁹² Committee for the Protection of Journalists. September 27, 2009. *U.S. reporter faces 'insult' suit in Brazil air crash aftermath*. Available at: <http://cpj.org/2009/09/us-reporter-faces-insult-suit-in-brazil-air-crash.php>; AFP. September 25,

89. As the Office of the Special Rapporteur indicated in its Annual Report 2008, in spite of some significant rulings made in the last few years by the Federal Supreme Court and the Electoral Supreme Court, Brazilian law still maintains the criminal offenses of defamation, slander, and offense to honor, which in their practical application can constitute an obstacle to the exercise of freedom of expression. Likewise, there is no standard to differentiate between expression related to public officials carrying out their duties and expression related to private individuals. Were such a standard to exist, journalists could count on a safety buffer wide enough to allow them to report on matters of public interest without fear of being imprisoned or losing their financial wealth. The Office of the Special Rapporteur also wishes to emphasize that when it comes to expression on matters of public interest, it is crucial to ensure that any damages awarded are not disproportionate to such a degree that they have a chilling effect on the spread of information and ideas. The Office of the Special Rapporteur also observes that the possibility that judges may adopt provisional measures during the course of trials related to the exercise of freedom of expression raises the possibility that those measures may be a form of prior censorship.

90. With regard to community radio stations, the Office of the Special Rapporteur takes note of a bill sent to the National Congress of Brazil in January of 2009 that excludes community radio broadcasters operating without a license from criminal liability.⁹³ As the Office of the Special Rapporteur has indicated on several occasions, the State should act with maximum caution when applying criminal law to any area related to freedom of expression. It is crucial that the law in the area of broadcasting follow the principles of pluralism and diversity.⁹⁴

91. On that same topic, the Office of the Special Rapporteur wishes to make known the fact that the government of Luiz Inacio Lula Da Silva granted two radio concessions and two television concessions to the Foundation for Society, Communication, Culture, and Labor, whose principle support is the metal-workers union, which just celebrated its 50th anniversary. According to the information received, this is the only concession of this kind.⁹⁵ The Office of the Special Rapporteur wishes to reiterate that Principle 12 states that "The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals."

92. The Office of the Special Rapporteur received information to the effect that in January of 2009, Federal Judge Paula Mantovani ordered that the investigation into the death of journalist Vladimir Herzog be closed. Herzog was killed in a prison of the Brazilian military dictatorship on October 25, 1975. According to the information received by the Office of the Special Rapporteur, the judge closed the case after agreeing with the Criminal Attorney General of

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2009. *Freelance US journalist sued for defamation in Brazil.* Available at: <http://www.google.com/hostednews/afp/article/ALeqM5jIn4LKEMN1BCmNwGfmQuJF6CfYLg>.

⁹³ Article 19. February 10, 2009. *Brazil: Lula to decriminalise unlicensed community radio.* Available at: <http://www.article19.org/pdfs/press/brazil-lula-to-decriminalise-unlicensed-community-radios.pdf>; Agencia Brasil. January 16, 2009. *Governo quer descriminalizar rádios comunitárias.* Available at: <http://www.agenciabrasil.gov.br/noticias/2009/01/16/materia.2009-01-16.3646894269/view>.

⁹⁴ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter. III. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

⁹⁵ Asociación Mundial de Radios Comunitarias. May 20, 2009. *Gobierno otorga concesiones de radio y televisión a sindicato.* Available at: <http://legislaciones.item.org.uy/index?q=node/990>; Noticias Terra. May 14, 2009. *Lula concede TVs e rádios a fundação mantida por sindicato.* Available at: <http://noticias.terra.com.br/brasil/interna/0,,O13764963-E17896,00-Lula+concede+TVs+e+rádios+a+fundacao+mantida+por+sindicato.html>.

the Federal Public Prosecutor of São Paulo that the statute of limitations had expired and that there was no possibility of categorizing the crime as a crime against humanity.⁹⁶

6. Canada⁹⁷

93. The Office of the Special Rapporteur views positively the fact that the National Assembly of Quebec has passed “An Act to amend the Code of Civil Procedure to prevent improper use of the courts and promote freedom of expression and citizen participation in public debate.” The law, which went into effect on June 4, 2009, allows Quebec courts to dismiss legal proceedings intended to intimidate or silence those who publicly criticize institutional projects or practices. The reform states that when lawsuits are used improperly to silence criticism and avoid public debate, the claimant must reimburse expenses and pay the costs of the proceedings and any damages suffered by the person the legal action was brought against. Finally, the reform states that if the improper legal action was filed on behalf of a corporation, then the corporation’s administrator or directors and employees that pressed the legal action can be ordered to pay the damages personally. The Office of the Special Rapporteur finds that this legislative reform contributes decisively to the protection of freedom of expression and the strengthening of public debate democratically and with equality.⁹⁸

94. On the other hand, on October 21, 2009, the Supreme Court held a hearing in a proceeding begun by the Attorney General against Le Groupe Polygone Éditeurs Inc. for alleged fraudulent mishandling of federal funds during an advertising campaign. The Supreme Court will hear an appeal filed by *Globe and Mail* journalist Daniel Leblanc, who wishes to avoid naming a source used in his book, *Nom de code: MaChouette: l’enquête sur le scandale des commandites*, published in November of 2006. The book exposes the way certain advertising companies – Le Groupe Polygone Éditeurs Inc. among them – handle funds entrusted to them by the federal government. Le Groupe Polygone Éditeurs Inc. requested that the *Globe and Mail* reveal the identity of Leblanc’s informant in order to discover whether the informant is a government official. According to the company, Leblanc’s testimony would be decisive, given that the Canadian government would have known about the company’s fraudulent activity since before 2002, meaning that the statute of limitations on the company’s fraudulent activities would have expired. On November 5, 2008, the Quebec Superior Court ordered Leblanc to reveal the identity of his source, but Leblanc and his newspaper appealed the decision before the Supreme Court.⁹⁹ At the

⁹⁶ ABRAJI. February 6, 2009. *Federal judge closes investigation into journalist Vladimir Herzog's murder in 1975*. Available at: http://www.ifex.org/brazil/2009/02/06/federal_judge_closes_investigation/; *JusBrasil*. January 14, 2009. *Juíza arquiva caso Herzog, que julga prescrito*. Available at: <http://www.jusbrasil.com.br/noticias/607814/juiza-arquiva-caso-herzog-que-julga-prescrito>.

⁹⁷ In preparing this section of chapter II of its 2009 Annual Report, the Office of the Special Rapporteur took into account information available until November 30, 2009. Information regarding incidents that occurred after this date is available in the press release section of the websites of the Office of the Special Rapporteur (<http://www.cidh.org/relatoria>) and the IACHR (<http://www.cidh.org>).

⁹⁸ Office of the Special Rapporteur- IACHR. June 22, 2009. Press Release No. R38/09. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=750&IID=1>; National Assembly of Québec. First session – Thirty-Ninth Legislature. Bill 9 (2009, chapter 12): An Act to amend the Code of Civil Procedure to prevent improper use of the courts and promote freedom of expression and citizen participation in public debate. Available at: <http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2009C12A.PDF>.

⁹⁹ Supreme Court of Canada. 33097: *Globe and Mail, a division of CTV Globemedia Publishing Inc. v. Attorney General of Canada, et al.* Summary. Available at: <http://www.scc-csc.gc.ca/case-dossier/cms-sgd/sum-som-eng.aspx?cas=33097>; *The Globe and Mail*. October 21, 2009. *Supreme Court weighs fate of whistleblowers*. Available at: <http://www.theglobeandmail.com/news/politics/top-court-weighs-fate-of-whistleblowers/article1332253/>; *Canada East*. May 22, 2009. *Top court to hear press freedom case involving right to protect sources*. Available at: <http://www.canadaeast.com/front/article/674484>; *The Globe and Mail*. May 30, 2009. *Court to rule on ‘tidal wave’ of press*

time this report went to press, the Supreme Court's decision was still pending. The Office of the Special Rapporteur wishes to reiterate that Principle 8 of the Declaration of Principles states that, "Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."

95. The Office of the Special Rapporteur received information indicating that on February 17, 2009, the Supreme Court held a hearing in the case of *Douglas Quan, et al. v. Danno Cusson*. Cusson, a constable with the Ontario Provincial Police, filed a defamation lawsuit in civil court against the *Ottawa Citizen* and three of its journalists who published articles between September and October of 2001 regarding Cusson's participation in rescue operations after the World Trade Center attacks in the United States. According to the information received, the news articles indicated that Cusson had lied to New York law enforcement authorities regarding his credentials, that he put several rescue operations at risk, and that as a result of his conduct, he was punished with disciplinary measures. On November 13, 2007, the Court of Appeal for Ontario found that while several of the facts of the case were true and two of the news stories touched on topics of public interest, for two others the court could "not say with sufficient confidence that they were in the public interest to the extent that they needed to be heard," making it appropriate to sanction the journalists and the newspaper. It is worth noting that the Court of Appeal for Ontario recognized that for these cases it was possible to invoke the "responsible journalism" defense, which holds that social communicators should be punished only if it is determined that they acted with malice in distributing information. However, the court concluded that in this case, the defendants did not resort sufficiently to that defense. The newspaper and the journalists filed a motion before the Supreme Court to determine if the "responsible journalism" defense is applicable.¹⁰⁰ At the time this report went to press, a decision was pending.

96. The Supreme Court will also review the extent of the "responsible journalism" defense in the case of *Peter Grant, et al. v. Torstar Corporation, et al.* The Office of the Special Rapporteur received information indicating that on April 23, 2009, the Supreme Court held a hearing to hear arguments from both parties. The case dates to June 23, 2001, when the *Toronto Star* published an article on the acquisition of public property ("crown land") by Grant for the expansion of his adjacent golf course. In the article, the newspaper reported that local residents feared that the project would affect the area's environmental equilibrium, and that close relationships between Grant and federal officials left the authorities incompetent to hear the local residents' complaints. Grant sued the *Toronto Star* for libel. On November 28, 2008, the Court of Appeal for Ontario found that the newspaper article referred to a subject of public interest and recognized the validity of the "responsible journalism" defense in the case. However, due to the seriousness of the errors committed during the legal proceedings in the lower court, the court ordered a retrial. The newspaper filed a motion before the Supreme Court requesting this point of the Court of Appeal's ruling be annulled. Grant appealed the Court of Appeal's ruling, requesting that the "responsible

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freedom cases. Available at: <http://www.theglobeandmail.com/news/national/court-to-rule-on-tidal-wave-brof-press-freedom-cases/article1147878/>; Canadian Journalists for Free Expression. May 21, 2009. *CJFE Welcomes Supreme Court Decision in Daniel Leblanc Case*. Available at: <http://www.cjfe.org/releases/2009/21052009canada.html>.

¹⁰⁰ Supreme Court of Canada. 32420: *Douglas Quan, et al. v. Danno Cusson*. Summary. Available at: <http://www.scc-csc.gc.ca/case-dossier/cms-sgd/sum-som-eng.aspx?cas=32420>; The Court. February 17, 2009. *Quan v. Cusson Goes Before the Supreme Court*. Available at: <http://www.thecourt.ca/2009/02/17/quant-v-cusson-goes-before-the-supreme-court/>; The Star. February 18, 2009. *Justify why libel law needs change, top court tells media*. Available at: <http://www.thestar.com/News/Canada/article/589103>; Canadian Journalists for Free Expression. November 14, 2007. *CJFE Hails Court Ruling as Important Advance for Press Freedom in Canada*. Available at: <http://www.cjfe.org/releases/2007/14112007ontariocourt.html>.

journalism”¹⁰¹ defense not be recognized in this case. As of the date of this report, a decision is pending.

97. The Office of the Special Rapporteur wishes to remind the State that Principle 10 of the Declaration of Principles holds that, “Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

7. Chile

98. The Office of the Special Rapporteur views positively the fact that on April 20, 2009, Law No. 20.285, the Law on Transparency of Civil Service and Access to State-Administered Information, entered into force. Law No 20.285 was promulgated on August 11, 2008, as part of the process of compliance with the judgment – dated September 19, 2006 – of the Inter-American Court in the *Case of Claude Reyes et al.* The judgment established that the State had violated the right to access to information “embodied in Article 13 of the American Convention” and failed to comply with its “general obligations [...] to adopt provisions of domestic law” in this matter.¹⁰² Principle 4 of the Declaration of Principles holds that “Access to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right.”

99. Likewise, on September 21, 2009, the Inter-America Court ruled to continue with the monitoring of compliance procedure for the judgment in the *Case of Palamara Iribarne v. Chile*, and regard the 13th operative paragraph (among others) as pending compliance. That operative paragraph orders the State to “take all the necessary measures to annul and amend, within a reasonable period of time, any domestic provisions which are incompatible with the international standards regarding freedom of thought and expression.” According to the IACHR, the State has not submitted “enough detailed and specific information [...] on the measures pending compliance as pertaining to the obligation to adjust domestic law to international standards on free thought and expression,” in particular “progress on adjusting Article 284 of the Code of Military Justice, under

¹⁰¹ Supreme Court of Canada. 32932: *Peter Grant, et al. v. Torstar Corporation, et al.* Summary. Available at: <http://www.scc-csc.gc.ca/case-dossier/cms-sgd/sum-som-eng.aspx?cas=32932>; The Star. April 24, 2009. *Court weighs ‘responsible journalism’ defence.* Available at: <http://www.thestar.com/printArticle/623713>; The Court. April 23, 2009. *Defamation, Media Privilege and the Charter: Cusson v. Quan and Grant v. Torstar Corp. Part 1.* Available at: <http://www.thecourt.ca/2009/04/23/defamation-charter-cusson-v-quant-and-grant-v-torstar-corp/>. It should be mentioned that, after this report went to press, the Office of the Special Rapporteur was informed that on December 22, 2009, the Supreme Court of Canada issued its decision in this case. In its judgment, the Supreme Court established the existence of the defense of “public interest responsible communication.” According to the tribunal, this defense protects the person who disseminates information in the public interest, even if it can be proven that the information was true. The defense requires only to “show that publication was responsible, in that he or she was diligent in trying to verify the allegation(s), having regard to all the relevant circumstances.” Supreme Court of Canada. 32932: *Peter Grant, et al. v. Torstar Corporation, et al.* Date: December 22, 2009. Disponible en: <http://scc.lexum.umontreal.ca/en/2009/2009scc61/2009scc61.html>.

¹⁰² I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs.* Judgment of September 19, 2006. Series C No. 151. Also see: *Diario Oficial de la República de Chile.* August 20, 2008. *Ley No. 20.285: On Access to Public Information (Sobre Acceso a la Información Pública)*; Inter-American Press Association. *Chile Report. Mid-Year Meeting, March 13-16, 2009, Asunción, Paraguay.* Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=22&inford=343&idioma=us.

which ‘desacato’ is punished under the concept of ‘threats to the Armed Forces.’”¹⁰³ The Office of the Special Rapporteur urges the State to continue taking the measures necessary for full compliance with the judgment of the Inter-American Court, and expects to receive information on the progress of the process.

100. The Office of the Special Rapporteur received information indicating that on May 17, 2009, freelance journalist Marcelo Garay Vergara was arrested by members of the *Carabiniero* Special Forces police (*Fuerzas Especiales de Carabineros*) of the La Araucanía Region while reporting on a conflict between a forestry company and members of the Juan Quintremil Autonomous Community (*Comunidad Autónoma Juan Quintremil*), in the Padre de Las Casas municipality. According to the information received by the office of the Special Rapporteur, Garay Vergara was held for 24 hours, accused of taking photographs of a “temporary police encampment” located on an enclosure owned by the company. The Public Prosecutor ordered the journalist arrested for the alleged violation of Article 161-A of the Penal Code, which holds that “Those who, in private enclosures or places that are not open to the public in any way, receive, intercept, record, or reproduce conversations or communications of a private nature; steal, photograph, photocopy, or reproduce documents or instruments of a private nature; or receive, record, film, or photograph images or incidents of a private nature that take place, are carried out, happen, or exist in private enclosures or places that are not open to public access without the authorization of those affected, will be punished with short-term imprisonment (*reclusión menor*) in any of its degrees and a fine of between 50 and 500 Monthly Tax Units (*Unidades Tributarias Mensuales*). The same sentence will apply to those who distribute the conversations, communications, documents, instruments, images, or incidents referred to in the previous subsection. In the event that the same person who obtained the material is also distributing it, the punishment will be short-term imprisonment (*reclusión menor*) in its highest degree and a fine of between 100 and 500 Monthly Tax Units.” The Office of the Special Rapporteur wishes to call the State’s attention to this kind of crime, as it could be incompatible with the terms of Article 13 of the American Convention. Finally, the Office of the Special Rapporteur was informed that on May 19, 2009, Garay Vergara filed a writ of constitutional amparo before the Temuco Appeals Court against the members of the IX Zone of *Carabiniero* police of the La Araucanía Region, alleging that after he was freed, he was followed around the area by state officials.¹⁰⁴

101. On a different topic, in August of 2009, law enforcement officials revealed the identity of the alleged assailant of Víctor Salas, a photographer with *Agencia EFE*. On May 21, 2008, Salas was seriously injured in his right eye by a police officer while covering a demonstration in Valparaíso.¹⁰⁵ The Office of the Special Rapporteur urges the State to try and duly punish those

¹⁰³ I/A Court H.R., *Case of Palamara-Iribarne v. Chile. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of September 21, 2009.

¹⁰⁴ El Clarín de Chile. May 21, 2009. *Presentan recurso de amparo por periodista detenido en Temuco*. Available at: http://www.elclarin.cl/index.php?option=com_content&task=view&id=16557&Itemid=45; La Opión. May 19, 2009. *Hoy se presentó recurso a favor de periodista detenido por tomar fotos a una ‘unidad policial.’* Available at: <http://www.laopinon.cl/admin/render/noticia/20079>.

¹⁰⁵ Reporters Without Borders. August 20, 2009. *Identifican por fin al carabiniero que agredió al fotógrafo Víctor Salas mientras nadie pone fin a la violencia policial*. Available at: <http://www.rsf.org/Identifican-por-fin-al-carabiniero.html>. Also see: IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. para. 63. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

Committee for the Protection of Journalists. May 23, 2008. *Chilean police officer strikes photographer*. Available at: <http://cpi.org/2008/05/chilean-police-officer-strikes-photographer.php>. Reporters Without Borders. May 22, 2008. *Un fotógrafo de la agencia española EFE podría perder un ojo tras sufrir una agresión policial en una manifestación*. Available at: http://www.rsf.org/article.php?id_article=27148; El Ciudadano. July 10, 2008. *Identificado agresor de fotógrafo Víctor Salas: Carabineros diluye, dilata y encubre*. Available at: <http://www.elciudadano.cl/2008/07/10/identificado-agresor-de-fotografo-victor-salas-carabineros-diluye-dilata-y-encubre/>.

responsible for the incident. Principle 9 of the Declaration of Principles indicates that “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.”

102. The Office of the Special Rapporteur also received information indicating that the Third Civil Court of Santiago is studying a civil suit filed on November 9, 2007 by Ángela Ramírez Sanz against the State Defense Council (*Consejo de Defensa del Estado*). The suit seeks for Ramírez Sanz to be allowed to exhibit a work of art. According to the information received by the Office of the Special Rapporteur, in September of 2007, Ramírez Sanz won a public contest to set up an art exhibit in the Justice Center (*Centro de Justicia*) in Santiago. However, after the work of art had won the award, the Justice Ministry decided that the work “did not fit with the new proposals for the reform of criminal procedure.” The installation of the art work was ordered halted.¹⁰⁶ The Office of the Special Rapporteur wishes to remind the State that Principle 5 of the Declaration of Principles clearly establishes that, “Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

103. Finally, the Office of the Special Rapporteur was informed that in May of 2009, the parliamentary process for a bill to regulate community radio broadcasting in Chile was restarted. According to the latest information received by the Office of the Special Rapporteur, on November 3, 2009, the Senate voted to continue discussion of the text of a bill that was passed by the Chamber of Deputies in September of 2009. The bill was originally presented to Parliament by the Executive on October 5, 2007. Currently, Chile’s community radio broadcasters do not have their own legal regime.¹⁰⁷

104. The Office of the Special Rapporteur wishes to remind the State of its duty to promote different groups’ access to radio and television frequencies and licenses under conditions of equality and non-discrimination, no matter their technology. In effect, the State is obligated to recognize and facilitate equal access to commercial, social, or public radio or television proposals, both in the radio spectrum and in the new digital medium. It is crucial that all disproportionate or discriminatory restrictions that block radio or television broadcasters be removed so that the broadcasters can access their frequencies and complete the mission they have taken up. The State regulatory framework should establish open, public, and transparent processes for assigning licenses or frequencies. These processes should have rules that are clear and pre-established, as well as

¹⁰⁶ Centro de Derechos Humanos de la Universidad Diego Portales. April 14, 2009. *Censura administrativa: obra sine qua non*. Available at: <http://www.derechoshumanos.udp.cl/censura-administrativa-obra-sine-qua-non/>.

¹⁰⁷ Chamber of Deputies of Chile. June 16, 2009. *Aprueban en general proyecto que regula radios comunitarias*. Available at: http://www.camara.cl/prensa/noticias_detalle.aspx?prmId=35586; Senate of Chile. October 28, 2009. *Radios Comunitarias: Surgen dudas sobre posibilidad que transmitan publicidad política*. Available at: http://www.senado.cl/prontus_galeria_noticias/site/artic/20091028/pags/20091028203940.html; Asociación Mundial de Radios Comunitarias. November 6, 2009. *Senado aprobó proyecto de ley sobre radiodifusión comunitaria*. Available at: <http://legislaciones.item.org.uy/index?q=node/1133>; Asociación Mundial de Radios Comunitarias. *Las mordazas invisibles. Estudios de caso: Chile (Octubre 2009)*, pp. 160-162. Available at: <http://legislaciones.amarc.org/mordazas/principal.htm>; Asociación Mundial de Radios Comunitarias. June 24, 2009. *Fue aprobado por unanimidad en comisión el proyecto de ley sobre radiodifusión comunitaria*. Available at: <http://legislaciones.item.org.uy/index?q=node/1022>; Asociación Mundial de Radios Comunitarias. May 20, 2009. *Reactivan proyecto de ley sobre servicios de radiodifusión comunitaria*. Available at: <http://legislaciones.item.org.uy/index?q=node/991>.

requirements that are necessary, just, and fair. It is also essential that the entire process of assignment and regulation be in the hands of an independent, technical body of the government. The body should be autonomous and free from political pressures, and it should be subject to the guarantees of due process, as well as judicial review.¹⁰⁸ In this context, and as the Office of the Special Rapporteur has repeatedly indicated, broadcasting regulations should expressly recognize community media and at a minimum contain the following elements: (a) simple procedures for obtaining permits; (b) the absence of onerous technological requirements that in practice block even the filing of a request for space with the State; and (c) an allowance for using advertising to fund the station.¹⁰⁹ Finally, to assure free, vigorous, and diverse television and radio, private media should have guarantees against State arbitrariness, social media should enjoy conditions that prevent them from being controlled by the State or economic interests, and public media should be independent from the Executive. Principle 12 of the Declaration of Principles holds that, “The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”

8. Colombia¹¹⁰

105. During the year 2009, the IACHR continued receiving information about the exercise of freedom of expression in Colombia. The following section sets forth some the advances and current challenges in this subject area.

a. Advances in the area of freedom of expression

106. The Commission observes with satisfaction the advancement of some judicial investigations of assassinations of journalists. In January 2009, the former Mayor of Barrancabermeja, Julio César Ardila Torres, and two other former officials of the Mayor’s Office, were sentenced to 28 years in prison as the masterminds of the murder of the journalist José Ementerio Rivas, which occurred in 2003. According to the judicial body, Julio César Ardila paid 150 million pesos to paramilitaries in the zone to assassinate the journalist, motivated by the constant accusations made by José Rivas against the former official of having links to the *Autodefensas Unidas de Colombia* (United Self-Defense Forces of Colombia).¹¹¹

¹⁰⁸ As indicated by the Office of the Special Rapporteur in its Annual Report 2008, “Rules such as the above allow for the protection of commercial channels and radio stations from abusive influences and provide them with the security that they will not be subject to arbitrary decisions, whatever their orientation may be. These types of rules also encourage the existence of state or public television channels and radio stations that are independent of governments and vitally promote the circulation of ideas and information not usually included in commercial programming (because of low profitability), and not generally given air time on social or community channels or radio stations (because of high production costs or because of the topics covered). Finally, regulations such as the ones proposed would enable the recognition and promotion of social communications media such as community channels and radio stations, which play an essential role in the democracies of our region.” IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter. IV. paras. 106-107. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

¹⁰⁹ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter. III. paras. 227-228. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>; IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2007. OEA/Ser.L/V/II.131. Doc. 34 rev. 1. 8 March 2008. Chapter III. paras. 5-6. Available at: <http://www.cidh.oas.org/annualrep/2007eng/Annual%20Report%202007.VOL.II%20ENG.pdf>

¹¹⁰ This section corresponds to the section on freedom of expression in Colombia in Chapter IV, Volume I, of the IACHR 2009 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.

¹¹¹ Fundación para la Libertad de Prensa (FLIP), January 22, 2009. Condenados autores intelectuales de asesinato de periodista en 2003 Available at: <http://www.flip.org.co/veralerta.php?idAlerta=341>. Diario El Tiempo, January 21, 2009.

107. In April of 2009, the Criminal Court of the Specialized Circuit of Quibdó, department of Chocó, sentenced Franklin Isnel Díaz Mosquera, alias "Juancho," to 34 years in prison as the perpetrator of the assassination of the journalist Elacio Murillo Mosquera. The murder was carried out in 2007 and the masterminds have still not been identified. According to the judgment, the journalistic denunciations by Elacio Murillo about the actions of paramilitary groups in the zone motivated the crime.¹¹²

108. The Council of State condemned the Nation for the murder of the journalist Henry Rojas Monje, which occurred in 1991. Henry Rojas, correspondent with the newspaper El Tiempo in Arauca, was murdered by two members of the National Army. According to the judgment of March 24, 2009, the State's responsibility arose from the fact that the soldiers who killed the journalist were public functionaries. This decision also questioned the impunity for this crime, since the masterminds were not identified.¹¹³

109. In a voluntary statement before the Unit on Justice and Peace, the demobilized paramilitary Jorge Enrique Ríos, alias "Sarmiento," confessed to having assassinated the journalist Flavio Iván Bedoya, on April 27, 2001. According to Jorge Enrique Ríos, the order to assassinate Flavio Bedoya arose from an interview the journalist had done with the commander "Marcos," guerrilla leader of the FARC.¹¹⁴ The Commission observes that in this process a definitive decision has not yet been adopted.

110. On another matter, the Commission emphasizes that in March of 2009, the Constitutional Court reiterated its jurisprudence in the area of rectification, according to which opinions are not rectifiable, since they are protected by the right to freedom of expression and opinion.¹¹⁵ Additionally, the Commission notes that the judgment of the Constitutional Court establishes that journalists will not be criminally responsible for information they make public about some persons who are judicially absolved of the acts that are reported. This ruling modifies the previous situation, in which a person accused of defamation could not absolve him- or herself, even if the truth of his or her affirmations was proven, if it involved facts that were the object of a judgment of absolution or closure of the investigations.¹¹⁶

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Como avance contra la impunidad calificó la SIP condena por crimen de periodista en Barrancabermeja. Available at: http://www.eltiempo.com/colombia/justicia/como-avance-contra-la-impunidad-califico-la-sip-condena-por-crimen-de-periodista-en-barrancabermeja_4767898-1.

¹¹² FLIP, April 8, 2009. Condenado autor material del asesinato de Elacio Murillo. Available at: <http://www.flip.org.co/veralerta.php?idAlerta=355>. El Tiempo, March 18, 2009. Condenan a 34 años de prisión a alias "Juancho" por asesinato del periodista Elacio Murillo. Available at: http://www.eltiempo.com/colombia/justicia/condenan-a-34-anos-de-prision-a-alias-juancho-por-asesinato-del-periodista-elacio-murillo_4884685-1.

¹¹³ Federación Internacional de Periodistas (FIP), March 27, 2009. Cesó-FIP valora el fin de la impunidad por el asesinato del periodista colombiano Henry Rojas Monje. Available at: http://www.p-es.org/index.php?option=com_content&task=view&id=2842&Itemid=62. FLIP, April 8, 2009. Condenada la Nación por asesinato de Henry Rojas Monje. Available at: <http://www.flip.org.co/veralerta.php?idAlerta=355>.

¹¹⁴ Portal Verdad Abierta, July 31, 2009. Ex para confiesa asesinato de periodista Flavio Bedoya. Available at: <http://www.verdadabierta.com/web3/nunca-mas/76-periodistas/1473-ex-para-confiesa-asesinato-de-periodista#>. FLIP, August 4, 2009. Available at: <http://www.flip.org.co/veralerta.php?idAlerta=376>.

¹¹⁵ Constitutional Court, Judgment T-219 of 2009. Presiding Judge Mauricio González Cuervo. With this decision, the Court overturned a judgment of the Superior Court of Bogotá against Alejandro Santos, editor of the magazine *Semana*, for a series of articles published about the magistrate of the Superior Council of the Judiciary, José Alfredo Escobar Araújo. Despite having made rectifications on two occasions, the magazine faced a new order of rectification and its editor, a contempt charge for failing to comply with it.

¹¹⁶ Constitutional Court, Judgement C-417 of 2009. Presiding Judge Juan Carlos Henao Pérez. FLIP, July 3, 2009. Corte Constitucional amplía el alcance de la veracidad como defensa en injuria y calumnia. Available at:

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111. In this respect, Principle 10 of the Declaration of Principles indicates that:

[p]rivacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.

112. The Commission notes that through a decision of the Constitutional Court, constitutional protection of the confidentiality of sources was authorized. Concretely, in response to journalistic denunciations made by the *Diario del Huila*, which linked a Senator of the Republic with alleged irregular activities, the Senator demanded that the media reveal its sources, considering that the information threatened his good name and honor. In this respect, the Court considered that "in principle and while the legislator does not establish a clear, reasonable, necessary, and proportionate disposition to the contrary, the privacy guaranteed by Article 74 of the Constitution is not subject to limitations."¹¹⁷

113. In this respect, it should be noted that Principle 8 of the Declaration of Principles on Freedom of Expression states that "[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."

114. The Commission takes note of the advances in the area of contracting and assigning official publicity in Colombia. In Cartagena, department of Bolívar, the implementation of the norms issued in 2008 has continued, creating an official committee and establishing a series of criteria for the contracting of official publicity. In the same vein, during 2009, the government of Caldas issued a decree with similar characteristics and has begun its implementation.¹¹⁸ In this respect, it is fitting to recall that Principle 13 of the Declaration of Principles states that the arbitrary and discriminatory assignation of official publicity "with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law."

115. On the other hand, the Commission recognizes the importance of the continuation of the Program for the Protection of Journalists of the Ministry of the Interior and Justice. Nevertheless, it expresses its concern over possible delays in the implementation of protective

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<http://www.flip.org.co/veralerta.php?idAlerta=371>. Grupo de Interés Público de la Universidad de Los Andes, July 2009. Acción pública de inconstitucionalidad contra el artículo 224 del Código Penal. Available at: <http://gdip.uniandes.edu.co/interno.php?Id=6&Menu=10&lang=es>.

¹¹⁷ Constitutional Court, Judgment T-298 of 2009. Presiding Judge Luis Ernesto Vargas Silva.

¹¹⁸ FLIP, May 11, 2009. Avanza la política pública sobre publicidad oficial en Cartagena. Available at: <http://flip.org.co/veralerta.php?idAlerta=364>. Regarding Cartagena, see also Office of the Mayor of Cartagena, May 13, 2009. La FLIP destaca avances en la regulación de la pauta oficial. Available at: <http://sigob.cartagena.gov.co/prensa/default.asp?codigo=270&tipo=Comunicados>. In the case of the governorship of Caldas, see FLIP, April 24, 2009. La Gobernación de Caldas expide decreto sobre publicidad oficial. Available at: <http://www.flip.org.co/veralerta.php?idAlerta=359>. Governorship of Caldas, March 27, 2009. Gobernación de Caldas expide decreto sobre publicidad oficial. Available at: http://www.gobernaciondecaldas.gov.co/index.php?option=com_content&view=article&id=177:noticias-marzo-27-de-2009&catid=71:notis&Itemid=190. Diario La Patria and Asociación por los Derechos Civiles (ADC), April 2009. Gobernación colombiana regula la distribución de publicidad oficial. Available at: http://www.censuraindirecta.org.ar/sw_contenido.php?id=492. ADC, April 2009.

measures and judicial orders regarding this point that have been issued against government officials in charge of this public policy.¹¹⁹

b. Assassinations, attacks, threats, and illegal detentions of journalists

116. The Commission deplores the assassinations of journalists that occurred in 2009. In the municipality of Patía, department of Cauca, José Everardo Aguilar of Radio Súper was assassinated on April 24, 2009, when an unidentified individual entered his residence and shot him several times. José Aguilar was a journalist recognized in his municipality for his criticism and denunciations of corruption at the local and departmental levels.¹²⁰ Three months later, the Police reported that they had captured the perpetrator of the crime.¹²¹ In this regard, in a communication of October 6, 2009, the State informed the Office of the Special Rapporteur for Freedom of Expression that the murder perpetrated against the communicator was strongly repudiated by the National Government and that the competent prosecutor's office had already opened an investigation in which the adoption of special rules was requested given the "particular situation of the victim and the gravity of the acts." Finally, the State reported that there was no request for protection on behalf of the murdered journalist found in the database of the Program for the Protection of Journalists and Social Communicators.

117. On September 22, 2009, in the municipality of Supía, department of Caldas, Diego Rojas Velásquez, a reporter with a community channel, was assassinated.¹²² According to the

¹¹⁹ Portal La Silla Vacía, October 12, 2009. La otra cara del Programa de Protección del Gobierno. Available at: <http://www.lasillavacia.com/historia/4726>. In relation to this issue, the Administrative Tribunal of Cundinamarca declared the Director of Human Rights of the Ministry of the Interior and the Director of the Administrative Department of Security (DAS, by its Spanish acronym) to be in contempt for failing to comply with a 2008 order of the Constitutional Court to adjust the protection plan for journalist Claudia Julieta Duque and to provide her with the information about her found in the files of the intelligence entity. The judgment is available at: <http://www.derechos.org/nizkor/colombia/doc/desacato.html>.

¹²⁰ Reporters without Borders (RSF), April 28, 2009. Radio reporter gunned down in Cauca. Available at: <http://www.ifex.org/colombia/2009/04/28/radio-reporter-gunned-down-in-cauca/>. FIP, April 27, 2009. La FIP condena firmemente el asesinato de un veterano periodista en Colombia. Available at: <http://www.ifj.org/es/articulos/la-fip-condena-firmemente-el-asesinato-de-un-veterano-periodista-en-colombia>. FLIP, April 25, 2009. Asesinado periodista en Patía, Cauca. Available at: <http://www.flip.org.co/veralerta.php?idAlerta=360>.

¹²¹ Reporters without Borders. July 15, 2009. Suspect arrested in the investigation into the murder of a radio journalist. Available at: <http://www.rsf.org/Radio-reporter-gunned-down-in.html>. FLIP, July 12, 2009. Capturado sicario de periodista en el Cauca. Available at: <http://www.flip.org.co/veralerta.php?idAlerta=372>.

After this chapter was sent to the State, the Office of the Special Rapporteur received information that on November 13, 2009, the First Special Judge in Popayán acquitted Arley Manquillo Rivera, allegedly the material author of the assassination. According to the information received, the verdict ignored evidence submitted by the Prosecutor's Office, based on the testimony of Agnolia Aguilar, the journalist's daughter, who witnessed the crime. The court considered Agnolia Aguilar's testimony "disturbed" by the violent scene she witnessed. The Prosecutor's Office said it would appeal the decision. See Freedom of the Press Foundation (FLIP). November 15, 2009. *Absuelto presunto asesino de periodista*. Available at: <http://www.flip.org.co/veralerta.php?idAlerta=393>; El Tiempo newspaper. November 16, 2009. *Declaran inocente a presunto asesino de periodista José Everardo Aguilar en el Cauca*. Available at http://www.eltiempo.com/colombia/occidente/declaran-inocente-a-presunto-asesino-de-periodista-en-el-cauca_6602868-1; Virtual newspaper of Cauca. November 13, 2009. *Ordenan libertad de alias "El Huracán" señalado de asesinar al periodista J. Everardo Aguilar*. Available at: http://www.periodicovirtual.com/index.php?option=com_content&view=article&id=598:ordenan-libertad-de-alias-el-huracan-senalado-de-asesinar-al-periodista-j-everardo-aguilar&catid=1:mi-noticia.

¹²² Inter-American Press Association (IAPA), September 25, 2009. IAPA condemns murders of journalists in Mexico, Colombia. Available at: <http://impunidad.com/index.php?comunicados=detail&idioma=us&id=4265>. Diario La Patria, September 23, 2009. Asesinaron a periodista oriundo de Supía. Available at: http://www.lapatria.com/Noticias/ver_noticia.aspx?CODNOT=76570&CODSEC=4. FIP, September 23, 2009. Fecolper condena asesinato de periodista en Caramanta, Antioquia. Available at: <http://www.fipcolombia.com/noticiaAmpliar.php?noticia=4136>. FLIP, September 23, 2009. Asesinado periodista en Supía, Caldas. Available at: <http://www.flip.org.co/veralerta.php?idAlerta=383>.

information received, Diego Rojas was working for the community channel Supía TV when he received a telephone call related to the coverage of a story in the municipality of Caramanta, department of Antioquia. The information adds that the journalist left the channel at around 6:30 p.m. and was intercepted a few blocks away by a group of unknown individuals who fired four shots at him, killing him immediately. According to the information received, the local authorities stated that they did not know of any threats against the life of the community journalist.

118. On December 13, 2009, the State said that according “to statistics as of October 31, 2009, from the Observatory [...] of the Presidential Human Rights Program, Office of the Vice President of the Republic,” during that period “there [had] only been the homicide of [José Everardo Aguilar,] who worked for Radio Súper.”¹²³

119. The Commission notes with concern that some judicial investigations of assassinations of journalists have been closed without any results or have been paralyzed after some advances.¹²⁴ The IACHR exhorts the State to investigate these crimes, sanction those responsible proportionately, and make reparations to the victims. The state of impunity for crimes against journalists continues to be especially serious.

120. On this matter, the State said on December 13, 2009, that the National Human Rights Unit had launched 48 investigations into crimes against journalists. According to the State, “these investigations have implicated 38 persons, and there have also been 17 convictions in 13 verdicts.”¹²⁵

121. In this sense, it recalls that Principle 9 of the Declaration of Principles on Freedom of Expression states that the “murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the State to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

122. The Commission was also informed that there were at least 40 cases of journalists threatened for reasons presumably related to their work and that these were concentrated in the departments of Atlántico, Valle del Cauca, Córdoba, and Huila.¹²⁶

123. According to information received by the Commission, in Barranquilla, department of Atlántico, grave threats against communicators had been presented, by means of a pamphlet presumably created by the illegal armed group “Águilas Negras.”¹²⁷ Subsequently, the reporters

¹²³ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 43.

¹²⁴ Last October, the Office of the Attorney General of the Nation precluded the investigation of the former president of the assembly of Huila, Carlos Augusto Rojas, for the assassination of the journalist Nelson Carvajal Carvajal, which occurred in Pitalito, Huila on April 16, 1998. In 2008, the Supreme Court had been asked to reopen the case. This petition rejected the request for revision. Inter-American Press Association (IAPA), October 12, 2009. Cierran investigación contra político colombiano por asesinato de Nelson Carvajal. Available at: <http://www.impunidad.com/index.php?shownews=405&idioma=sp>.

¹²⁵ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 43.

¹²⁶ FLIP, August 12, 2009. Informe semestral sobre libertad de prensa en Colombia, p. 3. Available at: <http://www.flip.org.co/veralerta.php?idAlerta=378>.

¹²⁷ FIP, February 1, 2009. Cesó-FIP y FECOLPER condenan amenazas de muerte contra periodistas en Barranquilla. Available at: <http://www.fipcolombia.com/noticiaAmpliar.php?noticia=3004>. FLIP, August 12, 2009. Informe semestral sobre libertad de prensa en Colombia, pp. 17-19. Available at: <http://www.flip.org.co/veralerta.php?idAlerta=378>.

José Granados, of the newspaper *El Herald*,¹²⁸ and Daniel Castro, of the newspaper *El Sol*, received intimidating telephone calls. Luis Camacho Montaña, of the newspaper *La Libertad*, was assaulted and threatened by various men who approached him on the street.¹²⁹

124. On the other hand, the station *Radio Diversia*, belonging to the LGBT community of Bogotá, was the victim of a robbery of equipment and later of threats, which were received through email. Carlos Serrano, director of the station, felt it was necessary to leave the country temporarily. Apparently, the threats were made by “social cleansing” groups.¹³⁰

125. With respect to the *Radio Diversia* case, on December 13, 2009, the State said that “the Office of Indigenous, Minority, and Roma Affairs of the Ministry of Interior and Justice did a technical study on the level of risk and degree of threat posed by the National Police, finding it ‘normal,’ and therefore the case was referred to the Committee for Rules and Risk Assessment–CRER of the Program for Protection of Journalists and Media Workers in the meeting of September 28, 2009, at which it was recommended that four (4) Avantel communication devices be provided for Nicolay Paulina Duque Aricapa, Carlos Serrano, Laura Giselle Vargas La Torre, and Liceth del Carmen Rochel Páez.” It also reported that the National Police had been asked to provide “preventive security measures around the station.”¹³¹

126. The Office of the Special Rapporteur also learned that the president of the Inter-American Press Association (IAPA), Enrique Santos Calderón, had been warned of a supposed plan to attempt to kill him, which was discovered by Colombian intelligence organs. The attempt was also planned against Juan Manuel Santos, at that time the Minister of Defense.¹³²

127. According to information received, the columnist and writer Gustavo Álvarez Gardeazabal was attacked and threatened by unknown individuals who entered his residence and stole part of his journalistic material. According to Gustavo Álvarez, six armed men entered his house in Tuluá, Valle del Cauca, bound and aimed firearms at the journalist and his maid, searched the journalist’s documents and archives, and took away computers and cellular telephones. It is

¹²⁸ FIP, April 3, 2009. ACSA rechaza amenazas contra periodista del diario *El Herald*. Available at: <http://www.fipcolombia.com/noticiaAmpliar.php?noticia=3364>. Revista *Semana*, April 2, 2009. Amenazado periodista de *El Herald* por denunciar irregularidades en la CRA. Available at: <http://www.semana.com/noticias-medio-ambiente/amenazado-periodista-heraldo-denunciar-irregularidades-cra/122462.aspx>. FLIP, April 3, 2009. Periodista de ‘*El Herald*’ recibe amenazas por denuncias de corrupción. Available at: <http://www.flip.org.co/veralerta.php?idAlerta=353>.

¹²⁹ FLIP, July 2, 2009. Periodista es asaltado y amenazado en Barranquilla, Atlántico. Available at: <http://www.flip.org.co/veralerta.php?idAlerta=370>. *Diario El Tiempo*, April 2009. Amenazas a periodistas en Barranquilla pasaron de los panfletos a la intimidación armada. Available at: <http://www.eltiempo.com/colombia/caribe/amenazas-a-periodistas-en-barranquilla-pasaron-de-los-panfletos-a-la-intimidacion-armada-5573727-1>.

¹³⁰ FLIP, May 26, 2009. Emisora activista de derechos de la comunidad LGBT recibe amenazas. Available at: <http://www.flip.org.co/veralerta.php?idAlerta=367>. RSF, June 5, 2009. Help for threatened community gay radio station. Available at: <http://www.rsf.org/Help-for-threatened-community-gay.html>. *El Tiempo*, May 8, 2009. Amenaza a director de *Radio Diversia* prende alarmas en el Distrito por agresiones a sectores LGBT. Available at: <http://www.eltiempo.com/colombia/bogota/amenaza-a-director-de-radio-diversia-prende-alarmas-en-el-distrito-por-agresiones-a-sectores-lgbt-5161068-1>.

¹³¹ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, pp.43-46.

¹³² *El Tiempo*, March 26, 2009. Guerrilleros que iban a atacar a Presidente de la SIP y MinDefensa estarían preparando secuestros (Guerrillas who were going to attack the President of IAPA and the Defense Ministry were planning abductions). Available at: <http://www.eltiempo.com/colombia/justicia/guerrilleros-que-iban-a-atacar-a-presidente-de-la-sip-y-mindefensa-estarian-preparando-secuestros-4901739-1>. FLIP, March 30, 2009. Frustran atentado contra el presidente de la Sociedad Interamericana de Prensa. Available at: <http://www.flip.org.co/veralerta.php?idAlerta=354>. IAPA, March 30, 2009. IAPA concerned about plot to kill its president, Enrique Santos Calderón). Available at: <http://www.ifex.org/colombia/2009/03/30/iapa-concerned-at-plot-to-kill/>.

worth reiterating that Principle 9 of the Declaration of Principles on Freedom of Expression states that intimidation and threats against journalists “violate the fundamental rights of individuals and strongly restrict freedom of expression.”

128. On the other hand, the Commission learned of new acts of aggression against journalists by members of the Police and private individuals. Specifically, in 2009, the following journalists, among others, were attacked in different circumstances: Emilio Castrillón, of the newspaper *El Pilón* of Valledupar, Cesar,¹³³ Luisa Alario Solano and Hernando Vergara, of the newspapers *Q' Hubo* and *El Herald*, also in Valledupar,¹³⁴ and Álvaro Miguel Mina, of *Caracol Radio* in Cali, Valle del Cauca.¹³⁵

129. The Commission notes with concern the possible illegal detention of Hollman Morris, director of the program *Contravía*, and Camilo Raigozo, a collaborator with the weekly *Voz*, by the National Army. The incidents occurred in February of 2009, when the reporters were returning from obtaining images and conducting interviews with several captives of the FARC minutes before they were liberated. The journalists were held for several hours in the municipality of Unión Peneya, department of Caquetá, during which time they were recorded with a video camera by an agent of the Division of the Judicial Police (SIJIN). According to the information received, they were also ordered to hand over their journalistic material, which the communicators refused to do. The journalists were able to leave after mediation by the regional office of the Human Rights Ombudsman.¹³⁶

130. In relation to the mentioned incident, in addition to other declarations of high-ranking government officials, on February 3, 2009, the President of Colombia, Álvaro Uribe, stated in a press conference that Hollman Morris “[shielded] himself with his condition as a journalist to be a permissive accomplice of terrorism, [...], one thing are those friends of terrorism who function as journalists, and another thing are the journalists.” The President added that Hollman Morris “took advantage [...] of his situation as a journalist, [...] and held a terrorist party in an alternative location to that of the liberation of the soldier and the police officers, last Sunday.”¹³⁷ The President referred to the journalist Jorge Enrique Botero in similar terms. According to the information received, after the declarations by the authorities, Hollman Morris received several threatening calls. On previous occasions, the journalist had to leave the country as a result of serious threats against

¹³³ FLIP, May 8, 2009. Policía de Valledupar agrade a reportero gráfico. Available at: <http://www.flip.org.co/veralerta.php?idAlerta=363>. FIP, May 7, 2009. Amenazados periodistas en Barranquilla y Miami, y golpeado fotógrafo en Valledupar. Available at: <http://www.fipcolombia.com/noticiaAmpliar.php?noticia=3566>.

¹³⁴ FLIP, September 14, 2009. Periodistas agredidos por guardias penitenciarios en Valledupar, Cesar. Available at: <http://www.flip.org.co/veralerta.php?idAlerta=381>. FIP, September 9, 2009. Guardias del INPEC atropellan a periodistas en Valledupar. Available at: <http://www.fipcolombia.com/noticiaAmpliar.php?noticia=4115>.

¹³⁵ *Diario El País*, October 6, 2009. Agreden al periodista Álvaro Miguel Mina. Available at: <http://www.elpais.com.co/paionline/calionline/notas/Octubre062009/alvaromina.html>. FLIP, October 7, 2009. Periodista es agredido en Cali por un desconocido (Journalist is attacked in Cali by an unknown individual). Available at: <http://www.flip.org.co/veralerta.php?idAlerta=387>.

¹³⁶ RSF, February 4, 2009. Polémica en torno al acoso del ejército a tres periodistas que cubrieron la liberación de unos rehenes de las FARC. Available at: <http://www.rsf.org/Polemica-en-torno-al-acoso-del.html>. FLIP, February 2, 2009. Ejército retiene a periodistas y les exige la entrega de su material periodístico. Available at: <http://www.flip.org.co/veralerta.php?idAlerta=342>.

¹³⁷ Committee to Protect Journalists (CPJ) and Human Rights Watch (HRW), February 6, 2009. CPJ and Human Rights Watch object to President Uribe's accusations against journalist Hollman Morris. Available at: http://www.ifex.org/colombia/2009/02/06/cpj_and_human_rights_watch_object/. FLIP, February 4, 2009. La FLIP exhorta al gobierno para que cesen las declaraciones estigmatizadoras contra periodistas. Available at: <http://www.flip.org.co/veralerta.php?idAlerta=344>. *El Tiempo*, February 11, 2009. Acusaciones de Uribe contra periodistas generan cascada de reacciones. Available at: <http://www.eltiempo.com/colombia/politica/acusaciones-de-uribe-contra-periodistas-generan-cascada-de-reacciones> 4808710-1.

his life. Hollman Morris has been the beneficiary of precautionary measures from the IACHR since 2000.

131. In this context, the Special Rapporteur for Freedom of Expression and the Rapporteur of the United Nations for Freedom of Opinion and Expression, on February 9, 2009, issued a joint press release in which they expressed their concern over the recent declarations against journalists by high-ranking officials of the Colombian government.¹³⁸ As stated by the IACHR, this type of statement not only increases the risk to those who practice journalism or defend human rights, “but also could suggest that the acts of violence aimed at silencing them have, in some way, the government’s acquiescence.”¹³⁹

132. As the Commission has reiterated, in these cases, the State must not only exercise diligently its duty to guarantee, but also it has to avoid increasing the level of risk to which journalists are exposed. In this connection, the IACHR deems it pertinent to remind the State that the Inter-American Court has consistently held that freedom of expression (which also covers political criticism and social protest) is a fundamental right that should be guaranteed not only with respect to the circulation of information or ideas that are received favorably or considered inoffensive or indifferent, but also to those that offend, shock or disturb the State or any other sector of the population; such are the demands of pluralism, tolerance and the spirit of openness, which are essential in a democratic society.¹⁴⁰ Furthermore, in a recent ruling on the scope of the freedom of expression of public officials in the performance of their duties, the court held that it is not an absolute right and, therefore, may be subject to restrictions when it interferes with other rights recognized by the Convention, and particularly with the duties of the State with respect to all of the inhabitants of a particular territory.¹⁴¹ In this case, the Court noted that while on certain occasions state authorities have a duty to make a statement on public-interest matters, “in making such statements the authorities are subject to certain restrictions such as having to verify in a reasonable manner, although not necessarily exhaustively, the truth of the facts on which their opinions are based, and this verification should be performed subject to a higher standard than that used by private parties, given the high level of credibility the authorities enjoy and with a view to keeping citizens from receiving a distorted version of the facts. Furthermore, they should bear in

¹³⁸ IACHR, Office of the Special Rapporteur for Freedom of Expression, February 9, 2009. Joint Press Release, R05-09. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=738&IID=1>. Fundación para la Libertad de Prensa. February 4, 2009. *La FLIP exhorta al gobierno para que cesen las declaraciones estigmatizadoras contra periodistas*. Available at: <http://www.flip.org.co/veralerta.php?idAlerta=344>. Inter-American Press Association. February 10, 2009. *SIP crítica calificativos del gobierno colombiano contra periodistas*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4135&idioma=sp. Fundación para la Libertad de Prensa. February 14, 2009. *El periodista Hollman Morris recibe amenazas de muerte*. Available at: <http://www.flip.org.co/veralerta.php?idAlerta=347>. Committee to Protect Journalists. February 5, 2009. *CPJ and HRW object to Uribe accusations*. Available at: <http://cpj.org/2009/02/cpj-hrw-object-to-uribes-accusations-against-hollm.php>. Committee to Protect Journalists. February 3, 2009. *FARC declares Colombian media a military target*. Available at: <http://cpj.org/blog/2009/02/farc-declares-colombian-media-a-military-target.php>. Reporters without Borders. February 4, 2009. *Polémica en torno al acoso del ejército a tres periodistas que cubrieron la liberación de unos rehenes de las FARC*. Available at: <http://www.rsf.org/Polemica-en-torno-al-acoso-del.html>. Inter-American Press Association. *Colombia Report. Midyear Meeting, Asunción Paraguay*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inford=344&idioma=us.

¹³⁹ IACHR, Annual Report 2004. OEA/Ser.L/V/II.222. Doc. 5 rev. 23 February 2005. Chapter IV. para. 38.

¹⁴⁰ See, inter alia I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107; I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74; and I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73.

¹⁴¹ I/A Court H. R., *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 5, 2008 Series C No. 182.

mind that, as public officials, they are in a position of guarantors of the fundamental rights of the individual and, therefore, their statements cannot be such that they disregard said rights.”¹⁴²

133. In light of the above, when the existence of stigmatizing statements would have increased the level of risk, the authorities must adopt all the necessary measures to decrease it, among which, the explicit and public recognition of the legitimacy of those who exercise a critical and independent journalism. Also, the Commission deems it pertinent to remind the State once more that high ranking officials must refrain from giving public statements that stigmatize critical journalists and generate an environment of intimidation that affects freedom of expression in the country. This obligation is particularly important in a context of polarization and armed conflict like the Colombian.

134. As regards the Hollman Morris case, in a note of December 13, 2009, the State said that “Mr. Morris has received precautionary measures requested by the [IACHR] and despite the extraordinary risk to his life he took an extreme risk, without telling the State from which he demanded protection.” The State adds that the President of the Republic said on February 3, 2009: “as the competent authority said this week, journalist Morris did not carry out his obligations as a person protected by the [IACHR]. The Government of Colombia has given him all the protection, and he ignored his duties. For example, he shook his bodyguards. We are required by the [IACHR] to protect journalist Morris, as we have protected so many Colombians, because this security has been democratic. Our effort has been for all Colombians, whether friends or opponents of the government. Journalist Morris did not carry out his obligations. This is a serious matter. It is one of the accusations that must be made against journalist Morris.” Finally, the State said that “Mr. Morris was not detained, ‘and his journalistic materials’ were not confiscated by police agents as the IACHR was erroneously told.”¹⁴³

c. Illegal interceptions of journalists

135. The Commission notes with concern the public information about illegal interceptions and surveillance of journalists, judges, and opposition politicians by the *Departamento Administrativo de Seguridad* (DAS), an entity dependant on the Presidency of the Republic.

136. As mentioned above, the news of wiretapping was revealed in an article in *Semana* magazine published in February 2009.¹⁴⁴ Two years earlier this magazine had denounced the possible infiltration of the intelligence agency by paramilitary groups.

137. In 2008, the Constitutional Court of Colombia had found that DAS security agents assigned as part of the protection measures for a journalist critical of the government had recorded intelligence about her movements.¹⁴⁵ In this decision, the Court ordered that the journalist be given

¹⁴² I/A Court H. R., *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 5, 2008 Series C No. 182. para. 131.

¹⁴³ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, pp. 46-48.

¹⁴⁴ *Semana* magazine, February 21, 2009. *El Das sigue grabando* [The DAS is still recording]. Available at <http://www.semana.com/noticias-nacion/das-sigue-grabando/120991.aspx>

¹⁴⁵ Constitutional Court of Colombia. *Judgment T-1037 of 2008*. Judgment delivered by Judge Jaime Córdoba Triviño. The judgment ordered the replacement of the protection arrangements for the journalist Claudia Julieta Duque, who had received threats following investigations into the murder of the reporter Jaime Garzón. The judgment also ordered the adjustment of the protection program for journalists in line with the demands of the practice of the profession of journalism and the rules of due process of law. Finally, the judgment ordered the DAS to deliver to the journalist concerned all of the information that the agency had on her that was not confidential by law.

all the information on her in the possession of the security agency that was not legally confidential and that the necessary corrective measures be adopted in the program for protection of journalists.

138. Furthermore, other journalists who were beneficiaries of precautionary measures granted by the Commission and who have had access to the judicial investigation underway on these facts have said that the DAS agents assigned to protect them were in charge of following them.¹⁴⁶ They have also reported that the intelligence agents were charged with monitoring their telephone calls, e-mails, and movements, in order to know in detail all about their journalistic activities. They said that DAS officials made a note of the contents of their articles and the sources with whom they talked.¹⁴⁷ They say that according to the investigation carried out by the office of the Attorney General they were regarded as “targets” against whom it was necessary to pursue “offensive intelligence” activities because of their dissident or critical ideas and opinions. By the same token, important organizations that champion freedom of expression have issued statements and reports in which they denounce the fact that journalists should have been spied on by the very persons whom the State assigned to protect them.¹⁴⁸ In this connection, the magazine that broke the news of the scandal said that the DAS secret agents who leaked the information about the existence of illegal wiretaps told them that the purpose of the surveillance and eavesdropping was to know in detail not only about the investigations that the journalists were pursuing but the information sources on which they relied.¹⁴⁹

139. According to local organizations¹⁵⁰ and communications media,¹⁵¹ at least 20 journalists have been victims of systematic interceptions and surveillance and on them there would be annotations in the intelligence archive in which the secret police would have evaluated and

¹⁴⁶ Cfr. Hearing on the Right to Freedom of Expression in Colombia held at the IACHR during its 134th Regular Session. In this connection see Hollman Morris and Daniel Coronell, among others, FLIP, August 12, 2009. Semi-annual report on freedom of the press in Colombia. Available at <http://flip.org.co/veralerta.php?idAlerta=378>

¹⁴⁷ FLIP, August 12, 2009. Semi-annual report on freedom of the press in Colombia. Available at <http://flip.org.co/veralerta.php?idAlerta=378>

¹⁴⁸ FLIP, August 12, 2009. Semi-annual report on freedom of the press in Colombia. Available at <http://flip.org.co/veralerta.php?idAlerta=378>. Communication from *Centro de Solidaridad Federación Internacional de periodistas Cesó Fip*, sent to the Office of the Special Rapporteur for Freedom of Expression, July 1, 2009. RWB, May 15, 2009. Former intelligence officials leak list of news media and journalists whose phones were tapped. Available at <http://www.rsf.org/Formers-intelligence-officials-leak,33166.html>.

¹⁴⁹ *Semana* magazine, February 21, 2009. *El Das sigue grabando* [The DAS is still recording]. Available at <http://www.semana.com/noticias-nacion/das-sigue-grabando/120991.aspx>. According to information published by this magazine, a detective from the operations department of the DAS explained to the magazine that the purpose of the wiretaps and surveillance was to control possible “threats” for the government. In the case of the news media and journalists, the interviewee said that [...] it has several objectives, one of which is to keep the government abreast of what is happening in the media, which gives the State room for maneuver in critical situations [...] there is sporadic monitoring of a number of editors or chiefs in order to identify what journalists call the ‘editorial line’. However, the main effort centers on journalists who handle ‘hard’ information and sources. In that way two birds are killed with one stone: it is known what story they are working on and, most important of all, who they are talking to. And another detective added, “the priority is to know the information in possession of those (media) that trouble the government, either because they are harshly critical or because unlike other media they are not under its thumb.” *Semana* magazine, February 21, 2009. *El Das sigue grabando* [The DAS is still recording]. Available at <http://www.semana.com/noticias-nacion/das-sigue-grabando/120991.aspx>. This article drew multiple reactions from civil society organizations, including the Inter-American Press Association. Cf. *IAPA warns of negative effects of wiretapping in Colombia*, February 25, 2009. Available at http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4140&idioma=us

¹⁵⁰ Communication from the Centro de Solidaridad Federación Internacional de periodistas Cesó Fip, sent to the Office of the Special Rapporteur for Freedom of Expression, July 1, 2009. RWB, May 15, 2009. Former intelligence officials leak list of news media and journalists whose phones were tapped. Available at: <http://www.rsf.org/Formers-intelligence-officials-leak,33166.html>.

¹⁵¹ See also *El Espectador*, February 22, 2009. *Revelan lista completa de ‘chuzados’*. Available at: <http://www.elespectador.com/impreso/tema-del-dia/articuloimpreso120505-revelan-lista-completa-de-chuzados?page=0,0>.

qualified their critical opinions or the coverage of relevant news for the government. Also the Commission is concerned that some journalists, like Hollman Morris and Daniel Coronell,¹⁵² appear to have received strong and stigmatizing statements on part of high ranking public officials due to a critical editorial line with respect to the current government. According to the information received, some of the journalists that have been subject to systematic interceptions and surveillance are the following: Hollman Morris, director of the program *Contravía*; Claudia Julieta Duque, of Radio Nizkor; Daniel Coronell, Ignacio Gómez, and Juan Luis Martínez, of *Noticias Uno*; Norbey Quevedo, investigations editor of *El Espectador*, and Ramiro Bejarano, a columnist with this newspaper; Alejandro Santos, editor of *Semana*; Eulfo Peña and Jineth Bedoya, journalists with *El Tiempo*, and Salud Hernández, a columnist with this media; Félix de Bedout and Julio Sánchez Cristo, of *W Radio*; Darío Arizmendi, director of 'Caracol Radio' and Fabio Callejas of the same station; Carlos Lozano, editor of the weekly *Voz*; Jenny Arias and Vicky Dávila, of *RCN Radio y Televisión*; Yamid Amat and Marilyn López of the public channel *CM&*.

140. In this sense, it is recalled that Principle 8 of the Declaration of Principles on Freedom of Expression states that “[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.” For its part, Article 9 recalls that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.” Finally, Principle 13. states that “[t]he means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

141. In consequence, the Commission exhorts the Colombian Government to adopt all the corrective measures necessary to stop illegal interceptions and surveillance of journalists by intelligence bodies; to move forward adequately all the administrative, disciplinary, and penal proceedings aimed at establishing what happened, to identify, and to sanction those responsible; and to adopt all the mechanisms to ensure the rights to privacy and personal integrity of communicators, as well as the confidentiality of sources. On this point the Commission notes that the most important measure to avoid criminal acts on part of State agents is the public recognition of the legitimacy of the activities of critical journalists. In particular this recognition is of fundamental importance with respect to those journalists that, in public statements of high ranking officials of the executive power, have been associated with criminal acts for the simple fact of having a critical editorial line with respect to the government.¹⁵³

142. With respect to these facts, the State said the following on December 13, 2009:

in general, the Colombian State wishes to respectfully call the Commission’s attention to various aspects in the draft report. In the section of the document dealing with the Department of Administrative Security–DAS–, the primary source of information is media reports that, although of some value, in many cases lack all necessary information for a complete understanding of illegal wiretapping. The main source is the *Revista Semana*, which has dealt with this topic this year. Without minimizing the value of media coverage, it seems that a report by an international organization that is evaluating the situation in a State

¹⁵² IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter. II. para. 77. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

¹⁵³ IACHR. Special Rapporteurship on Freedom of Expression, February 9, 2009. Joint Press Release, R05-09. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=738&IID=2>

regarding subjects of great complexity such as this one should also cite official sources that would facilitate balanced treatment of the topic with the necessary depth.¹⁵⁴

143. In this regard, the IACHR wishes to note that the primary source of information to report these extremely serious facts was in fact the *Revista Semana*, because it was the magazine that denounced the systematic surveillance and harassment suffered by several journalists.¹⁵⁵ The text of this section of the Annual Report was sent for the State's information before publication, so that it could supplement or if necessary refute the information presented there. In the State's note of December 13, 2009, it said the acts reported are not part of an "institutional policy" and asked the IACHR to take into account all the measures taken to prevent and punish them.¹⁵⁶ In the framework of the IACHR's 137th period of sessions, the current director of DAS reported on criminal and disciplinary cases underway to clarify the illegal intelligence activities carried on by that agency, as well as the start of the process of shutting that agency down and creating a new civil intelligence entity.

144. Finally, with respect to the right of journalists to know the illegal information obtained by the DAS while carrying out its protective duties, the Commission learned that during 2009, the journalist Claudia Julieta Duque had to initiate contempt proceedings as a result of the failure to comply with the judicial order issued by the Constitutional Court, in which it ordered the Government to give her all the information about her contained in intelligence files that were not subject to express legal reservations. The judicial order to supply information was based on the confirmation of the existence of information illegally obtained by members of the journalist's security detail, belonging to the DAS.¹⁵⁷ According to information officiously sent by the Director of the DAS to the Special Rapporteurship, no information about the journalist exists in the installations of that institution.

145. On December 13, 2009, the State said that on September 30, 2009, the Council of State issued an order of revocation declaring that "the Director of DAS carried out all orders of protection (*tutela*) judgment T-1037 of 2008 since he assumed office on January 22, 2009, and therefore was not guilty of contempt (*desacato*)."¹⁵⁸

146. The Commission has repeatedly recognized the importance of the Program for the Protection of Journalists and Social Communicators implemented by the Colombian Government. Nevertheless, the Commission expresses its concern regarding the facts mentioned above and calls upon the Ministry of the Interior and Justice to take the corrective measures necessary and to guarantee the effective protection of journalists at risk.

¹⁵⁴ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, pp. 1-2.

¹⁵⁵ On December 12, 2009, after this chapter was sent to the State, the Office of the Special Rapporteur received information that the Prosecutor's Office had an instruction manual "prepared on paper for DAS's exclusive use," which reportedly detailed the procedure to be used to threaten Claudia Julieta Duque, a journalist who said she was a victim of illegal wiretapping by that agency. On this point see: *Semana*. December 12, 2009. Manual para amenazar. Available on: <http://semana.com/noticias-nacion/manual-para-amenazar/132562.aspx>.

¹⁵⁶ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 47.

¹⁵⁷ Federación Colombiana de Periodistas, July 15, 2009. Desacato de autoridades frente a orden de entregar información sobre periodista. Available at: <http://www.fipcolombia.com/noticiaAmpliar.php?noticia=3929>. See also, FLIP, July 13, 2009. Por incumplir tutela a favor de periodista, tribunal inicia desacato contra miembros del gobierno. Available at: <http://flip.org.co/veralerta.php?idAlerta=373>.

¹⁵⁸ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 47.

147. The Commission underlines the duty of the states to prevent and investigate actions that limit freedom of expression. In this sense, Principle 5 of the Declaration of Principles establishes that “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

148. Additionally, Principle 3 of the Declaration of Principles on Freedom of Expression states that “[e]very person has the right to access to information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it.”

d. Right [of] access to information

149. The Commission expresses its concern about some articles of the Intelligence Law (Law 1288 of 2009). On the one hand, Article 21 delegates to the Executive Branch the power to define concretely what information can be subject to classification. In this respect, the law establishes that “documents, information, and technical elements” of the “organs that carry out intelligence and counterintelligence activities”—which are not defined by the law—have the character of classified information “according to the degree of classification warranted in each case,” delegating to the Executive Branch to establish this “degree of classification.”¹⁵⁹ The same norm delegates to the Executive Branch the power to define the time periods of classification within the maximum of 40 years established by the law itself. On this point, the State said on December 13, 2009, that “although the statement is true [...] that information can be declared classified for up to 40 years, it must be taken into account that said law also prescribes limits on the State’s intelligence and counterintelligence activities for respect of human rights; it provides that these activities must be in strict compliance with the Constitution, legislation, international humanitarian law, and especially respect for the principle of reserved information, which guarantees the protection of rights to reputation, good name, personal and family privacy, and due process.”¹⁶⁰

150. In this respect, the Commission permits itself to recall that Principle 4 of the Declaration of Principles on Freedom of Expression states that “[a]ccess to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”

151. Additionally, the Commission expresses its concern about the legal norms that establish the obligation to maintain the absolute confidentiality of information classified as secret, having as its only exception the duty to denounce “the presumed commission of a crime against humanity by a public servant who carries out intelligence and counterintelligence activities.”¹⁶¹ This

¹⁵⁹ Article 21. Reserve. “Due to the nature of the functions carried out by organisms that engage in intelligence and counterintelligence activities, their documents, information, and technical elements shall be supported by a legal reservation for a maximum term of 40 years and shall have the character of reserved information according to the level of classification that is warranted in each case. Paragraph. The public servant who decides to support him- or herself with reserve to avoid providing information must do so setting forth in writing the reasonability and proportionality of his/her decision and basing it on this legal disposition. In any case, these decisions are subject to legal and constitutional remedies and actions.”

¹⁶⁰ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 48.

¹⁶¹ Article 23. Exception to the duties of denunciation and declaration. “Public servants of the organs that carry out intelligence and counterintelligence activities are obligated to maintain the confidentiality of all that they see, hear, or learn in

exception would require a person with knowledge of grave violations of human rights that cannot be classified as crimes against humanity or that have been committed by persons or functionaries who are not assigned intelligence functions to abstain from denouncing them or reporting them to competent authorities under penalty of being criminally responsible for failing to comply with the duty of confidentiality.

152. In this respect, the Commission permits itself to recall that as it has previously indicated in its 2008 Annual Report, in which it recalled that freedom of expression includes the right of public functionaries, including members of the Armed Forces and the Police, to denounce violations of human rights that they become aware of—which also constitutes compliance with a constitutional and legal duty that corresponds to them. The exercise of this manifestation of freedom of expression, which is vital for the preservation of the Rule of Law in the democracies of the hemisphere, cannot be obstructed by the authorities nor can it be the cause of subsequent acts of retaliation against functionaries that made the denunciations. In terms of the Inter-American Commission

[...] the exercise of the right of freedom of thought and expression within a democratic society includes the right to not be prosecuted or harassed for one's opinions or for one's allegations about or criticisms of public officials. [...] This protection is broader, however, when the statements made by a person deal with alleged violations of human rights. In such a case, not only is a person's individual right to transmit or disseminate information being violated, the right of the entire community to receive information is also being undermined.¹⁶²

153. On the other hand, regarding Article 25¹⁶³ of the Law, as indicated by the Constitutional Court of Colombia itself,¹⁶⁴ the duty to maintain confidentiality is not applicable to those who, in the exercise of their right to freedom of expression, make denunciations publicly or privately before competent authorities, such as communications media or human rights defenders. The responsibility derived from the exercise of this right is always subsequent and must be derived from the existence of certain damage to a legal aim defined by law and necessary in a democratic society.

e. Judicial proceedings against journalists who denounce facts of public interest

154. During 2009, the Commission learned of various cases of journalists and communications media that were judicially charged for disseminating information about issues of

...continuation

the course of the exercise of their duties. In this sense, the public servants referred to in this article are exempt from the duty to denounce and cannot be obligated to testify. In the case that the organism considers it necessary to testify in a proceeding, it may do so through its Director or his or her delegate, in the capacity of proof of reference. The exclusion of the duty of denunciation does not apply in cases in which the public servant has information related to the alleged commission of a crime against humanity by a public servant who carries out intelligence or counterintelligence activities."

¹⁶² IACHR. Report No. 20/99. Case 11.317. Merits. Rodolfo Robles Espinoza and Sons. Peru. February 23, 1999. para. 148.

¹⁶³ Article 25. Modification of sentences for the crimes of revelation and use of reserved documents and abusive access to the information system. "With the objective of guaranteeing the legal reserve of intelligence and counterintelligence documents and avoiding their revelation by members of the organs that carry out this type of activities, Articles 194, 195, 418, 419, and 420 of the Penal Code will remain like this: Article 194. Revelation and use of reserved documents. One who, for the benefit of him/herself or others or with prejudice against another, reveals or uses the contents of a document that must be held in reserve, will incur a penalty of five (5) to eight (8) years in prison, if the conduct does not constitute a crime sanctioned with a greater penalty."

¹⁶⁴ See, among others, Constitutional Court, Judgments C-038 of 1996 and T-634 of 2001.

great public interest. Some of these proceedings were initiated by a magistrate of the Superior Council of the Judiciary for publications about the alleged relationships of this official with individuals being prosecuted for serious criminal acts. Rodrigo Pardo, editor of the magazine *Cambio*, was nearly taken to prison for alleged disobedience of a protective judgment (*fallo de tutela*) that ordered him to rectify some statements made in a report about the magistrate in the magazine. Other journalists who have been accused by the magistrate are the editor of the magazine *Semana*, Alejandro Santos – whose case gave rise to the Constitutional Court’s judgment, mentioned at the beginning of this section--; Daniel Coronell and María Jimena Duzán, columnists with the same magazine; and Mauricio Vargas, a columnist with *El Tiempo*.¹⁶⁵

155. In this sense, Principle 10 of the Declaration of Principles is reiterated, stating that

[p]rivacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.

156. For its part, Principle 11 states that “[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as ‘*desacato laws*,’ restrict freedom of expression and the right to information.”

9. Costa Rica

157. On July 9, 2009, the Inter-American Court handed down an order in monitoring compliance with its decision – dated July 2, 2004 – in the *Case of Herrera Ulloa v. Costa Rica*. In its order, the court indicated that the State is currently in the process of complying with the following points of the ruling: a) nullifying the November 12, 1999 judgment of the Criminal Court of the First Judicial Circuit of San José against journalist Mauricio Herrera Ulloa, along with all the measures it orders; and b) adjusting its domestic legal system according to the provisions of Article 8(2)(h) of the American Convention. According to the Inter-American Court, although the State has paid back Herrera Ulloa the principle of the fine that was levied against him in civil court, it has yet to pay him the interest and costs associated with that sum.¹⁶⁶ The Office of the Special Rapporteur urges the State to continue adopting the measures necessary for compliance with the ruling of the Inter-American Court.

158. The Office of the Special Rapporteur received information indicating that on April 4, 2009, Yuri Cortez, a photographer with the AFP news agency, and Rolando Avilés, a photographer with daily newspaper *Al Día*, were fired upon by security guards employed by Brazilian model Gisele Bündchen and American football player Tom Brady. According to the information received by the Office of the Special Rapporteur, the photographers were taking pictures of Bündchen’s house in the Santa Teresa de Cóbano area when the guards demanded that they hand over their cameras and memory cards. When the photographers fled in a vehicle, a bullet fired by the guards damaged the

¹⁶⁵ *El Tiempo*, July 31, 2009. Dejar sin efectos orden de arresto contra Rodrigo Pardo, piden Andiaros, Asomedios y SIP. Available at: <http://www.eltiempo.com/colombia/justicia/dejar-sin-efectos-orden-de-arresto-contra-rodrigo-pardo-piden-andiaros-asomedios-y-sip-5743707-1>. FLIP, August 4, 2009. Director de medio nacional enfrenta posible cárcel por orden de juez. Available at: <http://www.flip.org.co/veralerta.php?idAlerta=375>.

¹⁶⁶ I/A Court H.R., *Case of Herrera-Ulloa v. Costa Rica. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of July 09, 2009. Available at: http://www.corteidh.or.cr/docs/supervisiones/herrera_09_07_09_ing.pdf

back window. The information adds that the photographers filed a complaint with local Costa Rican law enforcement and that on September 22, 2009, they filed a lawsuit against Bundchen and her husband with a court in New York.¹⁶⁷ Principle 9 of the Declaration of Principles holds that the “murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

159. On May 4, 2009, investigators and law enforcement personnel confiscated photography and video equipment from Elías Alvarado Jiménez, a correspondent with *Diario Extra* and *Canal 42*. Jiménez had taken photographs and recorded video of a helicopter that had been carrying a load of cocaine and crashed in the area known as Death Hill.¹⁶⁸ The Office of the Special Rapporteur wishes to reiterate that Principle 5 of the Declaration of Principles holds that, “Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

160. Regarding the State’s responsibility to adjust domestic freedom of expression law to the standards of the inter-American system, the Office of the Special Rapporteur observes that the Freedom of Expression and Press Bill presented before the Legislative Assembly under file number 15.974 was tabled. The bill proposed modifying Article 151 of the Penal Code to establish a “felony exclusion” when “addressing the publication or reproduction of information or opinions about facts of public interest, offenses to honor, or to public reputation, distributed by other mass media outlets, news agencies, government authorities, or private individuals with authorized knowledge of the facts, as long as the publication indicates the source of the information.”¹⁶⁹ The Office of the Special Rapporteur wishes to reiterate to the State the importance of reforming its existing domestic

¹⁶⁷ Committee for the Protection of Journalists. April 13, 2009. *Bodyguards shoot at photographers in Costa Rica*. Available at: <http://cpj.org/2009/04/bodyguards-shoot-at-photographers-in-costa-rica.php#more>; La Nación de Costa Rica. September 23, 2009. *Giselle Bundchen y esposo son demandados por fotografías ticas*. Available at: <http://www.nacion.com/viva/2009/septiembre/23/viva2098848.html>; Reuters. September 22, 2009. *Photographers sue Bundchen, Brady over shooting*. Available at: <http://www.reuters.com/article/entertainmentNews/idUSTRE58L4KJ20090922>.

¹⁶⁸ El País de Costa Rica. May 8, 2009. *Colegio de Periodistas protesta por violación a libertad de prensa en Costa Rica*. Available at: <http://www.elpais.cr/articulos.php?id=6152>; Knight Center for Journalism. May 5, 2009. *Colegio de Periodistas de Costa Rica protesta por violación a libertad de prensa*. Disponible en: <http://knightcenter.utexas.edu/blog/?q=es/node/3978>; E-mail dated May 8, 2009, sent by attorney Carlos Serrano Castro to the Office of the Special Rapporteur for Freedom of Expression. The e-mail contained a copy of the Writ of Amparo filed with Costa Rica’s Supreme Court of Justice on May 5, 2009, “on behalf of Diario Extra, La Prensa Libre, Elías Alvarado Jiménez, and the people of Costa Rica.”

¹⁶⁹ National Assembly of the Republic of Costa Rica. August 11, 2005. Freedom of Expression and the Press Bill. File No. 15.974.

The text of Article 151 of the current Penal Code (Law 4573) holds that: “Unfavorable literary, artistic, historic, scientific, or professional criticisms are not punishable as offenses to honor; neither is an unfavorable opinion expressed as part of a duty or in the exercise of a right, as long as the manner of behavior or the lack of decorum, when necessary, are not intended to offend.”

The text of the current Penal Code (Law 4573) is available at: http://www.pgr.go.cr/scij/busqueda/normativa/normas/nrm_repartidor.asp?param1=NRTC&nValor1=1&nValor2=5027&nValor3=68813&strTipM=TC.

See also: Costa Rica Hoy. September 2, 2009. *Diputado Echandi denuncia violaciones a la libertad de expresión*. Available at: <http://costaricahoy.info/nacionales/diputado-echandi-denuncia-violaciones-a-la-libertad-de-expresion/26920/>; CEJIL. September 4, 2009. *Carta dirigida a la Asamblea Legislativa sobre el proyecto de Ley 15.974*. Available at: <http://www.cejil.org/comunicados/Carta%20Diputados-Ley%20de%20Libertad%20de%20Expresi%C3%B3n.pdf>.

laws to avoid the disproportionate application of criminal law to those who, while exercising their right to freedom of expression, denounce public officials or accurately reproduce information of relevance to the public published in other media outlets. The Office of the Special Rapporteur again reminds the State of its duty to comply with the ruling of the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*.

161. Furthermore, it is worth noting that the bill also proposed modifying Article 204 of the Code of Criminal Procedure to establish that, "Those who practice journalism are not obligated to reveal the source of information obtained during the exercise of their duties."¹⁷⁰ Principle 8 of the Declaration of Principles states that, "Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."

10. Cuba¹⁷¹

162. The situation of freedom of expression in Cuba in 2009 has changed very little in recent years, and is the reason why the Commission has systematically pointed out that Cuba is the only country in the Americas where it can be categorically affirmed that there is no freedom of expression.

163. The following paragraphs indicate some of the problems that occur in Cuba in the exercise of the right to freedom of expression.

a. Detentions

164. As in previous annual reports, the Commission reiterates its concern over the fact that in Cuba there continue to be more than 20 political prisoners,¹⁷² most of them detained after the incident known as "Black Spring," which occurred in March 2003, when the government jailed 75 political dissidents. Some of the journalists detained are in poor health due to the conditions in which they are held. According to information received by the Commission, Cuba is the country of the Americas with the largest number of journalists detained, due to the failure to observe the right to freedom of expression.¹⁷³

¹⁷⁰ The text of Article 204 of the Code of Criminal Procedure currently in force (Law 7594) holds that, "Unless otherwise disposed, every individual is obliged to comply with court orders and tell the truth as far as they know and are asked; likewise, individuals may not conceal facts, circumstance, or elements without damaging the judge's ability to weigh the testimony in accordance with the rules of sound judgment. The witness will not be bound to give statements on facts that could implicate him or her criminally."

The text of the current Code of Criminal Procedure (Law 7594) is available at: http://www.pgr.go.cr/scij/busqueda/normativa/normas/nrm_repartidor.asp?param1=NRTC&nValor1=1&nValor2=41297&nValor3=68817&strTipM=TC.

¹⁷¹ This section corresponds to the section on freedom of expression in Cuba in Chapter IV, Volume I, of the IACHR 2009 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.

¹⁷² Committee for the Protection of Journalists. April 30, 2009. *Los 10 peores países para ser bloguero*. Available at: <http://cpj.org/es/2009/04/los-10-peores-paises-para-ser-bloguero.php>. Inter American Press Association. *Informe Cuba. Reunión de Medio Año, Asunción, Paraguay*. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=22&inforid=346&idioma=sp. Reporters Without Borders. February 24, 2009. *Un año de presidencia de Raúl Castro: la política de apertura mantiene en un callejón sin salida a los periodistas encarcelados*. Available at: http://www.rsf.org/article.php3?id_article=30381. Reporters Without Borders. February 3, 2009. *Examen periódico universal de Naciones Unidas: 205 presos políticos cubanos, entre los que hay 23 periodistas, esperan a la libertad*. Available at: http://www.rsf.org/article.php3?id_article=30186

¹⁷³ Reporters Without Borders. October 6, 2009. *"2009: 168 periodistas encarcelados"*. Available at: http://www.rsf.org/es-barometre92-Periodistas_encarcelados.html. Committee for the Protection of Journalists. September 10, 2009. *"Informe especial: Con crónicas sobre Cuba, los blogueros ofrecen nueva esperanza"*. Available at: <http://cpj.org/es/2009/09/con-chronicas-sobre-cuba-los-blogueros-ofrecen-nuev.php>.

165. According to the information received, on March 1, 2009, Roberto de Jesús Pérez Guerra, director of independent press agency *Hablemos Press*, was arrested by security agents when leaving his home. The journalist spent four days in preventive detention, during which time he was interrogated to find out whether he was connected with the appearance of anti-Castro posters in the Old Havana district of Havana.¹⁷⁴

166. The IACHR expressed its concern about the three-year prison sentence ordered for Alberto Santiago Du Bouchet, a reporter for the Habana Press news agency, after a summary trial held on May 12, 2009 in Cuba. According to information received, Du Bouchet, who covered social issues for his news agency, was detained on April 18, 2009 in Artemisa, when visiting relatives. According to information published by NGOs, the police alleged that the reporter was shouting anti-government slogans in the street. On May 12, 2009, in a summary trial in which the journalist was not allowed to be represented by a lawyer, Du Bouchet was sentenced to three years in prison on charges of “disrespect” and distributing “enemy propaganda.” The journalist has spent one year in prison for “disrespect for authority” after a summary trial and sentencing in August 2005.¹⁷⁵

167. Information was also received that graphic reporter, María Nélide López Báez, from the Hablemos Press Information Center, was arrested on June 16, 2009 by members of the Political Police. Three days later, according this information, she was freed. The photographer declared that while under arrest she was interrogated several times as to whether she had any connections with adversaries of the regime. The journalist had already been detained on May 1, 2009, accused of having information about the people who had hung banners, according to the information received.¹⁷⁶

168. The Inter-American Commission noted that journalist Pablo Pacheco Ávila, detained since March 2003 and sentenced to 20 years in prison, was granted a 24-hour permit. According to

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¹⁷⁴ Committee for the Protection of Journalists. March 4, 2009. *CUBA: Independent journalist in custody without charges in Havana*. Committee for the Protection of Journalists. March 6, 2006. *Independent Cuban journalist details four-day detention*. Available at: <http://cpj.org/es/2009/03/cuba-periodista-independiente-detenido-sin-cargos.php>. Cuba Repression Blog. March 2, 2009. *Roberto de Jesús Guerra Pérez detained*. Available at: <http://cubarepression.blogspot.com/2009/03/detenido-roberto-de-jesus-guerra-perez.html>.

¹⁷⁵ Committee for the Protection of Journalists. May 14, 2009. *Cuba: Independent journalist sentenced to three years in prison*. Visit: <http://www.cpj.org/es/2009/05/cuba-periodista-independiente-sentenciado-a-tres-a.php>. Inter-American Press Association (SIP-IAPA). May 15, 2009. *SIP-IAPA condemns sentencing of independent journalists in Cuba*. Available at:

http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4187&idioma=sp. Writers in Prison Committee, International PEN. May 19, 2009. *Cuba: Independent journalist gets three-year prison sentence*. Alert received via email by the Office of the Special Rapporteur for Freedom of Expression. Cubaencuentro. May 15, 2009. *Journalist Alberto Santiago Du Bouchet sentenced to three years in jail*. Available at: <http://www.cubaencuentro.com/es/cuba/noticias/condenado-a-tres-anos-de-carcel-el-periodista-alberto-santiago-du-bouchet-178717>

¹⁷⁶ Reporters Without Borders. June 17, 2009. *Dissident photographer, detained incommunicado, in danger of being sentenced for “pre-crime social dangerous.”* Available at: <http://www.rsf.org/Una-fotografa-disidente-detenido.html>. Cuba Net. June 17, 2009. *Graphic reporter from CIHPRESS detained by the Security of State*. http://www.cubanet.org/CNews/y09/junio09/17_N_1.html MiscellaneousCuba. June 17, 2009. Press release by the Centro de Información Hablemos Press (CIHPRESS) independent news collective: Nélide López Báez arrested. Visit: <http://www.miscelaneasdecuba.net/web/article.asp?artID=21228>. Miscellaneous Cuba. June 19, 2009. *Graphic reporter María Nélide López Báez freed after lengthy interrogations in Villa Marista, Security of State headquarters*. Available at: <http://www.miscelaneasdecuba.net/web/print.asp?artID=21294>.

information received, Pacheco Ávila was able to be reunited with her family and friends during this time. The information added that the permit was granted for good conduct.¹⁷⁷

169. Article 13 of the American Convention provides that: "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 international borders, either orally, in writing, in print, in the form of art, or through any medium of one's choice."

170. To that effect, the IACHR recalls the fact that Principle 9 of the Declaration of Principles on Freedom of Expression states that intimidation and threats, among other things, violate the fundamental rights of individuals and "strongly restrict freedom of expression." The IACHR understands that detention and the subsequent restrictions and intimidations to which reporters were subjected are clear forms of restricting journalistic work and, hence, the exercise of freedom of expression.

b. Restrictions on the use of the Internet

171. The restrictions on freedom of access to information continue to give the Commission cause for concern. These restrictions partly affect the ability to obtain information from different and continuous sources on the subject of freedom of expression, and they hamper efforts to record both violations of this right, and any progress that may have been made in guaranteeing its exercise.

172. According to the information received, among other things, these restrictions make it hard for Cubans to have Internet access. According to non-governmental organizations, Cuba continues to be one of the countries where Internet access is difficult for the general population. According to the Committee for the Protection of Journalists (CPJ), "judging only from government figures, Cuba is the country with the lowest rate of Internet access in the Americas."¹⁷⁸ According to official reports from the National Office of Statistics, 13% of the Cuban population has Internet access, but independent journalist sustain that the information is exaggerated and really the figure is lower.¹⁷⁹

173. According to the information received, there are public connections available at government-controlled cybercafés and at hotels, but the cards or passes for using these Internet connections are expensive and can be hard to find.¹⁸⁰ Bloggers¹⁸¹ use these public connections or

¹⁷⁷ Committee for the Protection of Journalists. March 23, 2009. *Imprisoned Cuban journalist is granted 24 hours at home*. Available at: <http://cpj.org/es/2009/03/imprisoned-cuban-journalist-is-granted-24-hours-at.php> Baracutey Cubano (Blog). March 27, 2009. *Pablo Pacheco Ávila given 24-hour permit*. Visit: <http://baracuteycubano.blogspot.com/2009/03/recibe-permiso-de-24-horas-pablo.html>. *Asociación Pro Libertad de Prensa* (Blog). March 26, 2009. *24 hours, Pablo Pacheco Ávila*. Available at: <http://prolibertadprensa.blogspot.com/2009/03/24-horas-pablo-pacheco-avila.html>.

¹⁷⁸ Committee for the Protection of Journalists. September 10, 2009, "Special report: With chronicles on Cuba, bloggers offer a new hope" Available at: <http://cpj.org/es/2009/09/con-cronicas-sobre-cuba-los-blogueros-ofrecen-nuev.php>.

¹⁷⁹ Committee for the Protection of Journalists. September 10, 2009, "Special report: With chronicles on Cuba, bloggers offer a new hope" Available at: <http://cpj.org/es/2009/09/con-cronicas-sobre-cuba-los-blogueros-ofrecen-nuev.php>.

¹⁸⁰ Committee for the Protection of Journalists. April 30, 2009. *Ten worst countries to be a blogger*. Visit: <http://cpj.org/es/2009/04/los-10-peores-paises-para-ser-bloguero.php>. Inter-American Press Association (SIP-IAPA). *Cuba Report.. Semi-annual Meeting, Asuncion, Paraguay*. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=22&inforid=346&idioma=sp. Reporters Without Borders. February 24, 2009. *After a year of Raúl Castro as president: political opening still ignores imprisoned journalists*. Visit: http://www.rsf.org/article.php3?id_article=30381

those of foreign institutions, for instance, to publish their blogs. However, according to information received, access to blogs that contain critical or dissident information is usually blocked on the island.¹⁸²

174. Despite the legal and technical obstacles in Cuba that prevent people from connecting to the Internet, the number of Cuban bloggers is growing although it continues to be very low. According to information received from independent organizations that have studied the subject, there are now around 25 independent and journalistic blogs in Cuba that are produced by Cuban citizens, plus another 75 independent blogs that focus on news and information of a more personal or a family nature.¹⁸³ They also revealed that the sites of independent bloggers are frequently blocked by Cuban government officials. Additionally there are around 200 blogs that function with the permission of the Havana government and are produced by journalists who work for the Cuban regime, according to the website of the government-controlled Union of Cuban Journalists.¹⁸⁴

175. Resolution 179/2008, signed in October 2008, established "Regulations for providers of Internet access services to the public, which are offered in the Internet areas that are located in hotels, post offices and other entities around the country and offer browsing and national and international e-mail services to individuals."¹⁸⁵ The IACHR notes in particular that one of the provisions stipulates that providers have the following obligation: "Prevent access to sites where the content is contrary to social interests, morals or good custom, as well as the use of applications that affect the integrity or security of the State." Another point in that provision states that: "Providers must comply with the provisions issued by the country's Defense Bodies in exceptional situations, and take immediate action to ensure the guarantee of the defense and security of the State." Article 21 of the Resolution 179/2008 states that the sanction applicable to providers who fail to comply with the rules is suspension or permanent cancellation of the operating licenses, or suspension or permanent cancellation of the services and contracts signed with the Provider of Public Internet Access and Data Transmission Services.¹⁸⁶

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¹⁸¹ Bloggers are people who periodically publish or update written information, photographs, music or film on an individual or collective website.

¹⁸² Committee for the Protection of Journalists. April 30, 2009. *Ten worst countries to be a blogger*. Available at: <http://cpj.org/es/2009/04/los-10-peores-paises-para-ser-bloguero.php>. Reporters Without Borders. May 20, 2009. CUBA: "Anyone can browse the Internet...unless they are Cuban." Visit: http://www.rsf.org/article.php3?id_article=31383.

¹⁸³ Committee for the Protection of Journalists. September 10, 2009, "Special report: With chronicles on Cuba, bloggers offer a new hope" Available at: <http://cpj.org/es/2009/09/con-cronicas-sobre-cuba-los-blogueros-ofrecen-nuev.php>. Reporters Without Borders. September 18, 2009. Authorities block websites, detained 26th journalist. Visit: : <http://www.rsf.org/Bloqueo-de-sitios-y.html>.

¹⁸⁴ *Unión de Periodistas de Cuba*. October 6, 2009. "Bloggers Cuba Directory." Available at: http://www.cubaperiodistas.cu/blogueros/directorio_blogs.html#D

¹⁸⁵ Ministry of Information and Communications. Resolution 179/2008. Available at: Resolution 55/2009. <http://www.mic.gov.cu/legislacion/R%20179-%202008%20Reglam%20Proveedores%20Serv%20Acceso%20Internet%20al%20Publico.pdf>

¹⁸⁶ Article 21 of Resolution 179/2008 states: "Any provider who fails to comply with the provisions of these Rules and the legal provisions applicable, shall be subject to the following measures: a) Suspension or permanent cancellation of the operating licenses granted by the Agency for Control and Supervision of the Ministry of Information and Communications; b) Temporary or permanent suspension or cancellation of the services and contracts signed with the Provider of Public Internet Access and Data Transmission Services, subject to recognition and authorization by the Ministry of Information and Communications."

176. Resolution 55/2009, in force since June 2009, established the same rules for what are known as Public Service Providers of Accommodation, Hosting and Applications.¹⁸⁷ According to this resolution, the rules apply to Cuban companies that have received a license to operate as Public Internet Access Service Providers, including those that rent space so that a client can set up his or her own computer; companies that provide a site hosting service, applications and information; and companies that provide third party applications services.

177. The IACHR pointed out that the Internet “is a mechanism capable of strengthening the democratic system, contributing towards the economic development of the countries of the region, and strengthening the full exercise of freedom of expression. Internet is an unprecedented technology in the history of communications that facilitates rapid transmission and access to a multiple and varied universal data network, maximizes the active participation of citizens through Internet use, contributes to the full political social, cultural and economic development of nations, thereby strengthening democratic society. In turn, the Internet has the potential to be an ally in the promotion and dissemination of human rights and democratic ideals and a very important instrument for activating human rights organizations, since its speed and amplitude allow it to send and receive information immediately, which affects the fundamental rights of individuals in different parts of the world.”¹⁸⁸

178. Further, information was received which indicates that the government of Cuba refused permission for Cuban blogger Yoani Sánchez to travel to New York to receive the “María Moors Cabot 2009” prize from Columbia University on October 14, 2009. According to the information received, this is the fourth time the Cuban government has refused to allow Sánchez to travel outside Cuba.¹⁸⁹

179. The Commission wishes to stress Principle 4 of the Declaration of Principles on Freedom of Expression, which provides that “access to information held by the State is a fundamental right of every individual. All States have the obligation to guarantee the full exercise of this right.”

180. The Commission also pointed out that Principle 5 of the Declaration of Principles on Freedom of Expression provides that: “Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

c. Aggression and threats

¹⁸⁷ Ministry of Information and Communications. Resolution 55/2009. Available at: <http://www.mic.gov.cu/legislacion/R%2055-09%20Proveedores%20Serv%20Publicos%20Aloj%20Hosped%20y%20Aplic.pdf>.

¹⁸⁸ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 1999. OEA/Ser.L/V/II.106. Doc. 3 rev. 13 April 2000. Chapter. II. p. 41. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=135&IID=1>

¹⁸⁹ Inter-American Press Association (SIP-IAPA). October 14, 2009. *SIP/IAPA criticizes Cuban government for refusing to allow award-winning blogger to travel abroad*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4187&idioma=sp; Reporters Without Borders. October 15, 2009. *Darsi Ferrer starts hunger strike after 80 days in “preventive detention” as clampdown continues*. Available at: <http://www.rsf.org/Darsi-Ferrer-empieza-una-huelga-de.html>; AFP news agency. October 14, 2009. *Blogger Yoani Sánchez says Cuba refused her permission to travel to the United States*. Available at: http://www.google.com/hostednews/afp/article/ALeqM5gA6cDLjanYMK2o3h_S9oWlpCaa9vg.

181. The IACHR also received information according to which some journalists who do not support the Cuban government have been threatened and beaten by the State security forces.

182. Journalist Álvaro Yero Felipe, was reportedly beaten by members of the public security forces on April 5, 2009. According to the information received, Yero Felipe was intercepted by political police agents when he was on his way to a meeting in support of political prisoners. The information indicates that the journalist was taken to somewhere in the vicinity of Parque Lenin where he was beaten. The beating caused bruising to his face, mouth injuries and fractured his nose.¹⁹⁰

183. The IACHR received information according to which bloggers Luis Felipe González Rojas and Yosvani Anzardo Hernández, from the Province of Holguín, were severely beaten by the State security forces during a raid on September 10, during which their personal computers and cell phones were confiscated. While González Rojas was freed 4 hours later, Anzardo Hernández remained in custody for 14 days.¹⁹¹

184. The Commission also received information according to which Yoani Sánchez and other bloggers were detained and beaten in Havana by plainclothes members of the security forces on November 6, 2009, as they were on their way to participate in a protest against the violence. According to the information, Sánchez and the bloggers were intercepted by three members of the State Security forces, who forced them to get into two cars, where – for 20 minutes – they mistreated them “physically and verbally” according to Sánchez herself on her blog, *Generación Y*.¹⁹²

185. The Commission points out that Principle 9 of the Declaration of Principles on Freedom of Expression states that intimidation and threats, among other things, violate the fundamental rights of individuals and “strongly restrict freedom of expression.” The Office of the Special Rapporteur understands that detention and the subsequent restrictions and intimidations to which reporters were subjected are clearly ways of restricting journalistic work and, hence, the exercise of freedom of expression.

186. Celebrity journalist and radio show host Javier Ceriani, of Argentine nationality, reported that he was violently removed from the Peace without Borders concert given by Colombian singer Juanes on September 20 in Havana by agents from Cuba’s state security forces, shortly after unfolding a banner with the word “Freedom.” Ceriani reported that he was taken to a room in the Hotel Vedado by agents who forced him remain there for several hours in isolation until the concert was over.¹⁹³

¹⁹⁰ Journalists in Spanish. April 7, 2009. *Cuban journalist Álvaro Yero Felipe beaten by State security forces*. http://www.p-es.org/index.php?option=com_content&task=view&id=2931&Itemid=62. Reporters Without Borders. April 7, 2009. *Cuba: State security forces beat young dissident journalist*.

¹⁹¹ Reporters Without Borders. September 25, 2009. *Director of digital newspaper Candonga released after 14 days in detention*. Visit: <http://www.rsf.org/Bloqueo-de-sitios-y-html>. *Trinchera Cubana*. April 6, 2009. *Independent journalist beaten*. Visit: <http://www.trincheracubana.net/editoriales2.php?id=29>.

¹⁹² Blog Generación Y. November 8, 2009. *Secuestro estilo camorra*. Available at: <http://www.desdecuba.com/generaciony/?p=2468>. Human Rights Watch. November 7, 2009. *Cuba: Secuestran y golpean a destacada autora de un blog*. Available at: <http://www.hrw.org/es/news/2009/11/07/cuba-secuestran-y-golpean-destacada-autora-de-un-blog>. El País de Madrid. 7 de noviembre de 2009. *Yoani Sánchez denuncia un "secuestro siciliano" de la policía para impedirle participar en una manifestación crítica*. Available at: http://www.elpais.com/articulo/sociedad/Yoani/Sanchez/denuncia/secuestro/siciliano/policia/impedirle/participar/manifestacion/critica/elpepusoc/20091107elpepusoc_1/Tes.

¹⁹³ *El Nuevo Herald*. September 25, 2009. *Ceriani gives his version of the incident in Havana*. Visit: <http://www.miamiherald.com/1321/story/1250726.html>. Radio Martí. September 22, 2009. *Foreign journalist who attended*

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

188. The IACHR also pointed out that Principle 1 of the Declaration of Principles on Freedom of Expression states that: “Freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society.”

189. Meanwhile, Principle 2 states that: “Every person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights. All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition. ”

11. Ecuador¹⁹⁴

190. The Office of the Special Rapporteur observes with satisfaction the Bill on the Organic Code of Penal Guarantees (*Anteproyecto de Código Orgánico de Garantías Penales*) that would eliminate the crimes of offense against public officials, *desacato*, and certain kinds of libel, among others.¹⁹⁵ The Office of the Special Rapporteur views this progress as an initiative that takes into account inter-American doctrine and jurisprudence on *desacato* crimes. It also takes into account Principle 11 of the Declaration of Principles, which holds that, “Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as ‘desacato laws,’ restrict freedom of expression and the right to information.”

191. The Office of the Special Rapporteur also views positively the fact that on November 9, 2009, the State submitted detailed communication on the facts reported on Ecuador in Chapter II of the Office of the Special Rapporteur’s Annual Report 2008. The Office of the Special Rapporteur takes this good practice into account and thanks the State for the information submitted, which has been taken into account for the preparation of this section of the report. Regarding the case of Eduardo Molina and Germán Vera, cameramen with *Red Telesistema (RTS)*, the State indicated that “an official letter, assigned the number 2042, [had] been sent to the Guayas Public Prosecutor, [...]”

...continuation

the Peace without Borders concert held in Cuba. Available at: <http://www.martinoticias.com/FullStory.aspx?ID=F5984769-485A-4DA6-B94A1E4F11502A0C>.

¹⁹⁴ In preparing this section of chapter II of its 2009 Annual Report, the Office of the Special Rapporteur took into account information available until November 30, 2009. Information regarding incidents that occurred after this date is available in the press release section of the websites of the Office of the Special Rapporteur (<http://www.cidh.org/relatoria>) and the IACHR (<http://www.cidh.org>).

¹⁹⁵ Communication submitted by the State to the Office of the Special Rapporteur for Freedom of Expression on November 17, 2009. Note 4-2-321/2009; Ministerio de Justicia y Derechos Humanos. November 19, 2009. *Anteproyecto de Código Orgánico de Garantías Penales. Borrador para discusión*. Available at: http://www.minjusticia-dh.gov.ec/index.php?option=com_content&task=view&id=305&Itemid=210%20target.

requesting information on the investigations launched.”¹⁹⁶ As far as Freddy Aponte, the journalist with broadcaster *Luz y Vida*, the State indicated that the Bill on the Organic Code of Penal Guarantees “[would] codify [...] removing the conviction for libel, qualifying it as a misdemeanor penalized with a fine and without a prison term.”¹⁹⁷ Regarding the case of Francisco Vivanco, director of daily newspaper *La Hora*, the State indicated that the suit against him was dismissed and that there is no “legal possibility of reopening a suit dismissed by a competent authority under [Ecuadorian] law.”¹⁹⁸ On the request for the filing of legal proceedings against daily newspaper *El Universal*, the State indicated that “no criminal procedure has been launched based on these facts.”¹⁹⁹ As far as the process of seizure of property by the Deposit Guarantee Agency (*Agencia de Garantía de Depósitos*), the State stressed that “the objective is to protect the resources of millions of depositors damaged by the Isaías economic group and [that it] in no way constitutes an arbitrary act [...] designed to restrict the right to freedom of expression. As of now, the television channels *Gama TV* (previously *Gamavisión*), *TC* and *Cable Noticias* are continuing with the normal broadcast of their programming, including news and spaces for opinion.”²⁰⁰ Finally, with regard to the case of radio station *Ritmo*, the State indicated that the broadcaster still has not appealed “before the Administrative Court” the decision handed down by CONARTEL to close the station.²⁰¹

192. During 2009, the Office of the Special Rapporteur received information on a growing number of threats against and attacks on journalists and media outlets. On June 25, 2009, Eduardo Vite Benítez Mata, a journalist with television channel *Telecosta*, was shot by unknown assailants in the city of Esmeraldas, in the province of the same name. According to the information Received by the Office of the Special Rapporteur, Benítez was shot in his right arm while riding a motorcycle. Benítez hosts an opinion show where he gives opinions and reports on a variety of issues.²⁰²

¹⁹⁶ Communication submitted by the State to the Office of the Special Rapporteur for Freedom of Expression on November 9, 2009. Note 4-2-310/2009, pp. 4-5; IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter II. para. 102 Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

¹⁹⁷ Communication submitted by the State to the Office of the Special Rapporteur for Freedom of Expression on November 9, 2009. Note 4-2-310/2009, p. 5; IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter II. para. 103 Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

¹⁹⁸ Communication submitted by the State to the Office of the Special Rapporteur for Freedom of Expression on November 9, 2009. Note 4-2-310/2009, p. 6; IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter II. para. 105 Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

¹⁹⁹ Communication submitted by the State to the Office of the Special Rapporteur for Freedom of Expression on November 9, 2009. Note 4-2-310/2009, p. 6; IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter II. para. 105 Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

²⁰⁰ Communication submitted by the State to the Office of the Special Rapporteur for Freedom of Expression on November 9, 2009. Note 4-2-310/2009, pp. 6-7; IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter II. paras. 108-109. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

²⁰¹ Communication submitted by the State to the Office of the Special Rapporteur for Freedom of Expression on November 9, 2009. Note 4-2-310/2009, p. 7; IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter II. para. 111. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

²⁰² Instituto Prensa y Sociedad. July 7, 2009. *Balea a periodista. Se desconocen los motivos del atentado.* Available at: <http://www.ipys.org/alertas/atentado.php?id=1884>; Fundamedios. Date not specified. *Periodista de televisión baleado en la localidad costera de Esmeraldas.* Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=666>.

193. On a different topic, on September 28, 2009, Aquiles Arismendi, news editor with radio station *La Voz de su Amigo*, was unharmed after an apparent murder attempt. According to the information received by the Office of the Special Rapporteur, unknown individuals fired on the vehicle in which Arismendi was traveling with his family. Arismendi indicated that days prior, he had received a death threat warning him that “you only have a few days left.” Arismendi was obliged to leave the city due to the threats.²⁰³

194. The Office of the Special Rapporteur also received information on attacks against Elena Rodríguez, a correspondent with television channel *Telesur*. Rodríguez was attacked by supposed opponents of the government on the night of September 16, 2009, while driving through Quito in a private vehicle. According to the information received by the Office of the Special Rapporteur, the assailants struck her with the butt of a revolver, dragged her out of the car by force, and kicked her while she lay on the ground, causing head trauma and bruises all over her body. Rodríguez indicated that the attack could be connected to her work, given that the following day she found a note on her car accusing her of working for the government of President Rafael Correa Delgado and stating: “The next time, you will not save yourself.”²⁰⁴

195. The Office of the Special Rapporteur also recognizes the attacks on journalist Rafael Castro and cameraman Jorge Cabezas, who work with the program “In search of answers” (*En busca de respuestas*), broadcast on *Ecuador TV*. On September 24, 2009, the journalists were severely beaten by supposed students participating in demonstrations organized by the teachers union in the city of Guayaquil. During the protests, Mauricio Cerón – a cameraman with the television channel *Ecuavisa* – César Muñoz – a photographer with daily newspaper *Hoy* – and a journalist with state media who asked that his/her name be kept confidential for fear of retaliation, were also assaulted.²⁰⁵

196. The Office of the Special Rapporteur also received information indicating that on December 29, 2009, the journalist Ana María Cañizares, the cameraman Manuel Tumbaco and the camera assistant Francisco Quizno, from the television channel *Teleamazonas*, were attacked in Quito while they drove back to the channel headquarters after covering the National Assembly. According to the information received, their car was intercepted by a truck that blocked its path, and the truck’s occupants beat the camera man and his assistant.²⁰⁶

²⁰³ Fundamedios. Date not specified. *Periodista radial denuncia amenazas de muerte*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=774>; El Comercio. October 10, 2009. *Periodista denuncia ataque a su familia*. Available at: http://www1.elcomercio.com/solo_texto_search.asp?id_noticia=198896&anio=2009&mes=10&dia=2.

²⁰⁴ Office of the Special Rapporteur – IACHR. July 21, 2009. Press Release No. R72/09. Available at: <http://www.cidh.oas.org/Relatoria/showarticle.asp?artID=765&IID=1>; Instituto Prensa y Sociedad. September 16, 2009. *Corresponsal de Telesur denuncia golpiza desconoce las causas*. Available at: http://www.ifex.org/ecuador/2009/09/23/rodriguez_beaten/es/.

²⁰⁵ Office of the Special Rapporteur – IACHR. July 21, 2009. Press Release No. R72/09. Available at: <http://www.cidh.oas.org/Relatoria/showarticle.asp?artID=765&IID=1>; Instituto Prensa y Sociedad. October 2, 2009. *Estudiantes agreden a periodistas durante manifestaciones*. Available at: http://www.ifex.org/ecuador/2009/10/02/students_assault_journalists/es/.

²⁰⁶ Office of the Special Rapporteur. December 31, 2009. Press Release No. R88/09. Available at: <http://cidh.org/relatoria/showarticle.asp?artID=777&IID=2>.

197. On January 12, 2009, a group of inmates in the Guayaquil prison assaulted Juanita Von Buchwald, a journalist with daily newspaper *El Universo*, while she was trying to conduct interviews at the penitentiary.²⁰⁷

198. On March 18, 2009, José Vallejo, a cameraman with television channel *Gama TV*, was assaulted by taxi drivers demonstrating in the city of Quito. According to the complaint filed, the attack took place after the taxi drivers learned that Vallejo had filmed several demonstrators causing damage to private vehicles that were passing by.²⁰⁸

199. Likewise, the Office of the Special Rapporteur learned Mariela Rosero and Martín Jaramillo, reporters with daily newspaper *El Comercio*, were beaten by a group of persons near Quito's Universidad Central. The journalists were trying to cover a student meeting, but they were not allowed access to the meeting place. When they were leaving, a group of students rushed the journalists. The journalists were assaulted and beaten and their equipment was seized.²⁰⁹

200. The Office of the Special Rapporteur also received information according to which on August 14, 2009, Carlos Proaño, a journalist with news program *Notivisión*, broadcast by *Radio Visión* in Quito, received a death threat. In a phone call, an individual threatened him stating, "We know you have documents. If you open your mouth, we won't be held responsible." The information received by the Office of the Special Rapporteur indicates that the journalist had been researching a story related to administrative corruption.²¹⁰

201. On March 13, 2009, the editor of the opinion pages of daily newspaper *El Comercio*, Emilio Palacio, received a death threat via an e-mail that reproached him for his criticism of President Rafael Correa. Palacio filed a complaint on the incident with the authorities and was granted police protection.²¹¹

202. The Office of the Special Rapporteur learned that on August 4, 2009, several national media outlets were threatened simultaneously through an e-mail accusing them of manipulating information and "keeping the country in ignorance." The message was sent several

²⁰⁷ Fundamedios. Date not specified. *Presidarias agreden a periodistas*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=553>; Instituto Prensa y Sociedad. January 16, 2009. *Presidarias agreden a periodistas*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1701>.

²⁰⁸ Fundamedios. Date not specified. *Camarógrafo agredido en protesta de gremio de taxistas*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=602>; Instituto Prensa y Sociedad. March 20, 2009. *Camarógrafo agredido en protesta de taxistas*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1794>.

²⁰⁹ Instituto Prensa y Sociedad. July 13, 2009. *Estudiantes agreden a reporteros en Quito*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1892>; Fundamedios. Date not specified. *Periodista y fotógrafo agredidos*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=681>.

²¹⁰ Instituto Prensa y Sociedad. August 28, 2009. *Journalist threatened after reporting on corruption*. Available at: <http://www.ifex.org/ecuador/2009/08/28/proano-threatened/>; Fundamedios. Date not specified. *Periodista recibe amenaza por investigación periodística*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=758>.

²¹¹ Fundamedios. Date not specified. *Editor de opinión de diario 'El Universo' recibe amenazas*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=601>; El Universo. March 14, 2009. *Emilio Palacio denunció ayer una amenaza*. Available at: <http://www.eluniverso.com/2009/03/14/1/1355/34ACE8A287154139BD073DB61D415CC6.html>; Instituto Prensa y Sociedad. March 20, 2009. *Amenazan a editor de diario por criticar programa radial de presidente*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1793>.

times to journalists with daily newspapers *Hoy*, *El Comercio*, *El Universo*, and *Expreso*, and television channel *Teleamazonas*.²¹²

203. In 2009 the Office of the Special Rapporteur was informed that the headquarters of three media outlets were attacked. On February 17, 2009, at three o'clock in the morning, unknown assailants fired several shots at the headquarters of weekly newspaper *Mi Pueblo*, in Guayaquil, Guayas province. No injuries were reported.²¹³ In another incident, on April 7, 2009, unknown assailants entered the buildings of television channel *Telecosta* and radio broadcaster *Radio Gaviota*, damaging their equipment with acid. The directors of *Radio Gaviota* indicated that they had also received death threats.²¹⁴

204. The Office of the Special Rapporteur also learned that on October 1, 2009, journalists Marieta Campaña and René Fraga, and driver Luis Espinosa, all with daily newspaper *Expreso*, were held hostage for several hours by demonstrators with the indigenous communities in the Simón Bolívar area of the Ecuadorian Amazon. According to the information received, the demonstrators, who were protesting against the Water Law, took the journalists to a local stadium by force. They were released after a local indigenous leader intervened.²¹⁵

205. The Office of the Special Rapporteur urges the State to investigate and clarify these serious incidents of violence against journalists and calls on the authorities to promote a culture of respect for diversity of thought. It also calls on the authorities to abstain from making statements that could in any way foster an environment of social intolerance. As the Office of the Special Rapporteur has indicated on many occasions, diversity, pluralism and respect for the dissemination of all ideas and opinions are the basic conditions for the functioning of any democratic society. As a consequence, the authorities should contribute decisively to building an environment of tolerance and respect in which all individuals can express their thoughts and opinions without fear of being assaulted, punished, or stigmatized as a result. Likewise, the State's duty to foster conditions that allow all ideas and opinions to be freely distributed includes the obligation to investigate and adequately punish those who use violence to silence journalists or media outlets. Principle 9 of the Declaration of Principles indicates that, "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

206. In that respect, the Office of the Special Rapporteur observes with concern the statements of President Rafael Correa in reference to the media. The Office of the Special Rapporteur has received information indicating that the President frequently spends an hour of his

²¹² Instituto Prensa y Sociedad. August 7, 2009. *Amenazan a periodistas vía correo electrónico*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1944>; Fundamedios. Date not specified. *Periodistas reciben amenazas por correo electrónico*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=733>.

²¹³ Fundamedios. Date not specified. *Ecuador: atacan semanario a balazos*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=571>; Instituto Prensa y Sociedad. February 23, 2009. *Balean sede de semanario. No descartan que se deba por críticas al gobierno*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1770>.

²¹⁴ Fundamedios. Date not specified. *Ataques y amenazas a medios de comunicación en Esmeraldas*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=614>; Reporters Without Borders. April 15, 2009. *Telecosta TV station equipment damaged by acid attack, Radio Gaviota director threatened*. Available at: [http://www.ifex.org/ecuador/2009/04/15/telecosta acid attack/](http://www.ifex.org/ecuador/2009/04/15/telecosta%20acid%20attack/).

²¹⁵ Instituto Prensa y Sociedad. October 6, 2009. *Indígenas retienen a equipo periodístico*. Available at: <http://www.ipys.org/alertas/atentado.php?id=2026>; Fundamedios. Date not specified. *Equipo periodístico detenido en protesta indígena*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=776>.

weekly television broadcast strongly denouncing the press, branding it as “conspirator,” “corrupt,” “disrupting,” “irresponsable” and “liar.” Similarly, he has told the people not to buy newspapers and publicly threatened to take legal action against media outlets and journalists critical of his government.²¹⁶

207. Also, the Office of the Special Rapporteur learned that former Security Minister Gustavo Larrea stated before the National Parliament that several journalists and media outlets “are in the pay of the CIA.” According to the information received by the Office of the Special Rapporteur, the accusations were made without the presentation of any kind of proof and without naming names, which generated protest from the directors of several media outlets.²¹⁷

208. The Office of the Special Rapporteur acknowledges that the democratic function of freedom of expression requires State officials to give statements on questions of public interest in carrying out their mandates.²¹⁸ Under these circumstances, the exercise of freedom of expression by State authorities becomes not only a right, but a duty. This also means that public officials can exercise their right to freedom of expression to challenge expression whose content they do not consider adequate or exact, or to respond to criticism that they consider unjust or misleading. However, in exercising their right, State officials are subject to special limitations. First, and as the Inter-American Court has indicated, they have a duty to confirm, reasonably though not necessarily exhaustively, the facts stated in their opinions, and should do so “with a diligence even greater than the one employed by individuals due to their high investiture, the ample scope and possible effects their expressions may have on certain sectors of the population, and in order to avoid that citizens and other interested people receive a manipulated version of specific facts.”²¹⁹ Second, public

²¹⁶ Fundamedios. Date not specified. *Gobierno utiliza cadenas nacionales para tratar de mentirosos a periodistas*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=604>; El Clarín. September 4, 2009. *En Ecuador también acosan a la prensa y atacan a periodistas*. Available at: <http://www.clarin.com/diario/2009/09/04/sociedad/s-01992030.htm>; Fundamedios. Date not specified. *Presidente dedica más de una hora para cuestionar notas periodísticas; artículos de opinión y el trabajo de los medios*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=702>; Fundamedios. Date not specified. *Diario sufre constante acoso de presidente Rafael Correa*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=554>; Fundamedios. Date not specified. *Virulenta crítica presidencial a editorial de rotativo*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=689>; Inter-American Press Association. July 24, 2009. *IAPA condemns Ecuador government's confrontation with the press*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4220&idioma=us; Inter-American Press Association. July 25, 2009. *La SIP lamenta actitud de retaliación del presidente Rafael Correa*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4205&idioma=sp; Youtube. November 30, 2008. *Informe de Rafael Correa: Prensa corrupta y mediocre ataca casas MIDUVI*. Available at: <http://www.youtube.com/watch?v=oW--VVsd6JQ>.

²¹⁷ Fundamedios. Date not specified. *Ex ministro coordinador de seguridad acusa a periodistas de ser miembros de la CIA*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=658>; Expreso. Date not specified. *Periodistas llaman a Larrea a dar nombres de los acusados*. Available at: <http://www.expreso.ec/ediciones/2009/06/04/actualidad/periodistas-llaman-a-larrea-a-dar-nombres-de-los-acusados/Default.asp>.

²¹⁸ I/A Court H. R., *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 5, 2008 Series C No. 182. para. 131; IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. para. 202. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

²¹⁹ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. para. 139. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_194_ing.pdf; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. para. 151. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_195_ing.pdf.

officials have a duty to tolerate criticism to a greater degree. As the bodies of the inter-American system have indicated repeatedly, within the framework of the American Convention, the right to freedom of expression should be guaranteed not only in the distribution of ideas and information that are favorably received or considered inoffensive or neutral, but also in those that offend, shock, upset, or are unpleasant for public officials or a segment of the population. Such are precisely the requirements of the pluralism, tolerance and spirit of openness without which a truly democratic society would not exist.²²⁰ Finally, as “guarantors of the fundamental rights of the individual,” public officials cannot “disregard said rights” through their statements.²²¹ Public officials, in particular the most senior State officials, must take into account that those who work for the media as social communicators find the risks that they normally face increase when their employer is the object of stigmatizing official speeches.²²² On this point, and as the Inter-American Court has held repeatedly, the State must not only diligently carry out its duty to guarantee freedom of expression, but must also avoid increasing the level of risk to which journalists are exposed.

209. As previously mentioned, Ecuador has seen a rising climate of polarization in which attacks on and threats against journalists and media outlets of all editorial positions have increased. Under the circumstances, the agents of the State must work to decrease the risks faced by the most threatened individuals and adopt efficient mechanisms of protection. As indicated in the previous paragraph, senior State officials’ right to freedom of expression is not an absolute right, and therefore it can be subject to restrictions, especially when it interferes with the guarantees and protections that a State must provide to its inhabitants.²²³

210. On a different topic, the Office of the Special Rapporteur expresses concern over the cases of possible illegal detention of journalists. According to the information received, on January 20, 2009, Francisco Farinango, a journalist with community radio broadcaster *Intipacha*, was arrested by several police officers while covering an indigenous protest in the Pedro Moncayo canton, Pichincha province. The police officers accused him of disturbing the protest and held him for several hours.²²⁴

211. The Office of the Special Rapporteur also learned that on April 12, 2009, Israel Díaz and Vicente Albán, journalists with *Canal 4 Lago Sistema Televisión*, were assaulted by law enforcement officials while covering a police operation in Nueva Loja, Sucumbíos province.

²²⁰ I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 113; I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. para. 69.

²²¹ I/A Court H. R., *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 5, 2008 Series C No. 182. para. 131; IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. paras. 202-205. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

²²² I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. para. 143. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_194_ing.pdf; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. para. 155. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_195_ing.pdf.

²²³ I/A Court H. R., *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 5, 2008 Series C No. 182.

²²⁴ Fundamedios. Date not specified. *Periodista es detenido en manifestaciones indígenas*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=556>; Reporters Without Borders. January 22, 2009. *Ponen en libertad a un periodista comunitario pero mantienen abiertas las diligencias*. Available at: <http://www.rsf.org/Ponen-en-libertad-a-un-periodista.html>; Instituto Prensa y Sociedad. January 23, 2009. *Detienen a periodista durante manifestación indígena*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1711>.

According to the information received by the Office of the Special Rapporteur, the presence of the journalists had bothered the officials, who arrested and held Albán for more than seven hours.²²⁵

212. On January 25, 2009, Adolfo Caiminagua Herrera, a journalist with daily newspaper *Opinión*, was arrested arbitrarily by law enforcement officials in the Pasaje municipality, Machala. According to the information received by the Office of the Special Rapporteur, Caiminagua was covering the municipal elections when he took a photograph of police official Luis Gonzalo Ayala Condolo. The officer became annoyed and demanded the journalist turn over his equipment. When the journalist refused, he was arrested and held for 24 hours.²²⁶

213. On the right to access to information, on May 19, 2009, state oil company Petroecuador denied daily newspaper *Hoy* access to company documents and facilities. According to the information received by the Office of the Special Rapporteur, the same has happened on other occasions, when several journalists with that newspaper were denied access to the company's communications office.²²⁷

214. In another case of which the Office of the Special Rapporteur learned, the director of the Department of Culture with the Municipality of Esmeraldas, Katya Ubidia Guerra, refused to grant television channel *Telecosta* credentials to cover a public event. According to the information received by the Office of the Special Rapporteur, Ubidia Guerra said that the media outlet handles information in a "biased" fashion.²²⁸ Principle 4 of the Declaration of Principles indicates that, "Access to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right."

215. On the topic of legal proceedings, the Office of the Special Rapporteur learned of several legal proceedings brought against journalists who report or opine on facts in the public interest. According to the information received by the Office of the Special Rapporteur, Nelson Chacaguasay, a journalist and director of weekly newspaper *La Verdad*, had charges pressed against him for libel by a former public prosecutor over a news item published in 2007 connecting the ex-public official to a notary whose allegedly illegal businesses had caused damages to several people. The article resulted in a libel prosecution and in April of 2009, the journalist was sentenced to 30 days in prison. On appeal, the sentence was increased to four months in prison. Chacaguasay served his sentence in a prison starting in July of 2009. According to the information received by the Office of the Special Rapporteur, Chacaguasay complained of serious violations of due process

²²⁵ Fundamedios. Date not specified. *Agresión a camarógrafo y detención de periodista*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=621>; Instituto Prensa y Sociedad. April 21, 2009. *Policía detiene a reportero y agrede a camarógrafo en Sucumbios*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1820>.

²²⁶ Fundamedios. Date not specified. *Corresponsal de rotativo fue arrestado en una cobertura*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=561>; Instituto Prensa y Sociedad. February 10, 2009. *Arrestan a reportero por fotografiar a policía*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1738>.

²²⁷ Fundamedios. Date not specified. *Varios periodistas y medios tienen limitaciones al libre acceso de la información pública*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=661>; Hoy. July 23, 2009. *Petroecuador no otorga entrevistas para HOY*. Available at: <http://www.hoy.com.ec/noticias-ecuador/petroecuador-no-otorga-entrevistas-para-hoy-359509.html>.

²²⁸ Instituto Prensa y Sociedad. July 30, 2009. *Municipio rechaza pedido de acreditación de canal*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1928>; Fundamedios. Date not specified. *Municipio de Esmeraldas obstruye las coberturas de un canal de televisión local*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=723>.

and has requested protection of the authorities for fear of attempts on his life in prison.²²⁹ This is the second criminal libel trial in which the journalist has been imprisoned.

216. Regarding this case, the State has indicated that the Bill on the Organic Code of Penal Guarantees (see *supra*) would include the possibility of decriminalizing the crime of libel.²³⁰ Regarding the first criminal libel trial against this same journalist, the State indicated that in November of 2008 Nelson Chacaguasay turned to the Ministry of Justice and Human Rights' Office of Citizen Service, where he was provided with advisory services. The State indicated that an official from that office reviewed the proceedings that had been opened against the journalist in order to obtain information on the circumstances of his arrest. In this context, and in light of Chacaguasay's complaints about alleged irregularities in the first accusation, it was recommended to him that he file a formal request before the Complaints Commission of the Court Disciplinary Council (*Consejo de la Judicatura*) so that this entity might verify the best way to proceed in his case. It was also suggested that he file a motion for extraordinary protection. As far as the second criminal libel trial mentioned, the State indicated that in keeping with the request of the director of *Fundamedios*, the Ombudsman's Office had been commissioned to oversee due process in the case. The State added that the Ministry of Justice and Human Rights would follow up on the verification requested of the Ombudsman's Office. Likewise, it also suggested that the journalist file a motion for extraordinary protection.²³¹

217. The Office of the Special Rapporteur considers that the different legal rulings against Chacaguasay represent a step backward in the regional progress toward eliminating the State's use of criminal law to punish those who report or issue personal opinions on matters in the public interest, on public persons, or on individuals voluntarily involved in matters in the public interest. For this reason, the Office of the Special Rapporteur observes with satisfaction the presentation of a bill to depenalize such conduct.

218. The Office of the Special Rapporteur was also informed that on October 28, 2009, Giancarlo Zunio and Félix Pilco, representatives of the New Civic Council (*Nueva Junta Cívica*) of Guayaquil were arrested while placing signs on several pedestrian walkways. The signs declared President Correa *persona non grata*. According to the information received by the Office of the Special Rapporteur, Zunio and Pilco were charged with a crime under Article 128 of the Penal Code, which calls for a penalty of six months to three years in prison for those who "in any way incite or foment separatism, or offend or insult public institutions." The information received also indicates

²²⁹ Office of the Special Rapporteur - IACHR. July 21, 2009. Press Release No. R51/09. Available at: <http://www.cidh.oas.org/Relatoria/showarticle.asp?artID=756&IID=1>; Reporters Without Borders. July 16, 2009. *Nuevo encarcelamiento de un periodista por 'injurias.'* *Reporteros Sin Fronteras denuncia una 'persecución.'* Available at: <http://www.rsf.org/Nuevo-encarcelamiento-de-un.html>; Instituto Prensa y Sociedad. July 17, 2009. *Vuelven a encarcelar a periodista por injurias. Pide garantías por amenazas de muerte.* Available at: <http://www.ipys.org/alertas/atentado.php?id=1907>; Fundamedios. Date not specified. *Periodista vuelve a ser encarcelado por injurias y pide protección por amenazas de muerte.* Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=695>.

²³⁰ Communication submitted by the State to the Office of the Special Rapporteur for Freedom of Expression on November 9, 2009. Note 4-2-310/2009, pp. 5-6; IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter II. para. 104. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

²³¹ Communication submitted by the State to the Office of the Special Rapporteur for Freedom of Expression on September 1, 2009. Note 4-2-224/2009.

that although the criminal trial continues, on November 5, 2009, the representatives were released after posting bail.²³²

219. The Office of the Special Rapporteur also received information related to the administrative proceedings brought against *Teleamazonas*. On June 25, 2009, the Telecommunications Authority fined the station for having aired a live broadcast that it considered to have caused a “public disturbance.” Article 58(e) of the Television and Broadcasting Act provides that it is prohibited to “transmit news, based on assumptions, that can cause social or political harm or disturbances.” The medium asserted that it had in fact been subject to persecution due to its critical stance against the government.²³³

220. The information received by the Office of the Special Rapporteur indicates that this was the second administrative sanction that *Teleamazonas* received in 2009. Previously, on June 3, 2009, the Telecommunications Authority fined *Teleamazonas* for the “broadcasting of bullfighting images outside the authorized time slot.” Under Article 80 of the Regulations to the Broadcasting Act, the “repetition of the same technical or administrative violation, provided that it has been committed within one year” may be punishable by “the suspension of the station’s broadcasts for up to ninety days.” Likewise, Article 67(j) of the Television and Broadcasting Act provides that concessions may be cancelled as a result of the “non compliance with Article 58 (e) of the Television and Broadcasting Law.”²³⁴

221. The Office of the Special Rapporteur also expresses concern at statements from high government officials suggesting that they will take legal action against daily newspaper *El Universal* and television channel *Teleamazonas* after these media outlets reported on the possible negative effects of a contract for natural gas exploration on Puná Island in the Gulf of Guayaquil. The high government officials appear to have accused the media outlets of inciting the island’s population to protest against the government.²³⁵

222. Regarding these cases, the Office of the Special Rapporteur considers it pertinent to recall that Principle 11 of the Declaration of Principles holds that, “Public officials are subject to

²³² Hoy. October 29, 2009. *Acusan a directivos de incentivar separatismo*. Available at: <http://www.hoy.com.ec/noticias-ecuador/acusan-a-directivos-de-incentivar-separatismo-375436.html>; Expreso. October 28, 2009. *Detienen a opositores que colgaban carteles contra Correa en Guayaquil*. Available at: <http://www.diario-expreso.com/ediciones/2009/10/28/actualidad/detienen-a-opositores-que-colocaban-pancartas-contra-correa-en-guayaquil/default.asp?fecha=2009/10/28>; El Comercio. October 30, 2009. *Polémica por las vallas contra Correa*. Available at: http://www1.elcomercio.com/noticiaEC.asp?id_noticia=313472&id_seccion=3; Inter-American Press Association. *65th General Assembly, November 6-10, 2009, Buenos Aires, Argentina. Country Reports: Ecuador*. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=24&infoid=374&idioma=us.

²³³ Reporters Without Borders. June 26, 2009. *Teleamazonas corre el riesgo de un cierre administrativo*. Available at: <http://www.rsf.org/Teleamazonas-corre-el-riesgo-de-un.html>; Fundamedios. Date not specified. *Canal recibe segunda sanción*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=669>.

²³⁴ Committee for the Protection of Journalists June 4, 2009. *Ecuador: Presidente amenaza con tomar acción directa contra medios críticos*. Available at: <http://cpj.org/es/2009/06/ecuador-presidente-amenaza-con-tomar-accion-directa.php>. The complete text of the Law Radiodifusión y Televisión, as well as its General Regulation, is available at: http://www.conartel.gov.ec/c/document_library/get_file?p_l_id=10514&uuid=bfeed3ee-5666-401d-92f9-529ce39e2ef8&groupid=10113.

²³⁵ Instituto Prensa y Sociedad. June 2, 2009. *Presidente amenaza con recurrir a la justicia para que sancione a medios que considera ‘mentirosos’*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1861>; Fundamedios. Date not specified. *Presidente Correa amenaza recurrir a instancias legales para acabar con lo que llama prensa corrupta*. Available at:

<http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=651>.

greater scrutiny by society," and emphasizes that the use of the punitive power of the State, especially when it is used and applied by officials subject to greater scrutiny, has a serious chilling effect that restricts not only democratic debate but also the people's right to receive sufficient and diverse information on matters in the public interest. Likewise, Principle 10 indicates that "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news."

12. El Salvador

223. The Office of the Special Rapporteur takes note of the progress made in the investigation of the murder of French-Spanish documentarian Christian Poveda, who was killed on September 2, 2009, in the outskirts of San Salvador while making a documentary on youth gangs (*maras*). The Office of the Special Rapporteur acknowledges the quick reaction of the President of El Salvador, Mauricio Funes, who immediately condemned the incident. The Office of the Special Rapporteur also recognizes the quick arrest of several individuals suspected of having taken part in the crime. The Office of the Special Rapporteur urges the Salvadorian authorities to continue in these efforts, clarify the facts of what happened, and adequately punish the perpetrators of the crime.²³⁶ Principle 9 of the Declaration of Principles indicates that, "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

224. On a different subject, the Office of the Special Rapporteur received information indicating that in the final days of July 2009, Vladimir Abarca, José Beltrán, and Ludwing Iraheta, journalists with the community radio broadcaster *Radio Victoria* in the Cabañas department, received death threats. During the days before receiving the threats, the journalists had covered the crime of militant environmentalist Gustavo Marcelo Rivera. According to the information received by the Office of the Special Rapporteur, the threats were received via anonymous phone calls, during which the journalists were told they would "be next." *Radio Victoria* also suffered the theft of its broadcasting antenna in April of 2009.²³⁷ The Office of the Special Rapporteur reiterates to the State its obligation to take all measures necessary to prevent the commission of these crimes and punish those who seek to quell reporting and the free flow of information and ideas through these threats. Likewise, the Office of the Special Rapporteur calls on the State to promote protective measures to guarantee the life and safety of the journalists at risk. Principle 5 of the Declaration of Principles holds that "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

13. United States

225. The Office of the Special Rapporteur views positively the fact that on January 21, 2009, President Barack Obama announced the implementation of new policies to guarantee the

²³⁶ Reporters Without Borders. September 15, 2009. *Five suspects arrested in investigation into filmmaker's murder*. Available at: http://www.ifex.org/el_salvador/2009/09/15/suspects_arrested/s; Committee for the Protection of Journalists. September 11, 2009. *Six face murder charges in French filmmaker's slaying*. Available at: <http://cpj.org/blog/2009/09/six-face-murder-charges-in-french-filmmakers-slayi.php>; Agence France Presse (AFP). September 10, 2009. *Detenidos 5 sospechosos por el crimen del fotógrafo Christian Poveda*. Available at:

http://www.google.com/hostednews/afp/article/ALeqM5g8uj3yDXQ2_cyCHDu2z4bXJ4Vvsw?index=0.

²³⁷ Article 19. August 7, 2009. *El Salvador: Comunicadores y Sacerdote Defensor de Derechos Humanos reciben Amenazas*. Available at: <http://www.article19.org/pdfs/press/el-salvador-comunicadores-y-sacerdote-defensor-de-derechos-humanos-reciben-a.pdf>; Inter-American Press Association. July 30, 2009. *IAPA calls for investigation into incidents in Bolivia, El Salvador, Venezuela*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4227&idioma=us; Human Rights Watch. August 8, 2009. *El Salvador: Investigate Killing of Community Leader*. Available at: <http://www.hrw.org/en/news/2009/08/07/el-salvador-investigate-killing-community-leader>.

right to access to information.²³⁸ As a result of the announcement, on March 19, 2009, Attorney General Eric Holder sent a memo to executive departments and agencies that describes the new federal guidelines for compliance with the Freedom of Information Act (FOIA). The document states that government agencies must operate under a “presumption of disclosure” regarding the release of information. Under this principle, states the memo, government agencies “should not withhold information simply because it may do so legally,” and that they have the obligation to take whatever measures necessary to guarantee access to non-classified information. The memorandum also states that the government should not keep information confidential simply because “public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears.” Likewise, the document orders government agencies to publish information on their Web sites even before it is requested. It reminds them that they should set up a telephone line and an online service that allow users check on the progress of their requests.²³⁹ It is also worth mentioning that on May 27, 2009, President Barack Obama requested a review of the methodology currently used to categorize information as “controlled unclassified information.” He requested an evaluation of the possibility of creating a National Declassification Center.²⁴⁰

226. However, the Office of the Special Rapporteur received information that on May 13, 2009, the government refused to publish photographs that showed U.S. soldiers abusing Iraqi prisoners. On September 28, 2008, the U.S. Court of Appeals for the Second Circuit ordered the Department of Defense to turn over the photographs, which had been requested by the American Civil Liberties Union (ACLU). According to the court, “there is a significant public interest in the disclosure of these photographs.”²⁴¹ Initially, White House spokespersons had indicated that the decision would not be appealed and that the images would be disclosed. However, on May 13, 2009, the government said that it would not release the photographs because their distribution “could endanger the lives of American soldiers abroad.” On May 28, 2009, the government appealed the decision. Later, on October 28, 2009, Congress passed the Homeland Security Appropriations Bill, which granted the Department of Defense the authority to keep the content of documents classified as “protected” confidential. According to the law, a “protected document” is one “for which the Secretary of Defense has issued a certification...stating that disclosure of that record would endanger citizens of the United States, members of the United States Armed Forces, or employees of the United States Government deployed outside the United States; and...that is a

²³⁸ The White House. Office of the Press Secretary. January 21, 2009. Memorandum for the Heads of Executive Departments and Agencies. Subject: Freedom of Information Act. Available at: http://www.whitehouse.gov/the_press_office/FreedomofInformationAct/ and http://www.justice.gov/oip/foia_guide09/presidential-foia.pdf.

²³⁹ Department of Justice. March 19, 2009. Attorney General Issues New FOIA Guidelines to Favor Disclosure and Transparency. Available at: <http://www.usdoj.gov/opa/pr/2009/March/09-ag-253.html>; Department of Justice. Guide to the Freedom of Information Act (2009 edition). Available at: http://www.justice.gov/oip/foia_guide09/procedural-requirements.pdf. The text of the memorandum is available at: <http://www.justice.gov/ag/foia-memo-march2009.pdf>. Also see: Article 19. January 23, 2009. *United States: Article 19 and Privacy International Welcome New Openness Policies*. Available at: <http://www.article19.org/pdfs/press/united-states-article-19-and-privacy-international-welcome-new-openness-poli.pdf>; Reporters Committee for Freedom of the Press. March 19, 2009. *Holder's FOIA memo is a 'refreshing change.'* Available at: <http://www.rcfp.org/newsitems/index.php?i=10050>; Reporters Without Borders. March 20, 2009. *Attorney General applies presumption of openness in Freedom of Information Act guidelines*. Available at: <http://www.rsf.org/Attorney-General-applies.html>.

²⁴⁰ The White House. Office of the Press Secretary. May 27, 2009. Memorandum for the Heads of Executive Departments and Agencies. Subject: Classified Information and Controlled Unclassified Information. Available at: http://www.whitehouse.gov/the_press_office/Presidential-Memorandum-Classified-Information-and-Controlled-Unclassified-Information/; Reporters Committee for Freedom of the Press. May 28, 2009. *Obama orders review of classification process*. Available at: <http://www.rcfp.org/newsitems/index.php?i=10776>.

²⁴¹ United States Court of Appeals for the Second Circuit. No. 06-3140-cv: American Civil Liberties Union v. Department of Defense. September 22, 2008, p. 44. Available at: http://www.aclu.org/pdfs/safefree/acluvdod_photodecision.pdf.

photograph that-- (i) was taken during the period beginning September 11, 2001, through January 22, 2009; and (ii) relates to the treatment of individuals engaged, captured, or detained after September 11, 2001, by the Armed Forces of the United States in operations outside of the United States."²⁴² At the time this report went to press, no information has been received that would indicate that the photographs have been released.

227. At the same time, on March 2, 2009, the federal government confirmed that 92 video tapes containing footage of interrogations carried out by agents of the Central Intelligence Agency (CIA) in secret prisons were destroyed in November of 2005. According to information received by the Office of the Special Rapporteur, the State has opened a grand jury investigation into the matter.²⁴³ The Office of the Special Rapporteur wishes to remind the State that Principle 4 of the Declaration of Principles holds that, "Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right."

228. In 2009, the Office of the Special Rapporteur continued to receive information on the progress of the investigation into the murder of journalist Chauncey Bailey, former editor of the *Oakland Post*, a murder which took place in August of 2007. On April 30, 2009, criminal proceedings were opened against Yusuf Bey and Antoine Mackey, who are accused of ordering the killing of the journalist.²⁴⁴ Principle 9 of the Declaration of Principles states that the murder, intimidation, or threatening of journalists "violate the fundamental rights of individuals and strongly restrict freedom of expression." The Office of the Special Rapporteur urges the State to continue investigating this case, and that those responsible be brought to trial and duly punished.

229. On November 4, 2008, Diane Bukowski, a reporter for daily newspaper *The Michigan Citizen*, was arrested while covering an automobile accident in which two people died. According to the information received by the Office of the Special Rapporteur, the journalist, whose reporting strongly criticized Detroit authorities, had crossed a police line while reporting on the accident. On June 1, 2009, Bukowski was sentenced to a year's parole, and ordered to pay a fine of \$4,000 and complete 200 hours of community service after being found guilty of resisting arrest and police obstruction.²⁴⁵

²⁴² The Library of Congress. H.R. 2892. Department of Homeland Security Appropriations Act, 2010. Section 565. Available at: <http://www.govtrack.us/congress/billtext.xpd?bill=h111-2892>; Reporters Without Borders. May 14, 2009. *Obama Opposes Release of Torture Photos*. Available at http://www.rsf.org/Obama-opposes-release-of-torture_33163.html; ACLU. October 20, 2009. *ACLU urges Secretary Gates not to block release of torture photos*. Available at: <http://www.aclu.org/safefree/torture/41314prs20091020.html>; Reporters Committee for Freedom of the Press. May 13, 2009. *White House decision on prison abuse photos wrong*. Available at: <http://www.rcfp.org/newsitems/index.php?i=10752>. Reporters Committee for Freedom of the Press. June 1, 2009. *Prisoner abuse images should come out, RCFP argues*. Available at: <http://www.rcfp.org/newsitems/index.php?i=10785>.

²⁴³ The New York Times. June 2, 2009. *Grand Jury inquiry on destruction of CIA tapes*. Available at: <http://www.nytimes.com/2009/07/03/us/03inquire.html>; Reporters Without Borders. March 5, 2009. *CIA destroyed 92 interrogation videos : 'An investigation into the serious abuses of the "War on Terror" is imperative.'* Available at: <http://www.rsf.org/CIA-destroyed-92-interrogation.html>.

²⁴⁴ Reporters Without Borders. May 4, 2009. *Yusuf Bey IV indicted in Chauncey Bailey's murder*. Available at: <http://www.rsf.org/Yusuf-Bey-IV-indicted-in-Chauncey.html>; Committee for the Protection of Journalists. April 30, 2009. *Two indictments in Chauncey Bailey murder*. Available at: <http://cpj.org/blog/2009/04/two-indictments-in-chauncey-bailey-murder.php>; Committee for the Protection of Journalists. April 22, 2009. *In Oakland, progress in Bailey murder prosecution*. Available at: <http://cpj.org/blog/2009/04/in-oakland-progress-in-bailey-murder-prosecution.php>; Reporters Without Borders. January 29, 2009. *Call for federal investigation into newspaper editor's murder*. Available at: <http://www.rsf.org/Call-for-federal-investigation.html>.

²⁴⁵ The Michigan Messenger. June 1, 2009. *Convicted Detroit reporter faces sentencing*. Available at: <http://michiganmessenger.com/20040/convicted-detroit-reporter-faces-sentencing>; Committee for the Protection of Journalists. May 6, 2009. *U.S reporter found guilty of obstruction, faces 4 years in jail*. Available at: <http://cpj.org/2009/05/us-reporter-found-guilty-of-obstruction-faces-4-ye.php>; Reporters Committee for Freedom of the Press.

230. On April 21, 2009, the U.S. District Court for the Eastern District of Michigan ruled that the Fifth Amendment of the United States Constitution protected the right of David Ashenfelter, a journalist with the daily newspaper *Detroit Free Press*, from incriminating himself in legal proceedings brought by a public official to force him to reveal his sources. In 2004, Ashenfelter published an article in which he revealed the identity of an informant who had collaborated with an ex-public prosecutor, Richard Convertino, in an investigation into a possible terrorist attack. At the same time, Convertino was being investigated by the government for an alleged violation of federal guidelines during the investigation. Convertino sued the Justice Department for having leaked the identity of his informant to the media, and in 2006 he requested that Ashenfelter be ordered to reveal the name of the public official who had given him the information. In September of 2008, the U.S. District Court for the Eastern District of Michigan ordered the journalist to reveal his sources, but Ashenfelter refused, invoking the Fifth Amendment. Later, after the filing of several motions, the U.S. District Court for the Eastern District of Michigan decided that under Fifth Amendment protection, Ashenfelter could keep the identity of his sources confidential. According to the information received by the Office of the Special Rapporteur, Convertino has appealed this latest ruling.²⁴⁶

231. In this context, several organizations have continued to insist on the necessity of pushing for the passage of a law that grants federal protection to journalists, allowing them to conceal the identity of their sources. Just as in 2008, this year the Free Flow of Information Act (which would grant federal protection to journalists' right to conceal their sources) still has not been passed by the Senate.²⁴⁷ However, the Office of the Special Rapporteur has been informed that on May 13, 2009, the State of Texas' shield law that protects journalists' sources went into effect.²⁴⁸ The Office of the Special Prosecutor wishes to reiterate that Principle 8 of the Declaration of Principles holds that, "Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."

232. The Office of the Special Rapporteur notes that cameraman and photo journalist Ibrahim Jassam, of the Reuters news agency, has been in detention on a U.S. military base in Iraq since September 2008. The Office of the Special Rapporteur observes with concern that Jassam is

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May 5, 2009. *Jury convicts reporter who crossed crime-scene tape.* Available at: <http://www.rcfp.org/newsitems/index.php?i=10738>.

²⁴⁶ Reporters Without Borders. February 10, 2009. *Another reporter threatened with contempt for refusing to reveal sources.* Available at: <http://www.rsf.org/Another-reporter-threatened-with.html>; Reporters Without Borders. April 3, 2009. *Judge denies Free Press reporter David Ashenfelter's motion.* Available at: <http://www.rsf.org/Judge-denies-Free-Press-reporter.html>; Reporters Committee for Freedom of the Press. April 21, 2009. *Reporters Committee says Ashenfelter case shows need for shield law.* Available at: <http://www.rcfp.org/newsitems/index.php?i=10720>.

²⁴⁷ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter II. para. 119. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>; IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2007. OEA/Ser.L/V/II.131. Doc. 34 rev. 1. 8 March 2008. Chapter II. para. 202. Available at: [http://www.cidh.oas.org/annualrep/2007eng/Annual Report 2007.VOL.II%20ENG.pdf](http://www.cidh.oas.org/annualrep/2007eng/Annual%20Report%202007.VOL.II%20ENG.pdf)

²⁴⁸ Reporters Committee for Freedom of the Press. May 14, 2009. *Reporters Committee applauds new Texas shield law.* Available at: <http://www.rcfp.org/newsitems/index.php?i=10754>; First Amendment/AP. May 14, 2009. *Texas governor signs journalist shield law.* Available at: [http://www.firstamendmentcenter.org/news.aspx?id=21585&SearchString=texas shield law](http://www.firstamendmentcenter.org/news.aspx?id=21585&SearchString=texas%20shield%20law); Texas Capitol. Available at: <http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=81R&Bill=HB670>.

as of this date still detained, without having been put on trial for any crime, and despite the fact that the Iraqi authorities have ordered his release.²⁴⁹

233. Finally, on May 8, 2009, law enforcement officials arrested New York State Senator Kevin Parker after he allegedly physically assaulted *New York Post* photographer William C. López and destroyed his camera. According to the information received by the Office of the Special Rapporteur, López had photographed the Senator as he was getting out of a car near his home.²⁵⁰ Principle 9 of the Declaration of Principles states that, "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

14. Grenada

234. The Office of the Special Rapporteur expresses concern at the court order – dated October 27, 2009 – ordering weekly newspaper *Grenada Today* to pay approximately US\$71,000 in the civil defamation suit brought by then-Prime Minister Keith Mitchell. According to the information received by the Office of the Special Rapporteur, the weekly was sued for publishing a reader's letter in 2001, a letter which the former state official considered defamatory. Initially, the fine was set at US\$44,000; however, on appeal the courts ruled to increase the amount. The information submitted to the Office of the Special Rapporteur also indicates that, due to the lack of an agreement between the parties for making the payment, the court ordered the liquidation of the assets of the Granada Today Ltd. Company, the company that produces the weekly.²⁵¹

235. In this context, the Office of the Special Rapporteur reminds the State that, according to the standards of the inter-American system, the application of civil sanctions as a means of reparation for the abusive exercise of the right to freedom of expression should be strictly proportional to the real damage caused. In all cases, the application of the civil penalties must be designed in such a way that they restore the damaged reputation, not as a means of compensating the plaintiff or punishing the defendant.²⁵² The Office of the Special Rapporteur reminds the State that Principle 10 of the Declaration of Principles holds that, "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the

²⁴⁹ Los Angeles Times. May 24, 2009. *U.S. holds journalist without charges in Iraq*. Available at: <http://articles.latimes.com/2009/may/24/world/fg-iraq-journalist24>; Refworld. December 10, 2008. *US military refuses to comply with court order to free Reuters photographer*. Available at: <http://www.unhcr.org/refworld/country,,RSF,,IRQ,,49422f092,0.html>; Committee for the Protection of Journalists. September 2, 2009. *CPJ calls U.S. detention of Ibrahim Jassam unjust*. Available at: <http://cpj.org/blog/2009/09/cpj-calls-on-us-to-free-ibrahim-jassam.php>.

²⁵⁰ The New York Times. May 9, 2009. *After arrest, a State Senator loses his leadership posts*. Available at: http://www.nytimes.com/2009/05/10/nyregion/10parker.html?_r=1&ref=nyregion; Committee for the Protection of Journalists. May 12, 2009. *New York legislator faces charges in attack on photographer*. Available at: <http://cpj.org/2009/05/new-york-legislator-faces-charges-in-attack-on-pho.php>. Reporters Committee for Freedom of the Press. May 12, 2009. *New York legislator arrested in photographer assault*. Available at: <http://www.rcfp.org/newsitems/index.php?i=10750>.

²⁵¹ The Grenada Herald. October 27, 2009. *Court orders liquidation of Grenada Today newspaper*. Available at: <http://www.grenadaherald.com/?p=345>; Reporters Without Borders. October 28, 2009. *Weekly to be liquidated as a result of former prime minister's libel suit*. Available at: <http://www.rsf.org/Grenada-Today-to-be-liquidated-as.html>.

²⁵² IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. para. 100. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

15. Guatemala

236. The Office of the Special Rapporteur views positively the fact that on April 21, 2009, the Access to Public Information Law went into effect. The law was passed by the Congress of the Republic in September of 2008.²⁵³ As indicated in its 2008 Annual Report, the Office of the Special Rapporteur considers the passage of this law to be decisive progress for the right to access to information in Guatemala. The Office of the Special Rapporteur urges the State to incorporate the access to information standards of the inter-American system in the interpretation and implementation of the law.²⁵⁴ Principle 4 of the Declaration of Principles holds that, “Access to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right.”

237. The Office of the Special Rapporteur makes note of the bill brought by Alta Verapaz Congressman Marvin Orellana López to regulate community radio stations’ access to radio frequencies. The bill seeks to grant bandwidth space to community broadcasters, especially in indigenous communities, within the bounds of the law. The bill is currently under debate in the Congress of the Republic.²⁵⁵ Regarding this bill, the Office of the Special Rapporteur wishes once again to call the Guatemalan State’s attention to the need for implementing effective policies to ensure that radio and television broadcasters have access to concessions. Likewise, the Office of the Special Rapporteur reminds the State of its duty to take all measures necessary – including affirmative action – to insure that minority groups have access to media outlets.²⁵⁶

238. The Office of the Special Rapporteur also wishes to remind the State that it must promote different groups’ access to radio and television frequencies and licenses under conditions of equality and non-discrimination, no matter their technology. In effect, the State is obligated to recognize and facilitate equal access to commercial, social, or public radio or television proposals, both in the radio spectrum and in the new digital dividend. It is crucial that all disproportionate or discriminatory restrictions that block radio or television broadcasters be removed so that the broadcasters can access their frequencies and complete the mission they have taken up. The State regulatory frameworks should establish open, public, and transparent processes for assigning licenses or frequencies. These processes should have rules that are clear and pre-established, as

²⁵³ Congress of the Republic of Guatemala. September 23, 2008. *Decreto No. 57-2008: Ley de Acceso a la Información Pública*. Available at: <http://www.congreso.gob.gt/archivos/decretos/2008/gtdcx57-0008.pdf>; Periodismo por el Acceso a la Información Pública. April 22, 2009. *Guatemala: entró en vigencia una norma de vanguardia en materia de información*. Available at: <http://www.periodismo-aip.org/noticia-detalle.php?id=53>.

²⁵⁴ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

²⁵⁵ Congreso de la República de Guatemala. December 3, 2009. *Boletín Informativo: Martín Orellana presenta propuesta de Ley para legalizar radios comunitarias*. Available at: http://www.congreso.gob.gt/gt/ver_noticia.asp?id=8449; Cerigua. August 24, 2009. *Impulsan iniciativa de ley sobre medios de comunicación comunitaria*. Available at: http://cerigua.info/portal/index.php?option=com_content&task=view&id=13262&Itemid=31; World Association of Community Radio Stations. August 3, 2009. *Presentan propuesta de ley de radios comunitarias*. Available at: <http://legislaciones.item.org.uy/index?q=node/1090>.

²⁵⁶ IACHR, Justicia e Inclusión Social: los Desafíos de la Democracia en Guatemala. OEA/Ser.L/V/II.118. Doc. 5 rev. 1. 29 December 2003. Chapter VII. para. 414. Available at: <http://cidh.org/countryrep/Guatemala2003sp/capitulo7.htm>

well as requirements that are necessary, just, and fair. It is also essential that the entire process of allocation and regulation be in the hands of an independent, technical body of the government. The body should be autonomous and free from political pressures, and it should be subject to the guarantees of due process, as well as judicial review.²⁵⁷ In this context, and as the Office of the Special Rapporteur has repeatedly indicated, broadcasting regulations should expressly recognize community media and at a minimum contain the following elements: (a) simple procedures for obtaining permits; (b) the absence of onerous technological requirements that in practice block even the filing of a request for space with the State; and (c) an allowance for using advertising to fund the station.²⁵⁸ Finally, to assure free, vigorous, and diverse television and radio, private media should have guarantees against State arbitrariness, social media should enjoy conditions that prevent them from being controlled by the State or economic interests, and public media should be independent from the Executive. Principle 12 of the Declaration of Principles holds that, “The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.” The Office of the Special Rapporteur urges the Guatemalan State to adjust its legislative framework on broadcasting to meet international freedom of expression standards.

239. The Office of the Special Rapporteur views positively the State’s official apology and accepting of responsibility in the case of Irma Flaquer Azurdia, a journalist who disappeared in 1980. However, the Office of the Special Rapporteur urges the state to carry out an exhaustive investigation to identify, try, and punish those responsible for this crime who, 30 years on, still live in impunity.²⁵⁹

240. In spite of this reported progress, the Office of the Special Rapporteur received information in 2009 of two murders allegedly linked to the exercise of journalism activities.

241. The Office of the Special Rapporteur condemns the murder of Rolando Santiz, a journalist with television channel *Telecentro Trece*, and the attempted murder of Antonio de León, a cameraman with the same channel who was seriously wounded in the attack. On April 1, 2009, Santiz and De León were driving in a company car in Guatemala City when they were attacked by two unidentified individuals who fired on them from a motorcycle. Santiz died instantly, while the cameraman was seriously wounded. According to the information received by the Office of the Special Rapporteur, both men were returning from reporting on a murder. Santiz worked the crime

²⁵⁷ As indicated by the Office of the Special Rapporteur in its Annual Report 2008, “Rules such as the above allow for the protection of commercial channels and radio stations from abusive influences and provide them with the security that they will not be subject to arbitrary decisions, whatever their orientation may be. These types of rules also encourage the existence of state or public television channels and radio stations that are independent of governments and vitally promote the circulation of ideas and information not usually included in commercial programming (because of low profitability), and not generally given air time on social or community channels or radio stations (because of high production costs or because of the topics covered). Finally, regulations such as the ones proposed would enable the recognition and promotion of social communications media such as community channels and radio stations, which play an essential role in the democracies of our region.” IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter IV. paras. 106-107. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

²⁵⁸ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. paras. 227-228. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>; IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2007. OEA/Ser.L/V/II.131. Doc. 34 rev. 1. 8 March 2008. Chapter III. para. 5-6. Available at: [http://www.cidh.oas.org/annualrep/2007eng/Annual Report 2007.VOL.II%20ENG.pdf](http://www.cidh.oas.org/annualrep/2007eng/Annual%20Report%202007.VOL.II%20ENG.pdf)

²⁵⁹ Inter-American Press Association. January 21, 2009. *SIP reclama esclarecimiento de la desaparición de Irma Flaquer*. Available at: http://www.impunidad.com/index.php?shownews=259&idioma=sp; Cerigua. January 15, 2009. Dignifican memoria de periodista desaparecida Irma Flaquer Azurdia. Available at: http://cerigua.info/portal/index.php?option=com_content&task=view&id=6655&Itemid=31.

beat, which included subjects related to organized crime. Sources consulted by the Office of the Special Rapporteur indicated that the journalist had received threats related to his work.²⁶⁰ On October 28, 2009, the State sent communication to the Office of the Special Rapporteur describing actions taken by the Guatemalan authorities to investigate the crime. The State indicated that the case is currently being investigated as a murder by the Public Prosecutor's Crimes against Journalists and Union Members Unit of the Office of the Attorney General for Human Rights. The State also indicated that several different actions have been taken in the investigation, including searching homes, reviewing the call log of a phone number, requesting the video tape from the camera the journalist had when he was murdered, and the gathering of statements, including a statement from Rolando Santiz's wife. Finally, the State added that "there are several leads on the individuals responsible for the murder of Mr. Santiz, but for the moment there are no suspects."²⁶¹

242. The Office of the Special Rapporteur also condemns the June 6, 2009, murder of Marco Antonio Estrada, a correspondent with television channel *Telediario* in Chiquimula. According to the information received by the Office of the Special Rapporteur, Estrada was getting off his motorcycle when an unknown assailant fired on him several times. Estrada died instantly. Estrada was a general assignment correspondent with *Telediario*. His reporting included matters involving organized crime and drug trafficking.²⁶²

243. Regarding the aforementioned cases, the Office of the Special Rapporteur calls on the Guatemalan authorities to make every effort necessary to investigate these crimes thoroughly, identify the motives, and capture and adequately punish those responsible. The Office of the Special Rapporteur also urges the State to adopt urgent measures as soon as possible to protect journalists and social communicators who are at risk.

244. In 2009, the Office of the Special Rapporteur also received information on several threats and acts of violence against journalists. In May of 2009, José Freddy López, a correspondent with the Center for Informative Reports on Guatemala (*Centro de Reportes Informativos sobre Guatemala, Cerigua*) revealed that he had received a death threat from an individual. The incident happened while López was interviewing several *campesinos* in the Los Amates area in the Izabal department.²⁶³

²⁶⁰ Office of the Special Rapporteur - IACHR. April 3, 2009. Press Release No. R15/09. Available at: <http://www.cidh.oas.org/Relatoria/showarticle.asp?artID=739&IID=1>; Committee for the Protection of Journalists. April 2, 2009. *TV reporter gunned down, cameraman injured*. Available at: <http://cpj.org/2009/04/tv-reporter-gunned-down-cameraman-injured-in-guate.php>; Inter-American Press Association. April 2, 2009. *Condena la SIP asesinatos de periodistas en dos países en Centroamérica*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4163&idioma=sp; Reporters Without Borders. April 7, 2009. *Two young men held for TV journalist's murder*. Available at: <http://www.rsf.org/Two-young-men-held-for-TV.html>; *Cerigua*. April 2, 2009. *Muerte de periodista Rolando Santiz motiva múltiples muestras de solidaridad*. Available at: http://cerigua.info/portal/index.php?option=com_content&task=view&id=8779&Itemid=31.

²⁶¹ Communication dated October 28, 2009 from the State to the Office of the Special Rapporteur for Freedom of Expression (M12-OEA-F.9.2.2.1 No. 518-09).

²⁶² Office of the Special Rapporteur - IACHR. June 11, 2009. Press Release No. R36/09. Available at: <http://www.cidh.oas.org/Relatoria/showarticle.asp?artID=749&IID=1>; Reporters Without Borders. June 6, 2009. *Asesinado el segundo periodista en lo que va del año*. Available at: <http://www.rsf.org/Asesinado-el-segundo-periodista-en.html>; Committee for the Protection of Journalists. June 8, 2009. *TV reporter shot dead in eastern Guatemala*. Available at: <http://cpj.org/2009/06/tv-reporter-shot-dead-in-eastern-guatemala.php>; Inter-American Press Association. June 8, 2009. *IAPA condemns new murder in Guatemala, calls for prompt investigation*. Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4199&idioma=us; *Cerigua*. June 11, 2009. *Relatoría para la Libertad de Expresión de la OEA deplora asesinato de periodista en Guatemala*. Available at: http://cerigua.info/portal/index.php?option=com_content&task=view&id=10786&Itemid=31.

²⁶³ *Cerigua*. May 9, 2009. *Amenazan a corresponsal de Cerigua en Izabal*. Available at: http://cerigua.info/portal/index.php?option=com_content&task=view&id=9666&Itemid=31; Noticias de Guatemala. May

245. The Office of the Special Rapporteur also received information indicating that roughly 11 journalists in the Flores municipality, department of Petén, had received death threats in the form of a pamphlet. The document, which was unsigned, was slipped under the office door of radio host Abner Méndez Díaz on September 10, 2009. The threat was also addressed to journalists Rigoberto Escobar, Juan Ramón Arellano López, Byron Reynoso, Yuri Colmenares, Ramón Aguilar Mata, Efraín Cárdenas, Rafael Contreras Carrascosa, Enrique Grijalva, Francisco Montalván, and Herber Méndez Díaz. According to the information received by the Office of the Special Rapporteur, the note said that the journalists were being watched and that one of them might be murdered.²⁶⁴

246. On February 27, 2009, Mynor Mérida, Dany Castillo, and Ronald López, reporters with *Al Día*, *El Qetzalteco*, and *Nuestro Diario*, respectively, were threatened by the mayor of Malacatancito while they were taking photographs of an alleged motorcycle thief. According to available information, the mayor's words allegedly incited the townspeople to beat the reporters.²⁶⁵

247. The Office of the Special Rapporteur received information on the case of journalist Félix Aldemar Maaz Bol. On August 18, 2009, Maaz Bol was the victim of an attempted murder by unknown assailants who had placed an explosive device in his home in the Cobán municipality in Alta Verapaz. The device did not go off and there was no major damage. According to Maaz Bol, he had recently revealed corruption in the local police force. A month later, he received precautionary measures from the IACHR. Félix Aldemar is the brother of Eduardo Heriberto Maaz Bol, also a journalist, who was murdered in 2006.²⁶⁶

248. Regarding these facts, the Office of the Special Rapporteur wishes to remind the State of the need to implement protective measures, and recalls that Principle 9 of the Declaration of Principles states that, "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

249. On February 22, 2009, two journalists were thrown out of a public event by municipal employees. The incident took place in San Pedro Ayampuc, department of Guatemala. According to the information received by the Office of the Special Rapporteur, Omar Sandoval and his photographer, both with San Pedro newspaper *El Sol*, were covering the inauguration of the municipal stadium when a local official told them that they could not take pictures because their

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11, 2009. *Izabal: Periodista es amenazado*. Available at: <http://noticias.com.gt/departamentales/20090511-izabal-periodista-amenazado.html>.

²⁶⁴ Cerigua. September 12, 2009. *Salen a luz amenazas de muerte contra 11 comunicadores en Petén*. Available at: http://cerigua.info/portal/index.php?option=com_content&task=view&id=13907&Itemid=31; Cerigua. August 27, 2009. *Amenazan de muerte a dos periodistas en Petén*. Available at: http://www.ifex.org/guatemala/2009/08/27/mendez_death_threats/es/.

²⁶⁵ Cerigua. March 2, 2009. *Alcalde incita a población a golpear a periodistas; periodista y camarógrafo sacados a la fuerza durante inauguración de estadio municipal*. Available at: http://www.ifex.org/guatemala/2009/03/02/mayor_incites_citizens_to_assault/es/; Inter-American Press Association. *Guatemala Report. Mid-Year Meeting, Asunción, Paraguay*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&infolid=350&idioma=us.

²⁶⁶ Cerigua. August 20, 2009. *Amedrentan a periodista Félix Maaz Bol en Alta Verapaz*. Available at: http://cerigua.info/portal/index.php?option=com_content&task=view&id=13155&Itemid=31; IACHR. PM 262/09. *Precautionary Measures Granted by the Commission During 2009. Félix Waldemar Maaz Bol (Guatemala)*. Available at: <http://www.cidh.org/medidas/2009.eng.htm>.

newspaper had published criticism of the mayor.²⁶⁷ Principle 5 of the Declaration of Principles states that, "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

250. The Office of the Special Rapporteur expresses concern at the August 6, 2009, ruling sentencing editor Raúl Figueroa-Sarti to one year in prison and to a fine of \$6,000 for supposed copyright violation. Currently, Figueroa is under house arrest in Guatemala City, far from his family, who live in the United States. In March of 2007, Figueroa and his wife were the subjects of threats, forcing them to leave the country and settle in the United States. The intimidation was supposedly linked to articles he published on human rights. Later, in July of 2009, Figueroa's wife revealed that he had been the victim of the illegal interception of his phone calls and e-mails.²⁶⁸

251. The Office of the Special Rapporteur likewise expresses concern on the subject of the lawsuit for libel and slander filed by the Vice President of the Republic of Guatemala, Rafael Espada, against journalist Marta Yolanda Díaz-Durán. Espada filed the lawsuit after Díaz-Durán published an opinion article mentioning several important public officials.²⁶⁹ Principle 10 of the Declaration of Principles states clearly establishes that, "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news." Likewise, Principle 11 states that, "Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as 'desacato laws,' restrict freedom of expression and the right to information."

16. Guyana

252. The Office of the Special Rapporteur received information indicating that toward the end of February of 2009, the directors of *CNS Canal 6* received a call from government officials requesting that they not broadcast a program on the financial crisis of a domestic insurance company, in order to avoid causing unease in the population. According to the information received by the Office of the Special Rapporteur, *CNS Canal 6* revised the content of the program before broadcasting it. In 2008, the broadcasting license of *CNS Canal 6* was suspended for four months

²⁶⁷ P-ES. March 5, 2009. *La Asociación de Periodistas de Guatemala pide una investigación sobre abusos de autoridades locales*. Available at: http://www.p-es.org/index.php?option=com_content&task=view&id=2661&Itemid=62; Cerigua. March 2, 2009. *Alcalde incita a población a golpear a periodistas; periodista y camarógrafo sacados a la fuerza durante inauguración de estadio municipal*. Available at: http://www.ifex.org/guatemala/2009/03/02/mayor_incites_citizens_to_assault/es/.

²⁶⁸ Writers in Prison Committee - PEN International. August 14, 2009. *Editor condenado a un año de prisión*. Available at: http://www.ifex.org/guatemala/2009/08/14/figueroa-sarti_prison_sentence/es/; *Noticias de Guatemala*. August 17, 2009. *Condenan sentencia contra editor Raúl Figueroa Sarti*. Available at: <http://noticias.com.gt/nacionales/20090817-condenan-sentencia-contra-editor-raul-figueroa-sarti.html>.

²⁶⁹ Cerigua. September 3, 2009. *Presidente respalda acción penal de Espada contra columnista*. Available at: http://cerigua.info/portal/index.php?option=com_content&task=view&id=13576&Itemid=31.

after the channel broadcasted the commentary of a viewer who threatened to assassinate the president of Guyana.²⁷⁰

253. The Office of the Special Rapporteur was also informed that on July 13, 2008, high Guyanese authorities ordered Gordon Moseley, a television reporter with *Capitol News*, to be excluded from all press conferences taking place in the presidential offices or the State House. According to the information received by the Office of the Special Rapporteur, the decision was made after Moseley refused to apologize to the President for publicizing a letter considered by government authorities to be “disdainful and disrespectful.” In the letter, Moseley responded to criticisms that President had made of a report on his participation in a panel on citizen safety that took place at a conference in Antigua. As of the date of this report, the ban on Moseley attending press conferences has not been lifted.²⁷¹ The Office of the Special Rapporteur reminds the State that Principle 5 of the Declaration of Principles states that, “Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

17. Haiti²⁷²

254. The IACHR takes note of the information received in April 2009 from the Ministry of Justice, according to which judge Fritzner Fils-Aimé, who until then had been in charge of the investigation of the murder of radio journalist Jean Dominique, had been suspended for “serious acts of corruption.” Two other judicial authorities involved in the case were also suspended for similar reasons. Fils-Aimé is the sixth judge to have led the investigation of Dominique, assassinated in April 2000.²⁷³

255. The IACHR reminds that the State that principle 9 of the Declaration of Principles establishes that, “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

256. The IACHR also received information indicating that in July 2009, the residence of Sainlus Agustin, journalist with *Voice of the Americas* and *Radio Kiskeya*, had been attacked with

²⁷⁰ Kaiteur News. March 3, 2009. *Govt. Official forces CNS 6 to pull programme on CLICO debacle*. Available at: <http://www.kaiteurnews.com/2009/03/03/govt-official-forces-cns-6-to-pull-programme-on-clico-debacle/>; Inter-American Press Association. *Guyana Report. Mid-Year Meeting, Asunción, Paraguay*. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=22&inford=340&idioma=us/.

²⁷¹ Reporters Without Borders. July 16, 2008. *Leading TV journalist banned from president’s office*. Available at: <http://www.rsf.org/Leading-TV-journalist-banned-from.html>; Caribbean Net News. July 18, 2008. *International press associations call for an end to ban on Guyana journalist*. Available at: <http://www.caribbeannetnews.com/news-9205--13-13--.html>; Antigua Sun. July 16, 2009. *Press Association calls for lifting of ban on journalist*. Available at: <http://www.antiguasunonline.com/news/regional/248945-press-association-calls-for-lifting-of-ban-on-journalist-.html>.

²⁷² This section captures the same facts included in the report about Haiti, contained in Chapter IV, Volume I of the 2009 Annual Report of the IACHR.

²⁷³ Reporters Without Borders. April 2, 2009. *Haiti: Judge in charge of Jean Dominique Murder case suspended for corruption*. Available at: http://www.ifex.org/haiti/2009/04/03/judge_in_jean_dominique_murder/; Radio Kiskeya. April 10, 2009. *Le juge d’instruction en disponibilité Fritzner Fils-Aimé dénonce un attentat contre sa personne*. Available at: <http://radiokiskeya.com/spip.php?article5819>.

firearms. The information indicates that Agustin held Wilot Joseph responsible. Mr. Joseph, a member of Parliament and candidate for Senate, had allegedly expressed his displeasure regarding the journalist's reporting.²⁷⁴

257. The IACHR was further informed that Kerly Dubréus, director of *Radio Kon Lambi*, en Port-de-Paix, was detained from September 18th to 28th on the orders of the prosecutor's office, and that she was freed shortly after the organization SOS Journalistes pressed for her freedom.²⁷⁵

258. The IACHR has also received information regarding the closure of the radio station *Ideale FM*, which occurred in April of 2009 in Port-de-Paix. The closure was ordered by the prosecutor Jean Frédéric Bénêche, who accused the station of "obstruction of justice." According to the information received, when the prosecutor asked for the sources of a story about an alleged narcotrafficker, the employees of the station refused to reveal them, resulting in the prosecutor ordering the station shut down. A few days later, the Ministry of Justice ordered the radio station reopened as the authorities considered that the prosecutor should not have proceeded in that way.²⁷⁶ Principle 8 of the Declaration of Principles states that, "[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential." Principle 13 of the Declaration of Principles further states that the "exercise of power [...] by the state" for the "concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression."

18. Honduras²⁷⁷

259. Article 13 of the American Convention on Human Rights provides that "[e]veryone 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." It adds that exercise of this right "shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a. respect for the

²⁷⁴ Inter-American Press Association. *65° Asamblea General, 6 al 10 de noviembre de 2009, Buenos Aires. Informes por país: Haití.* Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=24&infoid=378&idioma=sp; Haitian Times. Octubre de 2009. *Press Freedom Is Improving, Group Says.* Available at: http://www.haitiantimes.com/pages/full_story/push?article-Press+Freedom+Is+Improving+Group+Says-%20&id=4159145&instance=news_special_coverage_right_column.

²⁷⁵ Haitian Times. Octubre de 2009. *Press Freedom Is Improving, Group Says.* Available at: http://www.haitiantimes.com/pages/full_story/push?article-Press+Freedom+Is+Improving+Group+Says-%20&id=4159145&instance=news_special_coverage_right_column; Agencia Pulsar. September 30, 2009. *AMARC-HAITÍ denuncia detención ilegal de director de radio comunitaria.* Available at: http://www.radiobemba.org/index.php/archivos/doc/amarc_haiti_denuncia_detencion_ilegal_de_director_de_radio_comunitaria/.

²⁷⁶ Reporters Without Borders. April 14, 2009. *Government orders reopening of provincial radio station.* Available at: http://www.ifex.org/haiti/2009/04/16/radio_station_reopened/; Reporters Without Borders. April 9, 2009. *Radio station closed for refusing reveal sources.* Available at: http://www.ifex.org/haiti/2009/04/09/id_ale_fm_radio_station_closed/; Radio Kisekeya. April 13, 2009. *Radio Idéale FM recommence à émettre.* Available at: <http://radiokisekeya.com/spip.php?article5824>.

²⁷⁷ This section corresponds to the part of freedom of expression of the special report of the IACHR entitled "Honduras: Human Rights and the Coup D'état", also included in Chapter IV of the Annual Report 2009 of the IACHR. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.

rights or reputations of others; or b. the protection of national security, public order, or public health or morals." It also states that "[t]he right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions." It adds that "[a]ny propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law."

260. Principle 5 of the Inter-American Declaration of Principles on Freedom of Expression states that prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Under this principle, "restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression." Principle 13 of the Inter-American Declaration states that the media have the right to practice their craft independently. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression."

261. The Constitution of Honduras recognizes the right to freedom of expression in Article 72, which provides that "The expression of thought and opinion by any means of dissemination shall be free and uncensored. Those who abuse this right shall answer to the law, as shall those who, by direct or indirect means, restrict or impede communication and the free flow of ideas and opinions." Article 73 of the Constitution provides that printing presses, radio and television stations and any other means of dissemination of thought and opinion and all their equipment "shall not be taken out of commission, confiscated, closed, or have their business interrupted for a crime or failure to report, notwithstanding any liabilities that may thereby have been incurred under the law. No business engaged in reporting news and opinions may be subsidized by a foreign government or foreign political party. The law shall prescribe the penalties for violation of this clause. The executive offices of print media, radio and television, and the intellectual, political and administrative management of them shall be performed by persons who are Hondurans by birth." Article 74 of the Constitution provides that "the right to express thoughts and opinions shall not be restricted through indirect means such as abuse of official or private control of the material used to print newspapers and the frequencies, tools or apparatuses used in broadcasting." Article 75 adds that "The law regulating expression of thought may provide for prior censorship for the purpose of protecting the ethical and cultural values of society, and the rights of persons, especially children, adolescents and youth. The law shall regulate commercial advertising of alcoholic beverages and tobacco consumption."

262. For its part, the *jurisprudence constante* of the Inter-American Court has been to underscore the importance of freedom of expression:

"Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a condition *sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed.

Consequently, it can be said that a society that is not well informed is not a society that is truly free."²⁷⁸

263. The Commission has received information about situations that have occurred since the coup d'état that constitute serious violations of the right to freedom of expression. During the Commission's on-site visit, it confirmed that on June 28 a number of media outlets –especially television and radio stations- were forced to suspend broadcasts when the military took over their facilities, when technical problems like blackouts occurred, and when relay stations and transmitters were seized, which meant that they were unable to report what was happening. The Commission also learned that various cable television channels were taken off the air. Broadcasting of television programs whose editorial leanings were critical of the coup d'état was suspended. Other methods of controlling information included calls made by various high-ranking officials, especially members of the forces of law and order, suggesting that it would be inadvisable to broadcast or print news or opinions against the *de facto* government. While broadcasting, reporters were assaulted and detained and their equipment destroyed. Private citizens also launched violent attacks and made death threats against the media.

264. The IACHR has been able to confirm that after the coup d'état, the media became polarized. Because of problems in their institutional structure, the government-owned media are not independent of the Executive Branch and as a result are openly biased in favor of the *de facto* government. Reporters, journalists and the media that are perceived as being supportive of the *de facto* government have become targets of sharp attacks, presumably from those who oppose the coup d'état. Other media outlets that are perceived as encouraging the resistance movement have had their ability to report affected by agents of the State and by private citizens who are restricting their reporting. In this highly polarized atmosphere, few media outlets have made public commitments to civilian organizations to report the news from all sides, without letting editorial positions influence their reporting. However, reporting the news freely and without interference is no easy job, as the *de facto* government has powerful tools it can use to exert influence and intimidate. These may be employed openly or under cover, under the pretext of enforcement of pre-existing laws. On the other hand, threats and violent attacks by private citizens have also made the practice of journalism very difficult.

a. Broadcasting shutdowns [and] interruptions

265. The Commission was told that a number of channels were taken off the air on the morning of June 28. Military troops took over the broadcasting antennas and cut electric power. Cable channels were ordered to block the signals from international channels and various radio stations were militarized. These were just some of the abuses committed against freedom of the press.

i. Television channels

266. According to the information the Commission received, on June 28 military personnel occupied the broadcast antenna facilities of various radio and television channels in the Cerro de Santa Gallo district of Tegucigalpa and for a number of hours prevented the transmitters from going online. The transmission towers for Channel 5, Channel 3, Channel 57, Channel [9], Channel 33, Channel 36, Channel 30, Channel 54 and Channel 11 are all in that area. This measure,

²⁷⁸ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 70.

combined with the repeated power outages, made it difficult for these channels to transmit a signal.²⁷⁹

267. For its part, Channel 8, which belongs to the State, stopped broadcasting its signal on June 28, according to what its former editor, Héctor Orlando Amador Zúñiga²⁸⁰ told the Commission. Some days thereafter, it started broadcasting again, but the entire staff and all the programming –including the advertising–had been substantially overhauled, presumably to reflect the *de facto* government's views.²⁸¹

268. Channel 36, whose editorial line was supportive of President Zelaya's administration, was also occupied by members of the armed forces on June 28 and went off the air. According to reports, the soldiers also took over the channel's antenna and broadcasting equipment, located on Cerro de Canta Gallo in Tegucigalpa. On July 4, the channel was back on the air, after the military authorities returned it to its owner, Esdras Amado López²⁸². A communication sent by the *de facto* government in response to a July 3 request for information from the Commission, and received on

²⁷⁹ Office of the Special Rapporteur-IACHR, Press Release 44-09: *Office of the Special Rapporteur for Freedom of Expression Condemns Limitations to Freedom of Expression in Honduras*, June 29 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=753&IID=1>. Committee to Protect Journalists, "CPJ Alarmed by Suppression of Media in Honduras," (New York) June 30, 2009. Available at: <http://www.cpj.org/blog/2009/06/cpj-alarmed-by-suppression-of-media-in-honduras.php>. Reporters Without Borders, "News blackout after army ousts president," June 29, 2009, Available at: <http://www.rsf.org/News-blackout-after-army-ousts.html>. C-Libre, "Reinician transmisiones Canal 36 y Radio la Catracha" [Channel 36 and Radio la Catracha resume broadcasting] (Tegucigalpa), July 5, 2009. Available at: http://www.conexihon.com/ediciones/edicion117/NOTAS/n_libertdad-expresion3.html. Committee of Relatives of Detainees- Disappeared in Honduras, "Informe Preliminar Violaciones a Derechos Humanos en el marco del golpe de Estado en Honduras" [Preliminary Report on Human Rights Violations in the Context of the Coup d'état in Honduras], July 15, 2009. Available at: <http://www.cofadeh.org/>. Commission meeting with COFADEH, Washington, D.C., United States, July 21, 2009.

²⁸⁰ In his testimony to the IACHR during the on-site visit to Honduras on August 21, 2009 (Tegucigalpa), the former managing editor of Channel 8, Héctor Orlando A. Zúñiga, said the following: "On June 28 I was planning for the channel to begin broadcasting at 6:30 AM. However, when I reached the presidential residence, where channel 8 is located, there were soldiers everywhere; the coup d'état had already happened. They took my colleagues –the technicians and the producer Cesar Romero- out at gunpoint, beat them up and took away their cell phones. I couldn't get into the station. We were standing outside, with guns pointed at us. I finally managed to get away when they picked me up on a motorcycle".

²⁸¹ "Corte le quita al gobierno la frecuencia del canal 8" [Court takes Channel 8 away from government], La Prensa (San Pedro Sula), November 25, 2008. Available at: <http://www.laprensahn.com/País/Ediciones/2008/11/26/Noticias/Corte-le-quita-al-Gobierno-la-frecuencia-de-Canal-8>. Radio La Primerísima (Managua), "Canal de televisión del Gobierno hondureño comienza a emitir señal" [Honduran government television channel begins to broadcast signal], August 3, 2008. Available at: <http://www.radiolaprimerisima.com/noticias/resumen/34874>. AMARC, "Canal de televisión del gobierno comenzó a emitir" [Government television channel started broadcasting], August 2008. Available at: <http://legislaciones.item.org.uy/index?q=node/732>. Inter-American Press Association. *Honduras Report. 64th General Assembly*, Madrid, Spain. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&infoid=321&idioma=us. "Gobierno intenta recuperar Canal 8 ante tribunales" [Government returns to the courts to get back Channel 8], La Prensa (San Pedro Sula), November 26, 2008. Available at: <http://www.laprensahn.com/Pa%C3%ADs/Ediciones/2008/11/27/Noticias/Gobierno-intenta-recuperar-Canal-8-ante-tribunales>.

²⁸² Testimony of the managing editor of Channel 36, Esdras Amado López, as told to the IACHR during the on-site visit in Honduras (Tegucigalpa) on August 17, 2009. Office of the Special Rapporteur-IACHR, Press Release 44-09: *Office of the Special Rapporteur for Freedom of Expression Condemns Limitations to Freedom of Expression in Honduras*, June 29, 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=753&IID=1>. Committee to Protect Journalists, "CPJ Alarmed by Suppression of Media in Honduras," (New York) June 30, 2009. Available at: <http://www.cpj.org/blog/2009/06/cpj-alarmed-by-suppression-of-media-in-honduras.php>. Reporters Without Borders, "News blackout after army ousts president," June 29, 2009, Available at: <http://www.rsf.org/News-blackout-after-army-ousts.html>. C-Libre, "Reinician transmisiones Canal 36 y Radio la Catracha" [Channel 36 and Radio la Catracha resume broadcasting]. (Tegucigalpa), July 5, 2009. Available at: http://www.conexihon.com/ediciones/edicion117/NOTAS/n_libertdad-expresion3.html.

July 10, stated the following about this case: “[T]he Office of the Special Prosecutor for Human Rights took various measures to get that channel back on the air, which finally happened on Saturday, July 4. That day, Channel 36 resumed normal broadcasting.”²⁸³

269. According to the information compiled by the Commission, Maya Channel 66 was also ordered to stop broadcasting, although its signal was restored on June 29. Eduardo Maldonado, who hosts the program “Hable como Habla” on Channel 66, told the Commission that on June 28 the Head of the Joint Chiefs, General Romeo Vásquez Velásquez, had called him by phone and told him that he should stay off the air.²⁸⁴

270. The signals of privately-owned channels 6 and 11 were interrupted on June 28, according to complaints received by the Commission during its on-site visit. The two channels resumed broadcasting and are back on the air, but there are complaints that they are up against restrictions in terms of what they can say and the views they can express regarding the events, especially when they report news related to President Manuel Zelaya. Nancy John, news coordinator at Channel 11, told the Commission that on the day of the coup “we began to receive phone calls from CONATEL telling us to take CNN in Spanish and TeleSUR off the air. We did establish links with them to be able to report the news that they had, because they had more access; however, we were told that we couldn’t.”²⁸⁵

271. In the department of Colón, at least two channels were forced to stop broadcasting for a number of days. This happened in the case of Channel La Cumbre and Televisora de Aguán, Channel 5. Nahúm Palacios, managing editor of Channel 5, told the Commission that on June 28, “a number of members of the Armed Forces came into the station” and “they forced the channel to stop broadcasting.”²⁸⁶

272. Early on the morning of September 28, the forces of law and order searched and seized broadcasting equipment at Channel 36 and Radio Globo. This was shortly after the *de facto* government approved executive decree PCM-M-016-2009.²⁸⁷

273. On October 20, the *de facto* government’s Foreign Office sent the Commission a communication in response to a request that the Commission had sent on October 6 seeking information. The *de facto* government’s reply states that “with regard to the closing of Channel 36 and Radio Globo, the Commission is advised that these media outlets were closed pursuant to the instructions given in resolutions Nos. OD-019/09 and OD-018/09, which were issued by CONATEL pursuant to Executive Decree PCM-M-016-2009; those instructions designate the First

²⁸³ *De facto* Secretariat of Foreign Affairs, Memorandum No. 526-DGAE-90, dated July 10, 2009.

²⁸⁴ Testimony of Eduardo Maldonado, who conducts the Maya TV program called “Hable como Habla,” as told to the Commission during the on-site visit to Honduras (Tegucigalpa), August 17, 2009.

²⁸⁵ Testimony of Nancy John, Editorial Head of Channel 11, as told to the Commission during the on-site visit to Honduras (Tegucigalpa), August 17, 2009. Inter-American Press Association, “Respect press freedom, IAPA again urges Honduras” (Tegucigalpa) July 2, 2009 Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4210&idioma=us. Reporters Without Borders, “News blackout after army ousts president,” June 29, 2009, Available at: <http://www.rsf.org/News-blackout-after-army-ousts.html>.

²⁸⁶ Testimony that Naúm Palacio, managing editor of Channel 5, gave to the Commission, by telephone, during the on-site visit to Honduras (Tegucigalpa) August 21, 2009.

²⁸⁷ Office of the Special Rapporteur-IACHR, Press Release 71-09: ‘The Office of the Special Rapporteur for Freedom of Expression Condemns the Suspension of Guarantees in Honduras and the Violations of the Right to Freedom of Expression,’ September 29, 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=764&IID=1>. “Micheletti acalla las voces contra el golpe en Honduras” [Micheletti silences the voices protesting coup in Honduras], *El País de Madrid*, September 29, 2009. Available at:

http://www.elpais.com/articulo/internacional/Micheletti/acalla/voces/golpe/Honduras/elpepiint/20090929elpepiint_10/Tes.

Communications Battalion, based in Las Mesas, Department of Francisco Morazán, as the repository of all transmitting equipment, relays and antennas confiscated in the operation". In its response, the *de facto* government added the following: "Inasmuch as the above-mentioned Executive Decree was revoked by Executive Decree PCM-M-020-2009, both Channel 36 and Radio Globo are currently operating normally. The Office of the Special Prosecutor for Human Rights has opened investigations into these cases."²⁸⁸

ii. Signal blocking

274. Apart from these situations, during its on-site visit the Commission confirmed that the National Telecommunications Commission (CONATEL) had instructed cable television companies to either directly or indirectly take the international news broadcasts by CNN in Spanish, TeleSUR, Cubavisión Internacional, Guatevisión, Ticavisión, and others off the air.²⁸⁹

275. However, during the Commission's meeting with the board of CONATEL on August 18 in Tegucigalpa the directors denied having given any order to have the signals of the international news channels blocked; they even said that they watched –from their own homes- the broadcasts by CNN in Spanish and TeleSUR.²⁹⁰

276. The chairman of CONATEL, Miguel A. Rodas, said that he had no "knowledge" of what happened on June 28, because he did not become chairman of CONATEL until five days after President Zelaya was deposed. "We don't know anything. No order has been given since July 3 to take the cable channels off the air," Rodas asserted.²⁹¹

277. In his response to the Commission's preliminary report on its on-site visit,²⁹² the National Commissioner for Human Rights (CONADEH), Ramón Custodio López, said that it was "true" that CONATEL instructed cable television providers to directly or indirectly take the international channels or domestic programs carried by local channels off the air.²⁹³

278. In the meantime, Nancy John, a journalist with Channel 11, told the Commission that on June 28, "we started receiving phone calls from CONATEL to take CNN and TeleSUR off the air." She also said that in these phone calls, they were also told, "[P]lease cut off CNN and

²⁸⁸ *De facto* Secretariat of Foreign Affairs of Honduras, Memorandum 731-DGAE-09 dated October 20, 2009.

²⁸⁹ Office of the Special Rapporteur-IACHR, Press Release 44-09: *Office of the Special Rapporteur for Freedom of Expression Condemns Limitations to Freedom of Expression in Honduras*, June 29 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=753&IID=1>. Reporters Without Borders, "News blackout after army ousts president," June 29, 2009, Available at: <http://www.rsf.org/News-blackout-after-army-ousts.html>. Inter-American Press Association, "IAPA censures acts against journalists and media in Honduras" (Miami), June 29, 2009. Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4208&idioma=us. Inter-American Press Association, "Respect press freedom, IAPA again urges Honduras" (Tegucigalpa) July 2, 2009. Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4210&idioma=us. Article 19, "Honduras: Early Warning Signs of Impending Crisis", (London) July 28, 2009. Available at: <http://www.article19.org/pdfs/press/honduras-early-warning-signs-of-impending-crisis.pdf>. Committee to Protect Journalists, CPJ Alarmed by Suppression of Media in Honduras," (New York) June 30, 2009. Available at: <http://www.cpj.org/blog/2009/06/cpj-alarmed-by-suppression-of-media-in-honduras.php>.

²⁹⁰ Commission's meeting with the Board of CONATEL, during its on-site visit to Honduras (Tegucigalpa), August 18, 2009.

²⁹¹ Commission's meeting with the Board of CONATEL, during its on-site visit to Honduras (Tegucigalpa), August 18, 2009.

²⁹² IACHR, Press Release 60-09: *IACHR presents preliminary observations on its visit to Honduras*, August 21, 2009. Available at: <http://www.cidh.oas.org/Comunicados/English/2009/60-09eng.htm>.

²⁹³ CONADEH's response to the Commission's Press Release 60-09, Honduras (Tegucigalpa), September 1, 2009.

TeleSUR". She said that their argument was that "they wanted to avert more acts of violence, which was why they didn't want the images of the people in the streets to be seen."²⁹⁴

iii. Radio

279. Other media outlets were also taken over or surrounded by security forces on the date of the coup d'état. According to the information received, on the morning of June 28, Army troopers were said to have gone to the facilities of *Radio Progreso* in the city of El Progreso, department of Yoro, and reportedly ordered the station personnel to shut down all the transmitting equipment and go home. Given the display of force, the managing editors of the radio station and its staff allegedly decided to follow orders, which is why Radio Progreso was not broadcasting that day. According to this information, the following day, June 29, the employees returned to the station, by which time the Army troops had apparently left the premises. That day, the station broadcast normally. However, on June 30, precautionary measures were requested from the Inter-American Commission because of the fear that the safety of the news crew had been compromised. Shortly thereafter, the station started broadcasting its signal again.

280. In his testimony to the IACHR, Radio Progreso journalist José Peraza recounted the moment when the military entered and took over the station.²⁹⁵

281. In a communication from the *de facto* government received at the Commission on July 10, the following is written about Israel Moreno, journalist and managing editor of Radio Progreso: "He complained that the station's signal had been suspended; it was restored and an investigation is in progress." As with so many of the situations involving issues related to freedom of expression and about which the Commission requested information, this communication said the following: "The Office of the Special Prosecutor for Human Rights is currently investigating the circumstances surrounding those complaints."²⁹⁶

282. Reports were also received to the effect that the following members of the journalist staff and members of Radio Progreso and the Equipo de Reflexión, Investigación y Comunicación (ERIC) [Jesuit Ministries' Team of Reflection, Research and Communication] had allegedly received threats via their cell phones and monitors: Rita Santa María, María Elena Cubillo, Lolany Pérez,

²⁹⁴ Testimony of Nancy John, as told to the Commission during its on-site visit to Honduras (Tegucigalpa), August 17, 2009.

²⁹⁵ Testimony of Radio Progreso journalists Ismael Moreno, Karla Rivas, Gustavo Cardoza and José Peraza, as told to the Commission during its on-site visit to Honduras (San Pedro Sula), August 19, 2009. Peraza said the following: "Early Sunday morning, the 28th we checked the media that tend to be carrying news at that time of the day; all they were carrying were sports, cartoons, and they said 'nothing's happening in this country. Right away we thought, the military is going to take us over. We knew we had no bargaining position, so we decided to leave the radio station. The first contingent of troops was on the street corner where the station is located at 10:10 a.m. But the people who were in the park, just a block away, came to the station and the soldiers took off running. Then, Karla Rivas, who was in the booth at that time, began to say that the military were here. Within minutes, the military came in, position themselves at key points and ordered the equipment shut down". Office of the Special Rapporteur-IACHR, Press Release 44-09: *Office of the Special Rapporteur for Freedom of Expression Condemns Limitations to Freedom of Expression in Honduras*, June 29 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=753&IID=1>. Reporters Without Borders, "News blackout after army ousts president," June 29, 2009, Available at: <http://www.rsf.org/News-blackout-after-army-ousts.html>. Committee to Protect Journalists, "CPJ Alarmed by Suppression of Media in Honduras," (New York) June 30, 2009. Available at: <http://www.cpj.org/blog/2009/06/cpj-alarmed-by-suppression-of-media-in-honduras.php>. Inter-American Press Association, "IAPA censures acts against journalists and media in Honduras" (Miami), June 29, 2009. Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4208&idioma=us.

²⁹⁶ *De facto* Secretariat of Foreign Affairs, Memorandum No. 526-DGAE-90, received on July 10, 2009.

Rommel Gómez, José Peraza, Lesly Banegas, Gerardo Chevez, Karla Rivas, Félix Antonio Molina and Elvín Fernaly Hernández.²⁹⁷

283. The Managing Editor of Radio Globo, David Ellner Romero, reported that on June 28, the station was surrounded by Army troops for more than two hours, until they finally decided to take over the station. In his testimony to the IACHR Romero recounted that on June 28, he arrived at the station at around 5:30 a.m.: “[T]here were around 40 soldiers surrounding it.” Romero said he received a call from an Armed Forces spokesperson at 8:00 a.m. who “told me I was making a big mistake by saying that there had been a coup d’état, because this was a handover of power.” “But I hung up on them and at 10:00 a.m. they came looking for me at the building from which I was broadcasting. I recalled then that in the 1980s I had been ‘disappeared’ for 6 days.” Romero added, “[W]ith that thought in mind, I jumped from the third floor.”²⁹⁸ That afternoon, the soldiers allegedly entered the station and took the reporters off the air. They were broadcasting live at the time. According to the information received, reporters Alejandro Villatoro, Lidieth Díaz, Rony Martínez, Franklin Mejía, David Ellner Romero and Orlando Villatoro had allegedly been roughed up and threatened. The station was off the air for a number of hours, and then started broadcasting again, but with restrictions. Some of the information about the station’s situation appeared in a letter that Ellner Romero published on the Web page.²⁹⁹

284. In the communication from the *de facto* government, which the Commission received on July 10, the following is stated: “Concerning these complaints, the Office of the Special Prosecutor used his good offices to have the signal of Radio Globo restored and to get the Maya TV program ‘Hable como Habla’ back on the air. Radio Globo has been broadcasting since last week.”³⁰⁰

285. According to information that the Commission received, the executives at Radio Globo had allegedly obtained a copy of the petition filed on August 3 with CONATEL by attorney José Santos López Oviedo, who has his office in the Office of the Judge Advocate General of the Armed Forces. In this petition, the attorney “requests suspension of one media outlet, because it is being used to commit sedition by inciting insurrection, thereby endangering the lives of private citizens.”³⁰¹ According to information received, the complaint is based on the fact that Radio Globo had allegedly broadcast a message from human rights activist Andrés Pavón, who had allegedly called for a popular uprising.

²⁹⁷ Request for precautionary measures filed by the International Mission to investigate the Human Rights Situation in Honduras in the wake of the coup d’état, July 22, 2009.

²⁹⁸ Testimony of David Ellner Romero, as told to the Commission during its on-site visit to Honduras (Tegucigalpa), August 17, 2009.

²⁹⁹ Office of the Special Rapporteur-IACHR, Press Release 44-09: *Office of the Special Rapporteur for Freedom of Expression Condemns Limitations to Freedom of Expression in Honduras*, June 29 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=753&IID=1>. Reporters Without Borders, “News blackout after army ousts president,” June 29, 2009, Available at: <http://www.rsf.org/News-blackout-after-army-ousts.html>. “El apagón de los medios” [The Media Blackout], *BBC World* (London), June 30, 2009. Available at: http://www.bbc.co.uk/mundo/america_latina/2009/06/090630_1030_honduras_medios_sao.shtml.

³⁰⁰ *De facto* Secretariat of Foreign Affairs, Memorandum No. 526-DGAE-90, received on July 10, 2009. Article 19, “Honduras: Early Warning Signs of Impending Crisis”, (London) July 28, 2009. Available at: <http://www.article19.org/pdfs/press/honduras-early-warning-signs-of-impending-crisis.pdf>. Reporter Without Borders, “Gag on media getting steadily tighter in month since coup,” July 28, 2009. Available at: <http://www.rsf.org/Gag-on-media-getting-steadily.html>.

³⁰¹ Commission’s meeting with the board of CONATEL during its on-site visit in Honduras (Tegucigalpa), August 18, 2009.

286. During the meeting between the Commission and the board of CONATEL in Tegucigalpa on August 18, the Chairman of CONATEL, Mr. Miguel A. Rodas, supplied a copy of the ruling that had declared the complaint against Radio Globo “inadmissible” “[o]n the grounds that CONATEL’s authorities and functions do not give it the power to investigate or punish alleged crimes; by law, that authority belongs exclusively to the Public Prosecutor’s Office and the Courts of the Republic, respectively.”³⁰²

287. On August 6, the managing editor of the station, David Romero Ellner, told the IACHR that he had received a phone call from a spokesman for the military chiefs emphasizing that the Armed Forces were not behind the petition and that it was attorney López’ personal initiative.³⁰³

288. Early on the morning of June 28, Radio Juticalpa in the department of Olancho was strafed by machinegun fire. The bullets struck the walls and windows of the broadcast booths. The incident was reported to the delegate of the Olancho Commissioner of Human Rights and to the Police, but there was allegedly no response. The owner of the station, Martha Elena Rubí, told the Commission that on the morning of June 28, a military contingent had come to the station and forced her to close it down. The military occupation of the station lasted until 7:00 p.m. Rubí and her children immediately started to receive death threats over their cell phones. Rubí told the Commission that the officers in charge of the operation refused to give her their names and told her that when she tells the Judge Advocate General what happened, “say that it was the Army.”³⁰⁴

289. Also on June 28, military personnel tried to shut down Radio Marcala in Marcala, department of La Paz. At the time, it was the only station transmitting the events. According to the information received, locals who allegedly heard what was happening, came to the radio station and refused to allow it to be shut down. Suyapa Banegas, a journalist with Radio Marcala, told the IACHR that “on the day of the coup d’état, when the troops showed up at the radio station we announced it on the air and the people planted themselves outside the station”, thereby preventing it from being taken over.³⁰⁵

290. On October 6, the Commission requested information from the *de facto* government concerning the serious threats and acts of harassment that community and commercial radio stations were said to have experienced. In its response, dated October 20, the *de facto* government wrote the following:

³⁰² Commission’s meeting with the board of CONATEL during its on-site visit in Honduras (Tegucigalpa), August 18, 2009.

³⁰³ “Radio globo de Honduras denuncia que auditor militar pidió silenciarla” [Radio Globo of Honduras denounces that military judge advocate seeks to silence it], El Nacional (Caracas), August 4, 2009. Available at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/92989/Honduras/Radio-Globo-de-Honduras-denuncia-que-auditor-militar-pidi%C3%B3-silenciarla-. C-Libre, “Fuerzas Armadas intentan cerrar Radio Globo” [Armed Forces Attempt to Shut Down Radio Globo]. (Tegucigalpa), August 4, 2009. Available at: <http://conexihon.com/blog/archives/582>. Testimony of David Romero Ellner, managing editor of Radio Globo, taken by telephone by the Commission on August 6, 2009.

³⁰⁴ Testimony of Martha Elena Rubí, owner of Radio Juticalpa, as told to the Commission during its on-site visit to Honduras (Tegucigalpa), August 21, 2009. Committee of Relatives of Detainees-Disappeared in Honduras, “Informe Preliminar de Violaciones a los Derechos Humanos en el marco del golpe de Estado en Honduras” [Preliminary Report on Human Rights Violations in the context of the coup d’état], July 15, 2009. Available at: <http://www.cofadeh.org/>. Request seeking precautionary measures, filed by the Center for Justice and International Law and received on July 20 and 22, 2009.

³⁰⁵ Testimony of Suyapa Banegas, journalist with Radio Marcala, as told to the Commission during its on-site visit to Honduras (Tegucigalpa), August 20, 2009. Committee of Relatives of Detainees-Disappeared in Honduras, “Informe Preliminar de Violaciones a los Derechos Humanos en el marco del golpe de Estado en Honduras” [Preliminary Report on Human Rights Violations in the context of the coup d’état], July 15, 2009. Available at: <http://www.cofadeh.org/>.

Apropos the threats and acts of harassment supposedly experienced by Radio Faluna Binetu (Radio Coco Dulce), Radio Durugubuti (Radio San Juan), Radio Lafuru Garabali (Radio Buenos Aires), Radio Stereo Celaque in the Municipality of Tomalá (Department of Lempira), Radio Estereo Lenca of Valladolid (Puerto Lempira), Revista Vida Laboral, Radio Orquídea serving the community of Guadalupe Carney (Department of Colón), Radio Gaurajambala (Department of Intibuca), Radio La Voz Lenca of the Municipality of San Francisco (Department of Lempira), Radio Márcala (Department of La Paz), Defensores en línea.com and the radio program Voces contra el Olvido, which is a broadcast of the Committee of Relatives of Detainees-Disappeared in Honduras (COFADEH), Radio Progreso of the Society of Jesus, and Radio Uno, the Commission is hereby advised that the National Bureau of Criminal Investigation has been instructed to conduct all the necessary investigations to clarify the facts being alleged; however, those who consider themselves to have been aggrieved are urged to file the corresponding complaints with the National Bureau of Criminal Investigation, which has offices nationwide. The Commission is also advised that the Office of the Special Prosecutor for Human Rights has issued instructions to the competent regional prosecutor's offices to look into the situations being alleged and, where appropriate, open investigative case files. Concerning Radio Progreso, the Commission is again advised that a request has been filed by the Public Prosecutor seeking indictment of personnel from the La Lima Air Base in the department of Cortés; as an update, the Judge presiding over case has decided to apply 4 of the 5 precautionary measures requested by the Office of the Special Prosecutor for Human Rights against Lieutenant Colonel Hilmer Enrique Hermida Álvarez and Lieutenant Dennis Mauricio Valdez Rodas, who have been prohibited from leaving the country, visiting the facilities of Radio Progreso and communicating with the station's personnel; they have also been ordered to make a weekly court appearance. The initial hearing has been set for November 16 of this year.³⁰⁶

iv. Impact on the print media

291. The staff of the newspaper Poder Ciudadano, established as the official newspaper of the administration of President Zelaya, was dismissed a few days after the coup d'état.³⁰⁷ On July 14, René Zelaya, Minister of Communications and Press of the *de facto* government, delivered a message to Lic. Mercedes Barahona, the editor of the newspaper, which read as follows: "On orders from the Office of the General Manager of the Presidential Residence and due to budgetary cuts, you are hereby respectfully notified that as of this date, all staff working on what was once the '*Poder Ciudadano*' newspaper is hereby discharged."³⁰⁸

292. In connection with these events, the Commission is compelled to point out that under Article 13 of the American Convention on Human Rights, "[e]veryone 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." Article 13 also provides that "[t]he right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions."

³⁰⁶ *De facto* Secretariat of Foreign Affairs of Honduras, Memorandum 731-DGAE-09 dated October 20, 2009.

³⁰⁷ Article 19, "'Honduras: Early Warning Signs of Impending Crisis", (London) July 28, 2009. Available at: <http://www.article19.org/pdfs/press/honduras-early-warning-signs-of-impending-crisis.pdf>.

³⁰⁸ Note sent to the newspaper Poder Ciudadano by the Presidential House, dated July 14, 2009, a copy of which was received by the Commission during its on-site visit to Honduras (Tegucigalpa), August 17, 2009.

293. Furthermore, Principle 5 of the Inter-American Declaration of Principles on Freedom of Expression states that “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.” Principle 13 states that “[t]he means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

b. Blackouts

294. On the morning of June 28, there was a generalized blackout that lasted for over two hours. According to the complaints received by the Commission during its visit, a number of intermittent blackouts followed for the rest of the day. The power cuts prevented radio and television broadcasts. Among the affected areas were those in which the transmission towers were located. The outages also affected landline and cellular telephone services.³⁰⁹

295. Dagoberto Rodríguez, managing editor of Radio Cadena Voces, confirmed the complaints of electric power being cut off.³¹⁰ Nancy John, news coordinator at Channel 11, also confirmed for the Commission the complaints concerning the incidents in which electric power was cut.³¹¹

296. For her part, Suyapa Banegas, on the staff of Marcala alternative radio in the department of La Paz, said that on the day of the coup d’état, broadcasters on commercial radio stations that supported the ousting of President Manuel Zelaya could be heard saying “[N]othing is happening here.” They asked the public “not to leave home” because “everything” was “normal.”³¹²

³⁰⁹ Office of the Special Rapporteur- IACHR, Press Release 44-09: *Office of the Special Rapporteur for Freedom of Expression Condemns Limitations to Freedom of Expression in Honduras*, June 29 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=753&IID=1>. C-Libre, “Bloqueo de Medios de Comunicación en Honduras. (Tegucigalpa), June 29, 2009. Available at: <http://conexihon.com/blog/archives/324>. Reporters Without Borders, “News blackout after army ousts president,” June 29, 2009, Available at: <http://www.rsf.org/News-blackout-after-army-ousts.html>. Inter-American Press Association. June 29, 2009, IAPA censures acts against journalists and media in Honduras. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4208&idioma=us. BBC. June 30, 2009. “El apagón de los medios” [The media blackout]. Available at: http://www.bbc.co.uk/mundo/america_latina/2009/06/090630_1030_honduras_medios_sao.shtml. Communication sent to the Commission on June 29, 2009.

³¹⁰ Testimony of Dagoberto Rodríguez, managing editor of Radio Cadena Voces, as told to the Commission during its on-site visit to Honduras (Tegucigalpa), August 17, 2009. Rodríguez said the following: “On Sunday the 28th, power was cut several times; one of the outages affected us. But because we have our generator, we solved the problem”. Rodríguez added that on that day, “broadcasting at all stations was suspended for a number of hours and we had to broadcast in segments. On Monday, we didn’t have problems. At least not at our station”.

³¹¹ Testimony of Nancy John, a journalist with Channel 11, as told to the Commission during its on-site visit to Honduras (Tegucigalpa), August 17, 2009. Ms. John said the following: “On the morning of the coup, there was a generalized two-hour blackout in Tegucigalpa and other cities and regions in Honduras. This was followed by a number of power cuts, but they were intermittent”.

³¹² Testimony of Suyapa Banegas, journalist with Radio Marcala, as told to the Commission during its on-site visit to Honduras (Tegucigalpa), August 20, 2009. She said the following; “However, when the radio stations in the country’s interior – the community and alternative stations- realized that what was happening was a coup, it occurred to us that the government –and more specifically the military, who were in control that morning- had decided to cut electric power in the country, specifically in those areas where the local stations were beginning to report the news. All this happened before 11:00 a.m., when electric power was restored”.

297. However, at the meeting that the Commission had with CONATEL's board, Miguel A. Rodas, chairman of CONATEL –which is in charge of regulating telecommunications- assured the Commission that he had no information as to whether the power outages were intentional. Rodas said the following: "What I can tell you is that electricity supply in Honduras is very unstable." By way of example he pointed out that "TIGO," a cell phone company, has "100 percent of its towers operating on generators."³¹³

298. The Commission also received information to the effect that a series of intermittent outages that began in Tegucigalpa on September 21, affected transmission by Channel 36 and Radio Globo. The IACHR also received information to the effect that on September 21, military troops took over the Tegucigalpa electric power plant, which is the plant that controls electric power transmission to the Tegucigalpa region.³¹⁴

c. Detentions of journalists

299. The Commission received reports to the effect that a number of journalists were detained for several hours for reasons associated with the practice of their profession. According to this information, on June 29, some 10 soldiers detained a group of journalists working for the foreign media at their hotel in Tegucigalpa. Among those detained were the following: Adriana Sivori, with TeleSUR, and the members of the crew working for the same channel, María José García and Larry Sánchez; Nicolás García and Esteban Félix, who were working for the Associated Press (AP), and two others also working for AP. According to various reports, the journalists were said to have been taken to an immigration office where they were allegedly questioned about their visas to work in the country. Other reports indicated that the military had allegedly confiscated the work material of the TeleSUR journalists. All were released some hours later.³¹⁵ The TeleSUR journalist, Madeleine García, told the IACHR that on Monday, June 29, they were transmitting "live" from the 12th floor of the Marriot Hotel, a vantage point that allowed them to film "everything that was happening" on the streets below, located in the vicinity of the Presidential Residence, where sympathizers of President Manuel Zelaya were gathered, "pleading for his return." García said that at around midnight, she received a call from the authorities of the *de facto* regime in which they warned her that the authorities were about to arrest them.³¹⁶

³¹³ The Commission's meeting with the board of CONATEL during its on-site visit to Honduras (Tegucigalpa), August 18, 2009.

³¹⁴ Office of the Special Rapporteur-IACHR, Press Release 66-09: *Special Rapporteurship for Freedom of Expression Condemns Restrictions to Freedom of Expression in Honduras*, September 24, 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=753&IID=1>

³¹⁵ Office of the Special Rapporteur-IACHR, Press Release 44-09: *Office of the Special Rapporteur for Freedom of Expression Condemns Limitations to Freedom of Expression in Honduras*, June 29 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=753&IID=1>. Committee to Protect Journalists, "CPJ Alarmed by Suppression of Media in Honduras," (New York) June 30, 2009. Available at: <http://www.cpj.org/blog/2009/06/cpj-alarmed-by-suppression-of-media-in-honduras.php>. Reporters Without Borders, "News blackout after army ousts president," June 29, 2009, Available at: <http://www.rsf.org/News-blackout-after-army-ousts.html>. Article 19, "Honduras: Freedom of Expression Under Threat Following Weekend Coup". (London), July 1, 2009. Available at: <http://www.article19.org/pdfs/press/honduras-freedom-of-expression-under-threat-following-weekend-coup.pdf>. Inter-American Press Association. "Respect Press Freedom, IAPA Again Urges Honduras." (Miami), July 2, 2009. Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4210&idioma=us.

³¹⁶ Testimony of Madeleine García, a journalist with TeleSUR, as told to the Commission during its on-site visit to Honduras (Tegucigalpa), August 17, 2009. García said that the midnight call she received was from a call center; the party at the other end of the line said to her: "Look, Madeleine, why are you doing this? You are showing something that isn't true. We'll be there in 20 minutes". Ms. García went on to say: "And in fact, 20 minutes later, a group of heavily armed military personnel arrived on the hotel's 12th floor and took all the reporters away, including the journalists from the AP and other news agencies. I immediately called General Romeo Vásquez Velázquez and asked him, 'Where are the journalists who were

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300. As with the other situations involving issues of freedom of expression and about which the IACHR requested information, the communication received from the *de facto* government said the following about this case: “The Office of the Special Prosecutor for Human Rights is currently investigating the circumstances under which the events in these complaints transpired.”³¹⁷

301. Caricaturist Allan McDonald was detained together with his 17-month-old daughter. According to the complaint, the caricaturist “reported from a hotel, where he was being held in custody along with the Consul of the Republic of Venezuela and two women journalists from Spain and Chile, with whom he was not acquainted.” The caricaturist said that on June 28, members of the Armed Forces burst into his home, “ransacked” it and built a “bonfire with all his caricatures and drawing materials.” The only thing they allowed him to take when they dragged him from his home was his passport.³¹⁸

302. The news director at Televisor de Aguán, Channel 5, Nahúm Palacios, reported that in Tocoa, department of Colón, soldiers surrounded the television station on June 29 and forcibly entered the facility, while the journalists were covering the coup d’état. The soldiers seized the broadcasting equipment and the channel went off the air.³¹⁹

303. On July 2, Mario Amaya, a photographer for the Salvadoran newspaper El Diario de Hoy, was beaten and taken into custody by soldiers as he was photographing a protest in San Pedro Sula that was being dispersed. On June 29, the same photographer reported having been beaten by alleged demonstrators as he was covering a pro-Zelaya march.³²⁰

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detained?’ All this came out, which is why they acted quickly to release the TeleSUR crew, which had been taken to the immigration office, on the pretext that they were in Honduras illegally”.

³¹⁷ *De facto* Secretariat of Foreign Affairs, memorandum No. 526-DGAE-90, received on July 10, 2009.

³¹⁸ Office of the Special Rapporteur-IACHR, Press Release 44-09: *Office of the Special Rapporteur for Freedom of Expression Condemns Limitations to Freedom of Expression in Honduras*, June 29 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=753&IID=1>. Article 19, “Honduras: Freedom of Expression Under Threat Following Weekend Coup”. (London), July 1, 2009. Verence Bengtson, e-mail received by the Commission on June 29, 2009. *Periodistas en Español*, “Secuestrado en Honduras el caricaturista Allan Mc Donald” [Caricaturist Allan McDonald abducted in Honduras], June 30, 2009. Available at: http://www.p-es.org/index.php?option=com_content&task=view&id=3724&Itemid=78.

³¹⁹ Testimony that Nahúm Palacios, news editor at Televisora de Aguán, Channel 5, gave to the Commission by phone during its on-site visit to Honduras (Tegucigalpa), August 21, 2009. C-Libre, “Director de Noticiero del Aguán también fue atropellado” [Editor at Aguan News also beaten] (Tegucigalpa), July 3, 2009. Available at: http://www.ifex.org/honduras/2009/07/07/nahun_palacios_victim/es/. Committee of Relatives of Detainees-Disappeared in Honduras, “Informe Preliminar Violaciones a Derechos Humanos en el marco del golpe de Estado en Honduras” [Preliminary Report on Human Rights Violations in the context of the coup d’état], July 15, 2009. Available at: <http://www.cofadeh.org/>. Nahúm Palacios, e-mail sent to the Commission on July 16, 2009. Testimony of Naúm Palacios, taken by the Commission by phone on July 15, 2009 and July 22, 2009. CEJIL’s letter to the Executive Secretary of the Commission, Santiago Cantón received by the Commission on July 23, 2009.

³²⁰ “A Micheletti no le preocupan represalias contra Honduras” [Micheletti unconcerned about reprisals against Honduras], El Universo (Guayaquil), July 3, 2009. Available at: <http://www.eluniverso.com/2009/07/03/1/1361/9AB24BE7076D489FA5EDC0956A412372.html>. “Periodista salvadoreño es agredido en Honduras” [Salvadoran journalist assaulted in Honduras], Diario Co Latino (San Salvador), July 3, 2009. Available at: <http://www.diariocolatino.com/es/20090703/nacionales/68733/>. Inter-American Press Association, “IAPA calls for investigation into the Death of Honduran Journalist” (Miami), July 7, 2009. Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4211&idioma=us. “Fotoperiodista salvadoreño golpeado en Honduras” [Salvadoran Photojournalist Beaten in Honduras], La Prensa Gráfica (San Salvador), July 2, 2009. Available at: <http://www.laprensagrafica.com/el-salvador/lodeldia/43920-fotografo-salvadoreno-golpeado-en-manifestacion-en-honduras.html>.

304. On July 2, Rommel Gómez, a reporter from Radio Progreso, was detained by the military as he was covering a protest in San Pedro Sula's Central Park. The soldiers took away his work materials and took photos of his personal documents. According to the complaints received, this was an act of intimidation.³²¹ Rommel Gómez and his wife, Miryam Espinal, also complained of receiving death threats on their private phones.³²²

305. According to information received, on the night of July 11, police in Tegucigalpa detained members of the TeleSUR and VTV news teams and took them to police headquarters on the pretext of confirming their immigration status. After a number of hours, the persons being held were released. The next morning, police had allegedly prevented reporters from leaving their hotels for a number of hours, on the pretext that they were waiting for the immigration authorities to arrive to check their status. According to the information received, journalists and members of the TeleSUR and VTV news teams were allegedly being held up as a form of intimidation, because of their coverage of the coup d'état and of the institutional rupture. According to reports received, the crews from both channels left Honduras the next day believing that they might be in danger. They were escorted [to] the Nicaraguan border by a delegation from Centro para la Prevención, Tratamiento y Rehabilitación de las Víctimas de la Tortura y sus Familiares (CPTRT) [the Center for the Prevention of Torture and the Treatment and Rehabilitation of its Victims and Their Families].³²³

306. On August 14, a reporter from Radio Progreso, Gustavo Cardoza, was taken into custody in Choloma, in the Department of Cortés, as he was covering the violent dispersal of a group of Zelaya sympathizers. The reporter was beaten by police and detained for a number of hours.

307. In the testimony he gave to the Commission, Cardoza recounted how he was beaten by security forces as he was trying to do his reporting.³²⁴ At the same protest, Eduin Castillo, an

³²¹ Defensores en Línea, "*Denuncian represión de militares hacia dirigentes sociales y periodistas independientes [Military repression of social leaders and independent journalists denounced]*". (Tegucigalpa), July 2, 2009. Available at: <http://libertaddeexpresionhn.blogspot.com/2009/07/denuncian-represion-de-militares-hacia.html>. Reporters Without Borders. September 7, 2009. *Media in Coup Storm*. Available at: <http://www.rsf.org/Media-in-coup-storm.html>. Committee of Relatives of Detainees-Disappeared in Honduras, "*Informe Preliminar Violaciones a Derechos Humanos en el marco del golpe de Estado en Honduras*" [*Preliminary Report on Human Rights Violations in the Context of the Coup d'état*], July 15, 2009. Available at: <http://www.cofadeh.org/>. Testimony of Patricia Murillo Gómez, coordinator of the School of Journalism of the Universidad Autónoma de San Pedro Sula and a correspondent for the newspaper *Tiempo de Tegucigalpa*, as told to the Commission during its on-site visit to Honduras (San Pedro Sula), August 19, 2009.

³²² Request seeking precautionary measures, filed by the International Mission Investigating the Human Rights Situation in the wake of the coup d'état, July 22, 2009.

³²³ Testimony of the Centro para la Prevención, Tratamiento y Rehabilitación de las Víctimas de la Tortura y sus Familiares (CPTRT) [Center for the Prevention of Torture and Treatment and Rehabilitation of Its Victims and Their Families], as told to the Commission during its on-site visit to Honduras (Tegucigalpa), August 17, 2009. Office of the Special Rapporteur-IACHR, Press Release R50-09: *Office of the Special Rapporteur for Freedom of Expression Condemns Detention of Foreign Journalists in Honduras*. July 12, 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=755&IID=1>. Committee to Protect Journalists, "Venezuelan journalists leave Honduras after harassment". (New York), July 13, 2009. Available at: <http://cpj.org/2009/07/venezuelan-journalists-leave-honduras-after-harass.php>. Inter-American Press Association, "IAPA condemns harassment of Venezuelan TV crews in Honduras." (Miami), July 14, 2009. Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4215&idioma=us. Comité de Familiares Detenidos Desaparecidos en Honduras [Committee of Relatives of Detainees-Disappeared in Honduras], "*Informe Preliminar Violaciones a Derechos Humanos en el marco del golpe de Estado en Honduras*" [*Preliminary Report on Human Rights Violations in the Context of the Coup d'État*], July 15, 2009. Available at: <http://www.cofadeh.org/>.

³²⁴ Testimony of Gustavo Cardoza, reporter from Radio Progreso, as told to the Commission during its on-site visit to Honduras (San Pedro Sula), August 19, 2009. Cardoza said the following: "The security forces were throwing tear gas grenades into the crowd of demonstrators. I took off running in the midst of the smoke. I began coughing, and they handed

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independent journalist from Tela in the department of Atlánti[c]a, complained of having been beaten by the security forces.³²⁵

308. The Commission received information to the effect that just after 6:00 a.m. on September 22, Agustina Flores López, a teacher and broadcaster with Radio Liberada, was allegedly arrested as she was on her way to the Embassy of Brazil in Tegucigalpa, where President Zelaya was. The information added that Flores López had allegedly been beaten and tortured by law enforcement personnel. On October 6, the Commission requested information on this matter from the *de facto* government. In its reply, sent October 20, the *de facto* government stated the following: "Concerning the complaint of the detention and alleged acts of torture committed against Mrs. Agustina Flores López, the Commission is hereby advised that the individual in question entered the National Bureau of Criminal Investigation on September 23 of this year, at 16:55 hours, together with Mr. Mario Enrique Molina Izaguirre. She was brought in on suspicion of the crime of sedition and aggravated vandalism, at the request of Metropolitan Police Headquarters No. 1, after being brought before the Combined Court of Francisco Morazán. When she entered police premises, Mrs. Agustina Flores López had a blow to the jaw area of the face and was therefore asked to have a dental examination; however, she did not respond. On October 12, the hearing was held to review measures. Judge No. 3, attorney Laura Casco, proceeded to release her by ordering substitute measures and payment of a bond of one hundred thousand lempiras (the equivalent of some 5 thousand United States dollars)."

309. The IACHR reiterated the provisions of Principle 5 of the Inter-American Declaration of Principles on Freedom of Expression to the effect that "[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

310. As for the violence to which reporters covering many of the events were subjected, the IACHR would point out that Principle 9 of the Inter-American Declaration of Principles warns that the "murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

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me the microphone to go on the air. I reported that the police were hurling grenades at the houses. A police officer, who must have been a high-ranking officer because his uniform was different, looked at me, drew his weapon and pointed it at me. I decided to run, because I was scared to death. But five anti-riot police caught. They threw us one on top of the other".

³²⁵ Testimony of Eudín Castillo an independent journalist from Tela, as told to the Commission during its on-site visit to Honduras (San Pedro Sula), August 19, 2009. Castillo reported that: "When told us that hundreds of members of the security forces were on their way, we stepped to one side. They came in shouting "Conquer or die." They were soldiers, police and members of the Cobra special strike force. I identified myself and a soldier told me 'Here, you're worthless.' Then they started shoving me. And they said 'son of a bitch, so you like to mix it up, get into fights'. When I protested and asked why the police were saying things just to the media that supported the coup, they slapped handcuffs on me and left me out in the sun. 'You'll fry out here, you son of a bitch'".

d. Assaults on journalists

311. The IACHR received reports of serious and multiple assaults on journalists for reasons associated with their news coverage. These assaults have been perpetrated by agents of the State as well as demonstrators. Information has been received on all these acts of violence.

312. The IACHR received information to the effect that on June 29, a journalist from the newspaper El Heraldo had allegedly been attacked while he was covering a demonstration in front of the Presidential House in Tegucigalpa.³²⁶ At least one photographic journalist from the newspaper La Tribuna, Juan Ramón Sosa, was beaten and verbally abused by police as he was covering the demonstration on June 29 in Tegucigalpa. His camera was also confiscated.³²⁷ Also in Tegucigalpa, three journalists with the program "Entrevistado" on Channel 42 were allegedly attacked on June 28 by a group of demonstrators who also knocked down and destroyed their cameras.³²⁸

313. On July 1, demonstrators presumably in support of President Zelaya, had allegedly assaulted Carlos Rivera, a correspondent with Radio América in the city of Santa Rosa de Copán. When a second journalist was assaulted at the same demonstration, the journalists present had allegedly felt compelled to leave. In the same city, Zelaya sympathizers had allegedly attacked Maribel Chinchilla, the owner of Channel 34 television.³²⁹

314. On July 25, a group of foreign journalists were allegedly assaulted by police in Danlí. According to the information received, photographic journalist Wendy Olivo, of the Agencia Bolivariana de Noticias, was reportedly attacked after trying to photograph persons detained at a police station. When she refused to hand over her camera to the police, Olivo was reportedly beaten up. Other journalists were also assaulted when they attempted to come to the photo-journalist's rescue.³³⁰

315. In the Department of El Paraíso on July 26 reporters from the newspaper La Tribuna reported having been assaulted by demonstrators presumably in favor of President Zelaya's return.

³²⁶ Reporters Without Borders, "News blackout after army ousts president," June 29, 2009, Available at: <http://www.rsf.org/News-blackout-after-army-ousts.html>. Inter-American Press Association, "IAPA Censures Acts against Journalists and Media in Honduras", Tegucigalpa, June 29, 2009. Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4208&idioma=us

³²⁷ Inter-American Press Association, "Respect Press Freedom, IAPA Again Urges Honduras," (Miami), July 2, 2009. Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4210&idioma=us. "Periodistas y fotógrafos denuncian agresiones" [Journalists and photographers denounce assaults], La Tribuna (Tegucigalpa), June 30, 2009. Available at: <http://www.latribuna.hn/web2.0/?p=14635>.

³²⁸ Inter-American Press Association, "Respect Press Freedom, IAPA Again Urges Honduras," (Miami), July 2, 2009. Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4210&idioma=us. "Periodistas y fotógrafos denuncian agresiones" [Journalists and photographers denounce assaults], La Tribuna (Tegucigalpa), June 30, 2009. Available at: <http://www.latribuna.hn/web2.0/?p=14635>.

³²⁹ Reporters Without Borders, "Media in Coup Storm", September 7, 2009. Available at: <http://www.rsf.org/Media-in-coup-storm.html>.

³³⁰ "Agencia estatal venezolana denuncia agresión contra reportera en Honduras" [Venezuelan state agency denounces assault on female reporter in Honduras], *EFE/Yahoo News*, July 25, 2009. Available at: <http://espanol.news.yahoo.com/s/25072009/54/n-world-agencia-estatal-venezolana-denuncia-agresion.html>. "Agredida reportera gráfica de ABN por fuerzas policiales hondureñas" [ABN photographic journalist roughed up by Honduran police], Agencia Bolivariana de Noticias (Caracas), July 25, 2009. Available at: <http://www.abn.info.ve/noticia.php?articulo=192265&lee=16>.

According to the information received, a group of people had allegedly attempted to grab the camera belonging to photo journalist Henry Carvajal. When journalist Martín Rodríguez intervened, they hit him, too, calling them 'coup supporters'. Carvajal allegedly lost all the photographs he had taken that day.³³¹

316. On July 30, a number of journalists and cameramen were assaulted by police as they were covering the repression of the demonstration held that day in Tegucigalpa. According to the information received, Karen Méndez, a reporter from *TeleSUR*, said she was pushed and threatened by a police officer, while a photographer from that same channel, Roger Guzmán, was also assaulted and his work materials taken away.³³² José Oseguera and Luis Andrés Bustillo, cameramen with the *Maya TV* program *Hable como Habla* were said to have been beaten in the Durazno area, on the northern road leading out of Tegucigalpa on July 30.³³³ Edgardo Castro, a journalist with Televisora Hondureña de Comayagua, was said to have been assaulted on July 30, during a demonstration in Tegucigalpa where he was filming the action the police were taking against demonstrators. His equipment was reportedly damaged.³³⁴

317. C-Libre reported that Juan Carlos Cruz, a journalist with the state-run Radio Nacional de Honduras, was beaten and arrested by police on July 31 because he was filming a confrontation between police and some young people who were driving a motorcycle without license plates, in a sector of Comayagüela. Cruz was held for 18 hours and his camera was not returned, even though he had identified himself as a reporter.³³⁵

318. On August 5, Héctor Clara Cruz, photo journalist with the newspaper *Tiempo*, was said to have been beaten by police as he was covering a student demonstration at the Universidad Nacional Autónoma de Honduras (UNAH). According to reports in the newspaper *Tiempo*, at least two police officers beat him up to make him stop taking photographs of the clash between students and police. The beating left him disabled for one week. His camera equipment was also damaged.³³⁶

³³¹ C-Libre, "Comunicadores denuncian agresiones" [Reporters denounce assaults].(Tegucigalpa), July 26, 2009. Available at: <http://conexihon.com/blog/archives/548>. "Seguidores de "Mel" agreden a fotógrafo de LA TRIBUNA" [Mel supporters rough up a photographer from La Tribuna] (Tegucigalpa), July 27, 2009. Available at: <http://www.latribuna.hn/web2.0/?p=23625>.

³³² C-Libre, "Policía hondureña golpea a periodistas y camarógrafos nacionales e internacionales" [Honduran police beat national and international reporters and photographers]. (Tegucigalpa), July 30, 2009. Available at: <http://conexihon.com/blog/archives/569>. "Reprime la policía hondureña a seguidores de Zelaya" [Honduran Police Repress Zelaya Followers], *La Crónica de Hoy* (Mexico, DF), July 31, 2009. Available at: http://www.cronica.com.mx/nota.php?id_notas=448659.

³³³ C-Libre, "Policía hondureña golpea a periodistas y camarógrafos nacionales e internacionales" [Honduran police beat national and international reporters and photographers] (Tegucigalpa), July 30, 2009. Available at: <http://conexihon.com/blog/archives/569>.

³³⁴ Testimony of Edgardo Castro, as told to the Commission during its on-site visit to Honduras (San Pedro Sula), August 19, 2009. C-Libre, "Policía hondureña golpea a periodistas y camarógrafos nacionales e internacionales"[Honduran police beat national and international journalists and cameramen] (Tegucigalpa), July 30, 2009. Available at: <http://conexihon.com/blog/archives/569>. *Habla Honduras*, "3 días de movilizaciones diarias" [Three days of daily demonstrations]. (Tegucigalpa), July 30, 2009. Available at: <http://hablahonduras.com/2009/07/31/hechos-destacados-jueves-30-de-julio-de-2009/>. "Endurecen golpistas acciones contra manifestantes en Honduras" [Coup takes harder line with demonstrators] *Milenio* (Mexico, DF), July 30, 2009. Available at: <http://www.milenio.com/node/259010>.

³³⁵ C-Libre, "Arrestado un policía porque filmaba pleito de jóvenes" [Arrested by police because he was filming a confrontation between police and youngsters] (Tegucigalpa), August 3, 2009. Available at: <http://conexihon.com/blog/archives/580>.

³³⁶ *Diario Tiempo*, "Salvaje golpiza propinan policías a reportero gráfico de Tiempo" [Police beat a photojournalist with *Tiempo* savagely] (Tegucigalpa), August 6, 2009. *Diario Tiempo*, "Evidente ignorancia del viceministro de Seguridad ante golpiza contra reportero gráfico de Tiempo" [Vice Minister of Security's obvious ignorance of the beating of the photo

319. Richard Esmith Cazulá, a cameraman with Channel 36, was said to have been beaten in Tegucigalpa on August 12, as he was filming a demonstration. His camera was also damaged. The reporter said that he was beaten by police.³³⁷

320. During a demonstration on August 14, a group of police assaulted Julio Umaña and confiscated his material. Umaña, a photographer for the newspaper Tiempo, had allegedly shown them his journalist credentials.³³⁸

321. On September 28, Guatemalan journalists Alberto Cardona, a reporter with Guatevisión, and Rony Sánchez, a cameraman with Guatevisión and the Mexican channel Televisa, were beaten by security forces as they were covering the shutdown of Radio Globo. The information received indicates that the security forces confiscated the video they had taken of the radio station being shut down. Police also damaged the television camera.³³⁹

322. The IACHR received information to the effect that in the municipality of El Progreso, department of Yoro, Dunia Montoya, wife of journalist Bartolo Antonio Fuentes, was allegedly assaulted as she was filming her husband being taken into custody on September 15. On October 6, the IACHR requested information on this case from the *de facto* government. In its reply, dated October 20, the *de facto* government maintained that it “has no information [whatsoever] concerning the assault allegedly suffered against Mrs. Dunia Montoya.”³⁴⁰

323. The Commission also received information to the effect that on September 28, Delmer Alberto Membreño Aguilar, graphics editor with the newspaper El Libertador, had reportedly been abducted and assaulted for a number of hours by four individuals wearing ski masks. The Commission requested information on this case from the *de facto* government on October 6. Its reply, dated October 20, reads as follows: “Concerning the alleged abduction of Mr. Delmer Alberto Membreño Aguilar, Graphics Editor with the newspaper El Libertador, the Commission is hereby informed that neither the National Bureau of Criminal Investigation nor the Public Prosecutor’s Office has any record of this episode; nevertheless, instructions have been issued to have the matter investigated.”³⁴¹

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journalist with Tiempo] (Tegucigalpa), August 7, 2009; IACHR, MC 196/09, Amplification of Precautionary Measures, Honduras, September 4, 2009. Available at <http://www.cidh.org/medidas/2009.eng.htm> ; Diario La Tribuna, Editorial “Libre Expresión” [Free Expression], August 18, 2009. Available at: <http://www.latribuna.hn/web2.0/?cat=10&paged=3>.

³³⁷ C-Libre, “Otro ataque contra la libertad de expresión en Honduras” [Another attack on freedom of expression in Honduras]. (Tegucigalpa), August 12, 2009. Available at: <http://conexihon.com/blog/archives/624>.

³³⁸ Diario La Tribuna, Editorial “Libre Expresión” [Free Expression], August 18, 2009. Available at: <http://www.latribuna.hn/web2.0/?cat=10&paged=3>.

³³⁹ Office of the Special Rapporteur-IACHR, Press Release 71-09: *Office of the Special Rapporteur for Freedom of Expression Condemns the Suspension of Guarantees in Honduras and the Violations of the Right to Freedom of Expression*, September 29, 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=764&IID=1>

³⁴⁰ *De facto* Secretariat of Foreign Affairs of Honduras, Memorandum 731-DGAE-09 dated October 20, 2009.

³⁴¹ *De facto* Secretariat of Foreign Affairs of Honduras, Memorandum 731-DGAE-09 dated October 20, 2009.

e. Violent attacks on the media

324. The IACHR has observed the increasing polarization between sectors of the press, the *de facto* government and the opposition, which has manifested itself in a variety of ways, including violent attacks on the media.

325. The San Pedro Sula newspaper La Prensa reported having been the target of an attack on June 29, in Tegucigalpa, when a group of demonstrators threw stones and sticks against the entrance to the newspaper office.³⁴² Radio América was also allegedly attacked on the night of June 30. According to the information received, a bomb was placed on the premises of the radio station in Tegucigalpa, after the curfew had gone into effect. Police removed the device. According to the complaints received the radio was off the air for the time it took to remove the device.³⁴³

326. On the night of July 4, an unidentified person reportedly left an explosive device in the Centro Comercial Prisa in Tegucigalpa, where the facilities of Channel 11 and the newspaper Tiempo are located.³⁴⁴

327. Early on the morning of August 14, persons wearing hoods and carrying weapons set fire to a vehicle that distributed copies of the newspaper La Tribuna, in an area known as Las Vueltas del Junquillo, on the outskirts of the city of Juticalpa. "The criminals stopped the green Nissan Frontier, driven by José Giovanni Fonseca Contreras, 30, tied him up, blindfolded him, threw him out of the vehicle, and finally set fire to the vehicle," wrote the newspaper El Heraldo when reporting the attack in its Saturday, August 15 edition.³⁴⁵

³⁴² Inter-American Press Association, "Respect press freedom, IAPA again urges Honduras" (Miami) July 2, 2009 Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4210&idioma=us. Gilberto Molina Arcos, "Periodista revela que no hay día sin amenazas a periodistas en Honduras" [Journalist reveals that not a day passes without threats to journalists in Honduras], El Universal (Mexico DF), June 30, de 2009. Available at: <http://www.eluniversal.com.mx/notas/608564.html>.

³⁴³ C-Libre, "Radio América denuncia atentado" [Radio América denounces attack] (Tegucigalpa), July 1, 2009. Available at: <http://conexihon.com/blog/archives/352>. Radio América. July 1, 2009, Radio América condena atentado [Radio América condemns attack]. Available at: <http://www.radioamerica.hn/sitio.cfm?pag=leenoticias&t=Nacionales&id=13379>.

³⁴⁴ Committee of Relatives of Detainees-Disappeared in Honduras, "Informe Preliminar Violaciones a Derechos Humanos en el marco del golpe de Estado en Honduras" [Preliminary Report on Human Rights Violations in the Context of the Coup d'état], July 15, 2009. Available at: <http://www.cofadeh.org/>. C-Libre, "Otro atentado a medio de comunicación en Honduras" [Another attack on a media outlet in Honduras] (Tegucigalpa), July 6, 2009. Available at: <http://conexihon.com/blog/archives/441>. El Tiempo, "Cofadeh constata daños por bombazo en Canal 11" [COFADEH confirms bomb damage at Channel 11]. Available at: <http://www.tiempo.hn/secciones/crisis-politica/13-cofadeh-constata-danos-por-bombazo-en-canal-11>.

³⁴⁵ Diario La Tribuna, Editorial "Libre Expresión" ["Free Expression"] August 18, 2009. Available at: <http://www.latribuna.hn/web2.0/?cat=10&paged=3>. "Queman carro repartidor de diario La Tribuna" ["They set fire to vehicle distributing La Tribuna], El Heraldo, (Tegucigalpa), August 15, 2009.

328. The following day, unidentified persons threw Molotov cocktails against the building that houses the newspaper El Herald. In his testimony to the IACHR, the deputy editor-in-chief of the newspaper, Carlos Mauricio Flores, mentioned the damage caused by the Molotov cocktails.³⁴⁶

329. Executives at Channel 36 and Radio Globo reported that on Sunday night, August 23, a group of hooded individuals attacked their transmission towers on Cerro de Santa Gallo, taking both stations off the air for several hours.³⁴⁷

330. Concerning this string of serious assaults and attacks, the Commission recalls that Principle 9 of the Inter-American Declaration of Principles on Freedom of Expression states that “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.”

f. Threats and other forms of intimidation

331. Threats and other forms intimidation have been used to obstruct the work of journalists. Since June 28 the Commission has received a number of complaints that single out the police and supporters of President Zelaya as engaging in these threats and intimidation tactics.

332. Indeed, the threats have come from a variety of sources and have been made by telephone, electronically or in person, while reporters are covering demonstrations or newsworthy events related to the political crisis. The Commission observed that during its visit in the [final] weeks of August, the threats against freedom of the press had increased.

333. TeleSUR reported that journalist Madeleine García had received phone threats from a person who allegedly identified himself as a military officer. This person had reportedly warned the journalist to stop reporting on the protests in support of President Zelaya.³⁴⁸

334. For his part, the managing editor of Radio Cadena Voces, Dagoberto Rodríguez, reported that on June 29 he received three phone calls, supposedly from groups identified with the Zelaya government, in which threats were made against his radio station in Tegucigalpa. Rodríguez filed a complaint with the IACHR to the effect that supporters of President Zelaya had threatened a

³⁴⁶ Testimony of Carlos Mauricio Flores, deputy editor of the newspaper El Herald, as told to the Commission during the on-site visit to Honduras. (Tegucigalpa) August 20, 2009. Flores said the following: “The most recent visible attack came in the early morning hours of Saturday, August 15, when a number of unknown men threw five incendiary bombs. Three of them exploded; two others, thrown at the second floor, fortunately did not explode. Had it not been for the expertise and skill of the building’s security personnel, the building would have caught fire; we believe that was the objective of the attackers”. Diario La Tribuna, “Lanzan bombas molotov contra diario capitalino” [Molotov cocktails hurled at capital city newspaper] (Tegucigalpa), August 16, 2009. Also available at: <http://www.latribuna.hn/web2.0/?p=30005>.

³⁴⁷ Testimony of the owner of Channel 36, Esdras Amado López, given by phone to the Commission on August 24, 2009. “Encapuchados sacan del aire al fundir transmisores de radio Globo y canal 36 [Hooded persons operate in the open to blow up Radio Globo and Channel 36 transmission towers], Diario Tiempo, August 24, 2009. Available at: <http://www.tiempo.hn/secciones/el-pais/2706-encapuchados-sacan-del-aire-al-fundir-transmisores-de-radio-globo-y-el-canal-36>.

³⁴⁸ Committee to Protect Journalists, “CPJ Alarmed by Suppression of Media in Honduras”, (New York) June 30, 2009. Available at: <http://www.cpj.org/blog/2009/06/cpj-alarmed-by-suppression-of-media-in-honduras.php>.

number of journalists from Radio Cadena Voces during the protests against the *de facto* government.³⁴⁹

335. Other reports indicated that journalist Eduardo Maldonado, a collaborator of Zelaya on the consultation that the administration was planning and who hosts his program “Hable como Habla” on Channel 66 Maya, had allegedly received threats and sought protection at an embassy.³⁵⁰

336. On July 2, journalist Jorge Otts Anderson filed a complaint from Bonito Oriental in the department of Colón, where he had to go into hiding because soldiers were looking for him to take away his camera. In a telephone conversation with the IACHR on July 15, Otts explained that channel La Cumbre, which he owns, had been shut down for several days.³⁵¹

337. Héctor Castellanos, who directs the program “El consultorio del Médico” [The Doctor’s Office] on *Radio Globo* said he had received death threats.³⁵² In an e-mail to the IACHR, Castellanos explained that after expressing his opinion on the current political situation in Honduras, he began receiving text messages and e-mails containing threats, as well as threatening phone calls from persons he supposes are supporters of President Zelaya. Castellanos said that he stopped doing his radio program, since on at least two occasions he had been the target of an attempted assault for not being a supporter of President Zelaya.³⁵³

338. Before the coup d’état, Jhonny Lagos, editor of the newspaper *El Libertador*, was threatened with jail and a fine for having asked his readers whether they were for or against the consultation proposed by President Zelaya. According to the information received, the reporter complained that after June 28 he was under constant surveillance and was constantly being followed in Tegucigalpa and that they had cut off the electric power supply to his newspaper or cut off its internet access. The Center for Justice and International Law reported that since July 10, the

³⁴⁹ Testimony of Dagoberto Rodríguez, managing editor de Radio Cadena Voces, as told to the Commission during its on-site visit to Honduras (Tegucigalpa), August 17, 2009. Rodríguez stated that: “a number of our colleagues were threatened at the protest marches. Some were asked to show their identification. The [authorities] don’t have a right to ask that. They asked which media outlets they were associated with and told them they would be beaten if they didn’t answer. The guys identified themselves. That happened to a number of our colleagues. Because of that, we didn’t cover the demonstrations staged by the Resistance group. This was not because we didn’t want to; the ideal would have been to give them more coverage. However, we felt that because of the threats that had been made and the fact that members of the Resistance block were become increasingly radicalized, we would have to stop covering their marches”.

³⁵⁰ Comité por la Libertad de Expresión [Committee for Freedom of Expression], June 29, 2009. Alerta: Bloqueo de Medios de Comunicación en Honduras [Warning: Media Blockout in Honduras]. Available at: <http://conexihon.com/blog/archives/324>. Radio la Primerísima. June 29, 2009. Periodista hondureño corre peligro: clausuran su canal [Honduran journalist in danger: they are shutting down his channel]. Available at: <http://radiolaprimerisima.com/noticias/general/55729>.

³⁵¹ C-Libre, “Continúan hostigamientos contra periodistas” [Harassment of journalists continues] (Tegucigalpa), July 3, 2009. Available at: http://www.movimientos.org/show_text.php3?key=14830. Committee of Relatives of Detainees-Disappeared in Honduras, “Informe Preliminar Violaciones a Derechos Humanos en el marco del golpe de Estado en Honduras” [Preliminary Report on Human Rights Violations in the Context of the Coup d’état], July 15, 2009. Available at: <http://www.cofadeh.org/>.

³⁵² C-Libre, “Continúan hostigamientos contra periodistas” [Harassment of journalists continues] (Tegucigalpa), July 3, 2009. Available at: http://www.movimientos.org/show_text.php3?key=14830. Héctor Castellanos, e-mail received by the Office of the Special Rapporteur for Freedom of Expression on July 16, 2009.

³⁵³ Héctor Castellanos, e-mail received by the Commission on August 13, 2009.

newspaper's offices had been under police guard. Lagos complained about the situation at a press conference held on July 15 at COFADEH's offices in Tegucigalpa.³⁵⁴

339. Information was received to the effect that José Luis Galdámez Álvarez, director of the program "Tras la Verdad" [Pursuing the Truth] on Radio Globo, had come out against the coup d'état, after which he was allegedly subjected to various acts of intimidation, such as surveillance of his home and direct threats made to his children at gunpoint by unidentified persons because of their father's political position.³⁵⁵

340. On July 21, Andrés Molina, a broadcaster on Radio Juticalpa, reported that telephone threats against journalists in the Olancho region who expressed views in opposition to the *de facto* government continued. He said that the previous day, he had himself received a phone call threatening him if he continued to speak on radio.³⁵⁶

341. On August 11, Rosangela Soto, a journalist with Televisión, complained of having been threatened by demonstrators in Tegucigalpa, as a protest against the coup d'état was coming to an end.³⁵⁷

342. Consistent with the pattern of intimidation, the IACHR was also told that soldiers were asking media outlets like Channel 11 and the newspaper *Tiempo*, to stop reporting on the opposition. A similar request was made of the journalists in Tocoa, Colón, two days after the coup d'état.

343. The Commission received information to the effect that on September 23, Raquel Isaula, coordinator of the Red de Desarrollo Sostenible (RDS) [Sustainable Development Network] had allegedly been persecuted for reasons having to do with her work. According to the information received, Isaula had allegedly been visited by CONATEL representatives who asked that the Network suspend all registration of Honduran domain names and that she turn over the lists and databases of the existing "hn" (Honduran) domain names [within two days]. The information received went on to say that Isaula had allegedly received a number of threatening messages on her cell phone. The Commission requested information on this matter from the *de facto* government, which on October 20 replied as follows: "Concerning the situation of Mrs. Raquel Isaula, Coordinator of the Red de Desarrollo Sostenible (RDS), the Commission is informed that the National Police have no knowledge of these events, since the alleged victim did not file a complaint; a review of the files of complaints presented to the Offices of the Special Prosecutor for Human Rights in Tegucigalpa and San Pedro Sula, as well as the files of other regional prosecutors' offices turned up no complaint filed by a person of that name (...) As for the Inspection Visit that CONATEL authorities made to the Sustainable Development Network-Honduras (RDS-HN), the Commission is advised that under the General Regulations of the Telecommunications Sector Framework Law (in

³⁵⁴ Complaint that the CPTRT filed with the Commission during its on-site visit to Honduras (Tegucigalpa), August 17, 2009. During a press conference held at COFADEH offices, Lagos said the following: "I have received mail by the post and electronic messages mentioning my mother and using words intended to scare me. I understand this is a psychological war. That doesn't affect me. I'm telling you right now, if something happens to me, those responsible will be the visible faces of the coup d'état".

³⁵⁵ Request for precautionary measures filed by the Center for Justice and International Law on July 20 and 22, 2009.

³⁵⁶ C-Libre, "Periodistas denuncian presiones para cancelación de contratos de publicidad" [Journalists denounce threats to cancel advertising contracts] (Tegucigalpa), July 21, 2009. Available at: http://movimientos.org/show_text.php3?key=15046.

³⁵⁷ C-Libre, "Otro ataque contra la libertad de expresión en Honduras" [Another attack on freedom of expression in Honduras]. (Tegucigalpa), August 12, 2009. Available at: <http://conexihon.com/blog/archives/624>.

force since December 2002), specifically Article 79B thereof, CONATEL has the authority to regulate and manage domains and IP addresses within the national territory. It also provides that CONATEL may take the measures necessary to ensure that the administration of domains and IP addresses can be done through other public or private institutions, for which purpose agreements shall be signed and the corresponding regulations issued.”³⁵⁸

344. The acts of aggression described earlier and the threats mentioned in this section are attributed both to the *de facto* government and to alleged members of the opposition, and illustrate how very polarized Honduran society is at the present time.

345. Once again, the Commission recalls the provisions of principle 9 of the Inter-American Declaration of Principles on Freedom of Expression, which states that “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.”

g. Other abuses

346. The Commission also received a number of complaints related to the suspension of programs whose editorial leanings were against the coup d’état, restriction of official advertising on media outlets not sympathetic to the *de facto* government or a temporary ban on journalists’ access to Government House.

347. On July 11, the program “Tiempos de Hablar,” carried over *Radio Cadena Voces* and hosted by journalist Daisy Flores, was allegedly cut off on the morning when Flores asked the panelists for their opinion of the coup d’état. According to the information received, the management of the radio station had reportedly told her that they had no explanation for the cut-off. Hours later, when she was about to go on air again in connection with the program “La Bullaranga,” which is a production of the Centro de Estudios de la Mujer de Honduras [Honduran Women’s Studies Center], the broadcast was interrupted again.³⁵⁹

348. Information was also received to the effect that the program “Voces contra el Olvido” [Lest We Forget], a production of the Comité de Familiares de Detenidos y Desaparecidos en Honduras [Committee of Relatives of Detainees-Disappeared in Honduras] broadcast by contract on Radio América, was taken off the air in mid-July. According to this information, the radio station’s management had allegedly informed the Committee that the program would be off the air until further notice, “given the situation in the country.” Bertha Oliva, one of the program’s hosts, told the IACHR that on July 11 she was told that her program was being taken off the air, “without an

³⁵⁸ *De facto* Secretariat of Foreign Affairs of Honduras, Memorandum 731-DGAE-09 dated October 20, 2009.

³⁵⁹ Comité de Familiares Detenidos Desaparecidos en Honduras [Committee of Relatives of Detainees-Disappeared in Honduras], “Informe Preliminar Violaciones a Derechos Humanos en el marco del golpe de Estado en Honduras” [Preliminary Report on Human Rights Violations in the Context of the Coup d’état], July 15, 2009. Available at: <http://www.cofadeh.org/>. Letter from CEJIL to the Commission’s Executive Secretary, Santiago Cantón. Received by the Commission on July 23, 2009. C-Libre/IFEX, “Two feminist movement radio programs censored” (Tegucigalpa), July 14, 2009. Available at: http://www.ifex.org/honduras/2009/07/20/cadena_voces_suspends_programmes/es/. Article 19, “Honduras: Early Warning Signs of Impending Crisis”, (London) July 28, 2009. Available at: <http://www.article19.org/pdfs/press/honduras-early-warning-signs-of-impending-crisis.pdf>.

explanation.” Oliva told the Commission that on Friday, July 10, she was called and told that her that the program was being suspended.³⁶⁰

349. On July 15, broadcaster Allan Adális Martínez complained that he was being dismissed for describing the *de facto* government as “golpista” on his radio show “Libre Expresión” on Radio Alegre, in Tocoa, Colón. According to Martínez, the owner of the station, where Martínez had worked for 13 years, had told him that some broadcasters would be discharged from the station for expressing views of that type.³⁶¹

350. In the meantime, Esdras López at Channel 36 and Radio la Catracha, and Eduardo Maldonado on Maya TV, complained that the *de facto* government had brought pressure to bear on private businesses to cancel advertising on their programs and media outlets.³⁶²

351. Information was also received to the effect that on July 13, a journalist from *Radio Globo*, Liliet Díaz, was denied entry to Government House, even though she had been given the credentials to enter more than a year earlier.³⁶³

352. On August 10, journalist Ivis Alvarado and cameraman Alejandro Fiallos, both from Channel 36 and accredited to the Presidential Residence, were not allowed to enter the presidential office “on orders from above.” The two members of the Channel 36 crew and the channel’s managing director, Esdras López Amado, lodged a complaint with the Office of the Special Prosecutor for Human Rights. The latter reportedly sent prosecutors to check [on] the situation, and they, too, were denied entry to the Presidential Residence. According to López Amado, other media outlets were given access to the Presidential Residence. This was the first time that members of the channel’s news crew had been unable to enter a State office to perform their job. The Presidential Residence lifted the suspension two days later.³⁶⁴

³⁶⁰ Testimony of Bertha Oliva, host of the COFADEH program “Voces contra el Olvido” [Lest We Forget], to the Commission during its on-site visit to Honduras (Tegucigalpa), August 17, 2009. Oliva said the following: “They said it was because of the crisis the country was experiencing, even though we had a contract until December (...) The one who called was an administrative assistant; she told us not to send the program, because the station couldn’t air it. She said this was temporary, not a big thing, and it was because of the situation in the country. We asked her to send us the message in writing, but they never did. We want them to notify us in writing. And although we’ve contacted them about this four times, they’ve never done”. C-Libre, “Radio América saca del aire programa radial” [Radio América takes radio program off the air] (Tegucigalpa), July 22, 2009. Available [in Spanish] at: <http://hablahonduras.com/2009/07/23/alerta-radio-america-saca-del-aire-programa-radial-de-cofاده-comite-de-familiares-de-detenedos-y-desaparecidos-en-honduras/>.

³⁶¹ C-Libre/IFEX, “Periodista despedido por oponerse al coup d’état” [Journalist fired for opposing the coup]. (Tegucigalpa), July 16, 2009. Available at: http://www.ifex.org/honduras/2009/07/20/martinez_fired_diaz_barred/es/. Reporters Without Borders, “International community urged to demand an end to news media lockdown by de facto authorities”, July 23, 2009. Available at: http://www.rsf.org/International-community-urged-to_33960.html.

³⁶² Testimony of journalists Esdras López Amado and Eduardo Maldonado, as told to the Commission during its on-site visit to Honduras (Tegucigalpa), August 17, 2009. C-Libre, “Periodistas denuncian presiones para cancelación de contratos de publicidad” [Journalists denounce threats to cancel advertising contracts] (Tegucigalpa), July 21, 2009. Available at: http://movimientos.org/show_text.php3?key=15046.

³⁶³ C-Libre, “Impiden acceso en Casa Presidencial a periodista de Radio Globo” [Radio Globo journalist denied access to Presidential House]. (Tegucigalpa), July 13, 2009. Available at: <http://conexihon.com/blog/archives/489>. Reporters Without Borders, July 23, 2009 “International community urged to demand an end to news media lockdown by de facto authorities”, July 23, 2009. Available at: http://www.rsf.org/International-community-urged-to_33960.html. “Vuelven a Presidencial periodistas de Canal 36 y Radio Globo” [Journalists from Channel 36 and Radio Globo return to Presidential Residence], *Diario La Tribuna* (Honduras), August 13, 2009.

³⁶⁴ Testimony of Esdras López Amado, taken by the Commission by phone on August 10, 2009. C-Libre, “Más violaciones a la libertad de expresión del Gobierno de facto en Honduras” [More violations of freedom of express by Honduras’ de facto government] (Tegucigalpa), August 10, 2009. Available at: <http://conexihon.com/blog/archives/612?action=lostpassword>. “Vuelven a Presidencial periodistas de Canal 36 y Radio

353. Journalist Pedro Antonio Noriega Nieto, host of the program “Noticias en línea” on Channel 51, told the Commission that officials of the television channel had removed his program on August 19 “because of pressure from above,” an allusion to the *de facto* government.³⁶⁵

354. In the meantime, on September 16, Channel 36 complained that its television signal was being sabotaged by order of the *de facto* government. In a news item broadcast on several occasions on the program “Así se informa” on that channel, the executive branch headed by Mr. Micheletti, CONATEL and the Honduran Telecommunications Company (HONDUTEL) were all blamed for the interruptions.³⁶⁶

355. On September 22 and October 7, the *de facto* government of Honduras published in the Official Gazette, two executive decrees containing provisions that disproportionately restricted the right to freedom of expression.

356. On September 22, the *de facto* government issued Executive Decree PCM-M-016-2009, which was published in the Official Gazette of September 26. This decree, *inter alia*, suspended the constitutional right to freedom of expression by prohibiting any publication that “offends human dignity or the dignity of public officials, or that violates the law and government decisions.” The decree authorized the National Telecommunications Commission (CONATEL) to use the forces of law and order to interrupt broadcasting by any radio station, television channel or cable system that in its judgment was in violation of the aforesaid prohibitions. Enforcing that decree, in the early morning hours of September 28, the security forces proceeded to search and confiscate the broadcasting equipment at television Channel 36 and Radio Globo. Both media outlets had been critical of the *de facto* government. The decree was nullified subsequent to its announcement, on Monday, October 19.

357. On October 7, the *de facto* government published Executive Decision 124-2009 in the Official Gazette. Under that decision, “in order to protect national security for the sake of the overriding interests of the Nation, and to defend the rights and physical and moral integrity of the human person,” “CONATEL and other competent organs of the State” were ordered to “revoke the permits and operating licenses that CONATEL granted to operators of radio and television stations that broadcast messages that seek to justify hatred of the nation and violation of protected rights and claims, and that defend a system of social anarchy as opposed to a democratic State and in so doing violate social peace and human rights.”

358. The IACHR was informed that on October 16, the executives at Radio Cadena Voces allegedly cancelled three feminist programs: “Aquí entre Chonas,” produced by the Movimiento de Mujeres por la Paz Visitación Padilla [Visitation Padilla Women’s Pro-Peace Movement], “Tiempo de

...continuation

Globo” [Journalists from Channel 36 and Radio Globo return to Presidential Residence], Diario La Tribuna (Honduras), August 13, 2009.

³⁶⁵ Testimony of Pedro Antonio Noriega Nieto, host of the program “Noticias en línea,” as told to the Commission during the on-site visit to Honduras (Tegucigalpa), August 21, 2009.

³⁶⁶ “Canal 36 asegura que el gobierno le sabotea la señal” [Channel 36 is certain that the government is sabotaging its signal], Diario Tiempo (Tegucigalpa), September 16, 2009. Available at: <http://www.tiempo.hn/secciones/el-pais/4052-fiscalia-y-conatel-intervienen-instalaciones-de-cablecolor-y-canal-11>. A fragment from an announcement made on the program “Así se informa” on Channel 36 went as follows: “Speaking to our listeners, to cable systems throughout the nation and to the international community: Channel 36 is reporting that the temporary suspensions of broadcasts in various parts of Honduras are the work of terrorists hired by the coup government of Roberto Micheletti, in complicity with CONATEL and HONDUTEL, to sabotage our satellite signal. We blame them for the interruptions of our broadcasts”.

Hablar” produced by the Centro de Derechos de Mujeres [Women’s Rights Center] (CDM) and “La Bullaranga” produced by the Centro de Estudios de la Mujer Honduras [Honduran Women’s Studies Center] (CEM-H). It did so on the grounds that it feared the *de facto* government would take away its license, in application of Executive Decision 124-2009.³⁶⁷

359. In response to complaints the Commission has received since June 28 alleging threats to physical integrity, the Commission has granted precautionary measures on behalf of dozens of journalists in private media and alternative or local media, located both in Tegucigalpa and elsewhere in Honduras.

h. Journalistic ethics

360. The Commission has been told by a number of sources that various media outlets may have manipulated the news, thereby preventing the Honduran public from receiving enough information, presented from all sides, about the situation that the country is experiencing. The IACHR recalls that at times of political crisis like the one Honduras is now experiencing, it is more important than ever that the exchange of ideas be as prolific as possible, which presupposes a well-informed society. In this context the separation of the editorial line from the news reporting offered to the population may contribute to achieving that objective. States should refrain from imposing standards of ethical conduct to the media; instead, journalists should pursue self-regulation by subscribing to deontological codes of ethics, style manuals, rules of composition, and by serving as watchdogs for the public’s interests, providing advice, and other mechanisms.

361. Principle 6 of the Inter-American Declaration of Principles on Freedom of Expression states that “[j]ournalistic activities must be guided by ethical conduct, which should in no case be imposed by the State.”

362. With respect to the right to freedom of expression, the Commission must remind the Honduran State of its obligation to respect the right to freedom of expression unreservedly, which demands that it guarantee to all journalists, irrespective of their editorial position, the freedom to express their ideas and impart the information they gather. Acts of intimidation and censorship, either direct or indirect, by reason of a media outlet’s coverage of a story or its editorial position and for the purpose of silencing it, are a blatant violation of the right that all persons have to express themselves without fear of reprisals, and of society’s fundamental right to receive information from multiple and diverse sources, without any form of censorship.

363. The Honduran State is also reminded that any restriction on the right to freedom of expression, even in a state of emergency or exception, can only be ordered by a legitimate government and must be proportionate and strictly necessary to protect the democratic system. Silencing dissident opinions or criticism by evoking words like ‘contempt’ -as was indeed attempted in Honduras- and giving law enforcement the authority to search and confiscate broadcasting equipment when, in the opinion of the government authorities, the media are engaging in behavior that they deem to be in violation of existing law, constitutes a serious, unnecessary, arbitrary and disproportionate restriction of every Honduran’s right to express himself or herself freely and to receive information from multiple and diverse sources.

³⁶⁷ Web page for “Las Chonas”. October 17, 2009. “Dictadura cierra tres programas radiales de mujeres” [Dictatorship takes three women’s radio programs off the air]. Available at: http://www.laschonas.com/cms/noticias.php?subaction=showfull&id=1255792139&archive=&start_from=&ucat=5&. Testimony of Mery Agurcia, COFADEH attorney, as told to the IACHR during its 137th regular session, November 3, 2009, Washington, D.C.

364. The Commission urges Congress and the Supreme Court to put a stop to enforcement of any measure that can violate the right to freedom of expression, and also to take steps to correct the adverse effects that may have been caused while those provisions were in effect. It also demands that the *de facto* government grant all the guarantees necessary so that media outlets and journalists are able to discharge their mission of informing and reporting with complete freedom and in total safety.

19. Jamaica

365. On March 20, 2009, during the 134th period of sessions, the IACHR held a public hearing on the situation of freedom of expression in Jamaica. Representatives of the State and of civil society participated in the hearing. The Office of the Special Rapporteur used the information submitted at the hearing in preparing this section of the Annual Report 2009.³⁶⁸

366. During the hearing, the petitioners stated that the laws on defamation in Jamaica do not establish special protection for expression related to public officials doing official work. Likewise, they stated that in some civil defamation trials, the courts have ordered media outlets to pay fines of such a high amount that they are having a chilling effect on the exercise of freedom of expression in the country.³⁶⁹ For their part, the representatives of the State indicated that in 2008, Prime Minister Bruce Golding provided for the creation of a new committee whose purpose is to review Jamaica's defamation laws. They stated further that on February 28, 2008, the committee issued a report whose recommendations were presented before the Parliament's House of Representatives. According to the State, the committee proposed abolishing criminal defamation, eliminating the distinction between the civil offenses known as slander and libel, and reducing the statute of limitations from six years to 12 months. It is worth noting that during the hearing, the petitioners indicated that the process for implementing these recommendations had not yet moved forward.³⁷⁰ In this context, the Office of the Special Rapporteur reiterates the importance of the State adjusting its legislation on matters of freedom of expression to inter-American standards.³⁷¹ The Office of the Special Rapporteur reminds the State that Principle 10 of the Declaration of Principles holds that, "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news."

³⁶⁸ The public hearing was requested by Oliver Clarke, director of daily newspaper *The Gleaner*. An audio recording of the hearing is available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=8>.

³⁶⁹ Information submitted on April 6, 2009, to the Office of the Special Rapporteur for Freedom of Expression from *The Gleaner*.

³⁷⁰ Information submitted on March 6 2009 by the State to the Office of the Special Rapporteur for Freedom of Expression. As of the date of this report, no information has been received regarding the progress of the initiative. In this regard, see Inter-American Press Association. *65th General Assembly, November 6-10, 2009. Buenos Aires, Argentina.* Country: *Jamaica.* Available at: [http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=24&infoid=368&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=24&infoid=368&idioma=us;); Reporters Without Borders. *Jamaica.* Available at: <http://www.rsf.org/en-rapport183-Jamaica.html>.

³⁷¹ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

367. The Office of the Special Rapporteur takes note of information indicating that in June of 2009, the Parliament began a debate to determine if providers of telecommunications services can be the subject of lawsuits for spreading third-party material via the Internet. According to the information received by the Office of the Special Rapporteur, during the debate, the Internet service providers argued that they should not be responsible for defamatory expressions or opinions placed on the Internet.³⁷²

368. The Office of the Special Rapporteur also received information according to which on February 20, 2009, Ricardo Makyn, a photographer with daily newspaper *The Gleaner*, was arrested while taking photographs of a police officer who fired at and wounded an individual who had tried to seize his mobile phone. At the time, Makyn was informed that he was being arrested for insulting, disobeying, and assaulting an officer of the law. According to the information received by the Office of the Special Rapporteur, in March of 2009, police authorities admitted that the detention of the photographer should not have happened.³⁷³

369. Finally, on February 20, 2009, the Broadcasting Commission of Jamaica issued two directives prohibiting the television or radio broadcast of soca or hip-hop music or videos, or any other rhythm whose content “displays, simulates, or instructs about sexual activities or positions,” or whose lyrics “glorify[] the gun and promot[] killings and other acts of violence.” The Broadcasting Commission of Jamaica also announced that the media outlets that violate these directives will be fined.³⁷⁴ Regarding this point, the Office of the Special Rapporteur recognizes the State’s important duty to prevent acts of violence. However, bans that are generic, ambiguous, or simply reproduce one of the many ethic or moral visions that exist in a plural society are incompatible with the defense of the right to freedom of expression. On this point, the Office of the Special Rapporteur reminds the state that the right to freedom of expression should be guaranteed not only in the spread of ideas and information that are favorably received or considered inoffensive or neutral, but also in the spread of information that is offensive, shocking, disturbing, or unpleasant to public officials or a segment of the population, unless otherwise established by article 13 of the American Convention. These are the requirements of pluralism, tolerance, and a spirit of openness, without

³⁷² Association of Caribbean Media Workers. June 18, 2009. *Legislators consider defamation suits against telecom providers*. Available at: http://www.ifex.org/jamaica/2009/06/18/telecoms_liable/; Jamaica *Gleaner*. June 13, 2009. *Telecommunications provider rejects content regulations*. Available at: <http://www.jamaica-gleaner.com/gleaner/20090613/news/news1.html>; Radio Jamaica. June 11, 2009. *Telecoms companies should not be held liable for defamatory statements made using its networks*. Available at: <http://www.radiojamaica.com/content/view/18798/51/>.

³⁷³ Inter-American Press Association. *65th General Assembly, November 6-10, 2009. Jamaica*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=24&inford=368&idioma=us; Reporters Without Borders. February 24, 2009. *Journalist Ricardo Makyn arrested for taking photos of police officer who shot, wounded man*. Available at: http://ifex.org/jamaica/2009/02/24/journalist_ricardo_makyn_arrested/; Radio Jamaica. March 13, 2009. *Police and Media meet to quell tension*. Available at: <http://www.radiojamaica.com/content/view/16306/26/>.

³⁷⁴ Broadcasting Commission of Jamaica. February 20, 2009. *Broadcasting Commission issues further directives on soca coverage and gun lyrics*. Available at: <http://www.broadcastingcommission.org/uploads/releases/BCJ%20issues%20further%20Directives%20on%20Soca%20and%20Gun%20Lyrics.pdf>; Broadcasting Commission of Jamaica. February 6, 2009. *Statement by the Broadcasting Commission on actions and recent directives relating to broadcast media content*. Available at: <http://www.broadcastingcommission.org/uploads/releases/Broadcasting%20Commission%20Statement%20on%20Dagginger%20Songs.pdf>; Caribbean Net News. February 23, 2009. *Broadcasting Commission brings soca and gun lyrics under control in Jamaica*. Available at: http://www.caribbeanetnews.com/jamaica/jamaica.php?news_id=14460&start=200&category_id=9; Caribbean Net News. February 11, 2009. *Jamaica to take tough stance against lewd and violent music, says PM*. Available at: http://www.caribbeanetnews.com/jamaica/jamaica.php?news_id=14183&start=240&category_id=9; The Gleaner. February 21, 2009. *Broadcasting Commission targets soca*. Available at: <http://www.jamaica-gleaner.com/gleaner/20090221/lead/lead3.html>.

which a truly democratic society cannot exist.³⁷⁵ Principle 5 of the Declaration of Principles holds that, "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

20. Mexico³⁷⁶

370. The Office of the Special Rapporteur notes the progress made in the judicial investigation into the murder of journalist Roberto Javier Mora García, which occurred on March 19, 2004 in Nuevo Laredo, State of Tamaulipas. Hiram Oliveros Ortiz was sentenced to 16 years in prison by the Second Criminal Court of Nuevo Laredo, which found him guilty of participating in the murder. According to the information received, the judicial investigation was plagued by irregularities and attempted anomalies.³⁷⁷

371. Likewise, the Office of the Special Rapporteur appreciates the progress made in the case of Amado Ramírez, a radio host and *Televisa* correspondent in Acapulco, who was murdered in April of 2007. According to the information received, in March of 2009 the alleged perpetrator of the crime, Genaro Vázquez Durán, was sentenced to 38 years in prison. The complaints indicate that the journalist had received threats prior to his death.³⁷⁸

372. The Office of the Special Rapporteur also emphasizes the advances made by Congress in the process of making crimes against freedom of expression federal offenses. This initiative was driven by journalists and press organizations, and more recently was supported by the Executive Branch. The bill was passed in the House of Representatives, and is now pending before

³⁷⁵ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. paras. 30-31. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf> ; See also: I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 113; I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. para. 69

³⁷⁶ In preparing this section of chapter II of its 2009 Annual Report, the Office of the Special Rapporteur took into account information available until November 30, 2009. Information regarding incidents that occurred after this date is available in the press release section of the websites of the Office of the Special Rapporteur (<http://www.cidh.org/relatoria>) and the IACHR (<http://www.cidh.org>).

³⁷⁷ Inter American Press Association. June 4, 2009. *Sentenciado asesino de periodista mexicano*. Available at: <http://www.impunidad.com/index.php?shownews=304&idioma=sp>; CEPET. June 8, 2009. *Sentencian a presunto asesino de periodista, el proceso plagado de anomalías*. Available at: http://www.ifex.org/mexico/2009/06/08/alleged_murderer_sentenced/es/

³⁷⁸ Reporters Without Borders. March 27, 2009. *Condenan a 38 años de cárcel, en primera instancia, a un hombre acusado de asesinar a un periodista*. Available at: http://www.ifex.org/mexico/2009/03/27/man_sentenced_to_38_years_in_prison/es/; Crimes against Journalists. Impunity Project. March 24, 2009. *Sentencian a asesino de periodista mexicano Amado Ramírez*. Available at: <http://impunidad.com/index.php?shownews=282&idioma=sp>; Milenio. March 24, 2009. *Sentencian a 38 años de cárcel a asesino de Amado Ramírez*. Available at: <http://www.milenio.com/node/189075>; El Universal. March 24, 2009. *Presunto homicida de periodista es sentenciado a 38 años*. Available at: <http://www.eluniversal.com.mx/notas/586195.html>.

the Senate.³⁷⁹ Given this positive sign, it is the hope of the Office of the Special Rapporteur that the initiative will be approved in the Senate, where it apparently has not made significant progress.³⁸⁰

373. The Office of the Special Rapporteur is pleased by the June 17, 2009 decision of the Supreme Court, which ruled that several criminal provisions were inapplicable due to their incompatibility with the Constitution and with international standards on freedom of expression. In this decision, the Supreme Court revoked a judgment that, based on the right to honor and to privacy, imposed a prison sentence against the director of a newspaper that had published an article about the behavior of a public official. The judgment of the Supreme Court, citing expressly the highest inter-American standards, emphasized the need to prevent criminal law from being used as a mechanism to silence democratic speech concerning government officials and matters of public interest. The Court also found that the norms on slander and libel in the Press Law of the State of Guanajuato, given its extreme vagueness and lack of specificity, was inconsistent with the Constitution and the standards of the inter-American system regarding freedom of expression.³⁸¹

374. In another recent decision, the Supreme Court affirmed a judgment releasing the magazine *Proceso* from the payment of damages for pain and suffering resulting from the publication of an article on the first divorce of the wife of a former President of the Republic. In rendering this decision, the Supreme Court found that the case dealt with “a public figure who, although she did not hold public or elected office at the time the contested article was published, was certainly nationally and internationally known due to his personal status and even his political activities.” It stated that this renown was of such magnitude “that it entailed greater public scrutiny or interest in his actions or behavior, and therefore the legitimate interest of society to receive certain information about [it].”³⁸²

375. The Office of the Special Rapporteur also views positively the fact that on June 29, 2009, the Congress of the State of Nuevo León passed an amendment to the state Criminal Code that imposes penalties of up to 35 years in prison for the murder of a journalist or his relatives,

³⁷⁹ CENCOS. April 2, 2009. *Aprueban diputados federalización de delitos contra la libertad de expresión; se turna al Senado*. Available at: <http://www.cencos.org/es/node/20566>; CENCOS. April 2, 2009. *“Urgente” que pase al Senado la iniciativa de federalización de delitos contra la libertad de expresión*. Available at: <http://cencos.org/es/node/20562>; El Universal. April 1, 2009. *Impulsan federalizar delitos contra actividad periodística*. Available at: <http://www.eluniversal.com.mx/nacion/166786.html>.

³⁸⁰ Inter American Press Association. March 3, 2009. *La SIP alerta sobre retroceso en los esfuerzos para federalizar crímenes contra periodistas*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4143&idioma=sp; Committee to Protect Journalists. April 6, 2009. *El Congreso mexicano debe aprobar medidas para federalizar los crímenes contra la libertad de expresión*. Available at: <http://cpj.org/es/2009/04/el-congreso-mexicano-debe-aprobar-medidas-para-fed.php>; Article 19. April 16, 2009. *Mexico: Reform of the Federal Penal Code Falls Short in Protecting the Right to Freedom of Expression*. Available at: <http://www.article19.org/pdfs/press/mexico-reform-of-the-federal-penal-code-falls-short-in-protecting-the-right-.pdf>.

³⁸¹ Office of the Special Rapporteur - IACHR. June 22, 2009. Press Release No. R38/09. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=750&IID=2>; Supreme Court of Mexico. June 17, 2009. *Amparan a sentenciado por delito de ataques a la vida privada*. Available at: <http://www.scjn.gob.mx/PortalSCJN/MediosPub/Noticias/2009/17-Junio-2009.htm>; CEPET. June 18, 2009. *Ampara la Corte a periodista y fija límites a demandas penales contra comunicadores*. Available at: http://libex.cepel.org/index.php?option=com_content&view=article&id=616:ampara-la-corte-a-periodista-y-fija-limites-a-demandas-penales-contracomunicadores&catid=36:alertas&Itemid=55.

³⁸² Supreme Court, Judgment of October 7, 2009. Direct Amparo 6/2009. CEPET. October 9, 2009. *Absuelve corte al semanario “Proceso” por demanda de ex primera dama*. Available at: http://www.ifex.org/mexico/2009/10/09/wornat_owes_damages/es/.

when it can be proven that the crime was due to reasons connected to the practice of his professional work.³⁸³

376. The Office of the Special Rapporteur notes that on November 5, 2009, representatives from the Ministry of the Interior announced that "the competent authorities [had] approve[d] the issuance of permits for six community radios."³⁸⁴ Nevertheless, the Office of the Special Rapporteur was later informed that the granting of such permits would require an additional issuance procedure before the Department of Communications and Transportation. According to this information, on October 28, 2009, the Federal Telecommunications Commission (COFETEL) issued a favorable opinion for the Department of Communications and Transportation to issue the permits to those communities.³⁸⁵

377. In spite of the progress cited, during 2009 the Office of the Special Rapporteur observed with great concern the increase in the number of murders committed against journalists and other members of the media in Mexico.

378. On May 3, 2009, journalist Carlos Ortega Melo Samper, a correspondent for the newspaper *El Tiempo de Durango*, was murdered in the municipality of Santa María de El Oro. According to the information received, Ortega was on his way home when two pick-up trucks intercepted him, and unidentified persons forced him to get out of his car. He resisted, and was shot several times in the head. Days earlier, the reporter had denounced in an article that he had been threatened by alleged representatives of the local government in connection with a piece he had published regarding acts of corruption.³⁸⁶ The authorities have investigated those officials' links to the crime, but no significant progress has been made.

379. On May 25, 2009, journalist Eliseo Barrón Hernández of the newspaper *La Opinión Milenio* was kidnapped. His body, which showed signs of torture, was found 24 hours later in the municipality of Tlahualilo, in the state of Durango. The information received indicates that on the night of May 25, 2009, Barrón was forcibly removed from his home in front of his wife and daughters by a group of unidentified armed individuals. Barrón had been covering police news for *La Opinión de Torreón* for eleven years. In the days leading up to the events, the reporter had written

³⁸³ Milenio. June 29, 2009. *Endurecen penas para asesinos de periodistas en NL*. Available at: <http://www.milenio.com/node/240019>; CEPET. July 2, 2009. *Incrementa Congreso de Nuevo León penas contra asesinatos de periodistas*. Available at: http://libex.cepet.org/index.php?option=com_content&view=article&id=638:incrementa-congreso-de-nuevo-leon-penas-contra-asesinos-de-periodistas-&catid=36:alertas&Itemid=55.

³⁸⁴ Public hearing "Status of Political Rights in Mexico", held on November 5, 2009 during the 137th Period of Sessions of the IACHR. Available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=117&page=2>.

³⁸⁵ Information sent by Asociación de Radios Comunitarios (AMARC) on November 3, 2009 via email to the Office of the Special Rapporteur.

³⁸⁶ Office of the Special Rapporteur – IACHR. May 7, 2009. Press Release No. R22/09. Available at: <http://www.cidh.org/Relatoria/showarticle.asp?artID=741&IID=2>; Inter American Press Association. May 6, 2009. *Condena la SIP asesinato de periodista en México*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4183&idioma=sp; Inter American Press Association. May 6, 2009. *Resumen de caso: Carlos Ortega Melo Samper*. Available at: <http://www.impunidad.com/index.php?showreporte=114&idioma=br>; Reporters Without Borders. May 5, 2009. *Asesinan a un periodista en conflicto con las autoridades del municipio del Estado de Durango*. Available at: <http://www.rsf.org/Asesinan-a-un-periodista-en,33182.html>; Diario La Jornada. May 5, 2009. *Asesinan a balazos a un periodista en Durango*. Available at: <http://www.jornada.unam.mx/2009/05/05/index.php?section=estados&article=033n1est>; CENCOS. May 19, 2009. *El Director General de la Unesco condena el asesinato del periodista mexicano Carlos Ortega Melo Samper*. Available at: <http://cencos.org/es/node/20799>.

about corruption in Torreón.³⁸⁷ The Office of the Special Rapporteur received information indicating that on June 12, 2009, five members of the criminal organization "Los Zetas" had been arrested and had confessed their involvement in Barrón's kidnapping and murder. On August 13, 2009, they were indicted and ordered to stand trial in the Second District Court of Saltillo, state of Coahuila.³⁸⁸

380. On July 12, 2009, journalist Martín Javier Miranda was murdered in his residence in the city of Zitácuaro, in the state of Michoacán. His colleagues at the newspaper *Panorama* stated that he had been the victim of recent threats.³⁸⁹

381. On July 28, 2009, the body of reporter Juan Daniel Martínez Gil was discovered in Acapulco, state of Guerrero. According to the information received, members of the Police had been informed of the crime in an anonymous telephone call. The reporter's body had been found buried in a vacant lot in the town of La Máquina. Apparently he was bound at the hands and feet, his head was wrapped in brown tape and he had been severely beaten. Martínez Gil was the host of a news show on *W Radio* and the program *Guerrero en vivo* on the *Rádiorama Acapulco* radio station.³⁹⁰

382. On September 23, 2009, unknown persons killed Norberto Miranda Madrid, a journalist from the digital newspaper *Radio Visión*, in the municipality of Nuevo Casas Grandes, Chihuahua. According to the information received, on the night of September 23, 2009, a group of heavily armed individuals had burst into the editorial office of the digital newspaper and fired several shots at the journalist. Miranda Madrid had in recent weeks decried the insecurity of living in northern Mexico, especially in the town of Casas Grandes, where 25 people had been killed since September 1, 2009. The reports also indicate that Miranda Madrid had told other journalists that he had been threatened when he published a story relating to the arrest of members of the so-called "Juárez Cartel."³⁹¹

³⁸⁷ Office of the Special Rapporteur – IACHR. May 29, 2009. Press Release No. R34/09. Available at: <http://www.cidh.org/Relatoria/showarticle.asp?artID=748&IID=2>; CENCOS. May 26, 2009. *Encuentran cadáver de periodista secuestrado en Durango*. Available at: <http://cencos.org/es/node/20852>.

³⁸⁸ CEPET. September 1, 2009. *Dictan formal prisión contra presuntos asesinos de periodista*. Available at: http://libex.cepet.org/index.php?option=com_content&view=article&id=709:dictan-formal-prision-contra-presuntos-asesinos-de-periodista&catid=36:alertas&Itemid=55; El Universal. September 2, 2009. *Dictan prisión a asesinos de Eliseo Barrón*. Available at: <http://www.eluniversal.com.mx/notas/623828.html>.

³⁸⁹ Inter American Press Association. July 16, 2009. *Condena la SIP asesinatos de dos periodistas en México y pide investigar*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4218&idioma=sp; Reporters Without Borders. July 16, 2009. *Asesinan a dos periodistas en veinticuatro horas; los móviles no se han averiguado todavía*. Available at: <http://www.rsf.org/Asesinan-a-dos-periodistas-en,33863.html>; El Universal. July 28, 2009. *Unesco condena crimen contra periodista mexicano*. Available at: <http://www.eluniversal.com.mx/notas/615389.html>.

³⁹⁰ Office of the Special Rapporteur – IACHR. July 30, 2009. Press Release No. R54/09. Available at: <http://www.cidh.org/Relatoria/showarticle.asp?artID=757&IID=2>. El Universal. July 29, 2009. *Sicarios a sueldo, posibles asesinos de reportero de W Radio*. Available at: <http://www.eluniversal.com.mx/notas/615700.html>.

³⁹¹ Office of the Special Rapporteur – IACHR. September 29, 2009. Press Release No. R70/09. Available at: <http://www.cidh.org/Relatoria/showarticle.asp?artID=763&IID=2>; Inter American Press Association. September 25, 2009. *Condena la SIP asesinatos de periodistas en México y Colombia*. Available at: <http://www.impunidad.com/index.php?comunicados=detalle&idioma=sp&id=4265>; CENCOS. September 25, 2009. *Article 19 y Cencos condenan asesinato de Norberto Miranda y denuncian las condiciones para ejercer el periodismo en el país*. Available at: <http://cencos.org/es/node/21725>; CEPET. September 24, 2009. *Asesinan a periodista dentro de redacción en Chihuahua*. Available at: http://libex.cepet.org/index.php?option=com_content&view=article&id=743:asesinan-a-periodista-dentro-de-redaccion-en-chihuahua&catid=36:alertas&Itemid=55; Reporters Without Borders. September 25, 2009. *Un periodista de radio en línea asesinado por un comando en su redacción en el Estado de Chihuahua*. Available at: <http://www.rsf.org/Un-periodista-de-radio-en-linea.html>.

383. On November 2, 2009, the body of journalist José Bladimir Antuna García of the newspaper *El Tiempo* of Durango was found. The Office of the Special Rapporteur received information that Antuna García had been kidnapped on the morning of the same day on which he was killed. His body was apparently found with a note, the content of which has not been revealed by the authorities. The information adds that shortly before the murder of journalist Eliseo Barrón Hernández of the newspaper *La Opinión* (see *supra*), Antuna García had met with him to exchange information on police corruption and organized crime.³⁹²

384. On December 22, 2009, José Alberto Velázquez López, owner of the newspaper *Expresiones de Tulum* in the State of Quintana Roo, was wounded by various bullets fired by individuals on a motorcycle, while he drove his vehicle in the city of Cancún. The information received by the Office of the Special Rapporteur indicates that the journalist was taken to a hospital closeby, where he died hours later. Spokespeople for the newspaper indicated that that the daily had received a series of threats in prior weeks as a result of a publication regarding alleged corruption by local authorities. They also indicated that the newspaper's printing press had been attacked with an incendiary bomb in November 2009.³⁹³

385. The Office of the Special Rapporteur also learned of five other murders of members of the media during 2009. In three of these cases, there is some evidence that the murders could be connected to the victims' profession, although the motive is still unclear. In the other two cases, some local organizations believe that the murders were not related to the journalists' work.³⁹⁴ In any case, the Office of the Special Rapporteur urges the authorities to investigate these events and determine through the courts their possible relationship to journalistic activity and freedom of expression.

386. Indeed, the Office of the Special Rapporteur was informed of the case of Jean Paul Ibarra Ramírez, a photographer for the newspaper *El Correo*, who was shot and killed on February 13, 2009 in the city of Iguala, state of Guerrero, while riding his motorcycle with his colleague Yenny Yuliana Merchán. Later, on February 26, 2009, the police had arrested the alleged perpetrator of the crime. In spite of the fact that the authorities are considering the possibility that the crime was motivated by personal revenge, the hypothesis that it was motivated by journalistic work has not been ruled out.³⁹⁵

387. On February 27, 2009, journalist Juan Carlos Hernández was also murdered in the state of Guerrero, but in the city of Taxco. According to the information submitted to the Office of

³⁹² Office of the Special Rapporteur – IACHR. November 4, 2009. Press Release No. R76/09. Available at: <http://www.cidh.org/Relatoria/showarticle.asp?artID=772&IID=2>; Article 19 – México and Cencos. *José Bladimir Antuna García, noveno periodista asesinado este año*. Available at: <http://www.libertad-expresion.org.mx/noticias/alerta-le-jose-bladimir-antuna-garcia-noveno-periodista-asesinado-este-ano/>.

³⁹³ Office of the Special Rapporteur – IACHR. December 29, 2009. Press Release, No. R87/09. Available at: <http://cidh.org/relatoria/showarticle.asp?artID=776&IID=2>.

³⁹⁴ Article 19 – México and Centro Nacional de Comunicación Social [National Center for Social Communication] (Cencos), October 28, 2009. *Article 19 y Cencos presentan Tercer Informe Trimestral sobre Agresiones contra la Libertad de Expresión en México*. Available at: <http://www.libertad-expresion.org.mx/noticias/articulo19-y-cencos-presentan-tercer-informe-trimestral-sobre-agresiones-contra-la-libertad-de-expresion-en-mexico/>; Sociedad Interamericana de Prensa. *65ª Asamblea General, 6 al 10 de noviembre 2009, Buenos Aires. Informe por país: México*. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=24&inoid=380&idioma=sp.

³⁹⁵ El Universal. February 18, 2009. *SIP condena asesinato de fotógrafo mexicano*. Available at: <http://www.eluniversal.com.mx/notas/577746.html>; Reporters Without Borders. March 6, 2009. *Detenido un sospechoso en la investigación del asesinato del fotógrafo Jean Paul Ibarra; el móvil es muy vago*. Available at: <http://www.rsf.org/Asesinan-a-un-fotografo-del-Estado.html>.

the Special Rapporteur, Hernández was traveling in his vehicle when he was intercepted by another car, from which an unknown person exited and shot him several times. The journalist was the director of the local newspaper *El Quijote*, as well as the representative of an *ejido* [communally-owned land] and a businessman in the pharmaceutical industry. The motives for the crime are unknown, but its relationship to his work as a journalist cannot be ruled out completely.³⁹⁶

388. Likewise, journalist Luis Daniel Méndez of the radio station *La Poderosa*, in the city of Huayacocotla, state of Veracruz, was killed on February 23, 2009. The crime occurred at night, during the city's carnival celebrations. According to the authorities, the murder took place as part of a fight during the festivities. However, the local press organizations do not rule out possible journalistic motives for the murder.³⁹⁷

389. Finally, the Office of the Special Rapporteur received information on the murder of journalist Fabián Ramírez López of the radio station *La Magia 97.1*, who was missing for two days before his body was found on October 11, 2009 in Mazatlán, state of Sinaloa.³⁹⁸ The other was the case of Ernesto Montañez, editor of the magazine *Enfoque*, a publication of the newspaper *El Sol*, who was murdered on July 14, 2009 as he was traveling with his son in a vehicle in Ciudad Juárez, in the state of Chihuahua.³⁹⁹ Although a link to the profession has not been verified in these cases, the Office of the Special Rapporteur urges the authorities not to dismiss that possibility completely before conducting an exhaustive investigation.

390. With regard to the journalists murdered in Mexico and the risk of impunity in the judicial investigations of these events, the Office of the Special Rapporteur notes and underscores what the National Human Rights Commission of Mexico (CNDH) stated on August 19, 2009 in its General Recommendation No. 17/09.⁴⁰⁰

³⁹⁶ CEPET. March 1, 2009. *Ejecutan a tiros a director de un semanario*. Available at: http://libex.cepet.org/index.php?option=com_content&view=article&id=458:ejecutan-a-tiros-a-director-de-un-semanario&catid=36:alertas&Itemid=55; Periodistas en Español. March 3, 2009. *Asesinado en México el director de "El Quijote" de Taxco Juan Carlos Hernández Mundo*. Available at: http://www.p-es.org/index.php?option=com_content&task=view&id=2649&Itemid=62; Federación Latinoamericana de Periodistas [Latin American Federation of Journalists]. April 5, 2009. *Incontenible el ritmo de asesinatos de periodistas; caen tres en un mes*. Available at: <http://www.felap.info/archivo/2009/0409/1T.20090405.html>.

³⁹⁷ CENCOS. February 25, 2009. *Ultiman por la espalda a periodista en Huayacocotla, Veracruz*. Available at: <http://cencos.org/es/node/20351>; Periódico ADN. February 25, 2009. *SIP condena asesinato de periodista en México*. Available at: <http://www.adn.es/sociedad/20090225/NWS-3535-SIP-Mexico-periodista-asesinato-condena.html>; Reporters Without Borders. February 25, 2009. *Matan a un joven periodista radiofónico en el Estado de Veracruz; aún no se ha establecido el móvil*. Available at: <http://www.rsf.org/Matan-a-un-joven-periodista.html>; El Universal. February 24, 2009. *Periodista es asesinado en carnaval de huasteca veracruzana*. Available at: <http://www.eluniversal.com.mx/notas/579365.html>.

³⁹⁸ International Federation of Journalists. October 14, 2009. *Los periodistas siguen en el punto de mira en México*. Available at: <http://www.ifj.org/es/articles/los-periodistas-siguen-en-el-punto-de-mira-en-mexico>; CEPET. October 13, 2009. *Locutor de radio, asesinado en Sinaloa*. Available at: http://libex.cepet.org/index.php?option=com_content&view=article&id=764:locutor-de-radio-asesinado-en-sinaloa&catid=36:alertas&Itemid=55; Reporters Without Borders. October 13, 2009. *Un locutor de radio aparece asesinado a las cuarenta y ocho horas de su desaparición*. Available at: <http://www.rsf.org/Un-locutor-de-radio-aparece.html>.

³⁹⁹ Inter American Press Association. July 16, 2009. *Condena la SIP asesinatos de dos periodistas en México y pide investigar*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4218&idioma=sp; Reporters Without Borders. July 16, 2009. *Asesinan a dos periodistas en veinticuatro horas; los móviles no se han averiguado todavía*. Available at: <http://www.rsf.org/Asesinan-a-dos-periodistas-en-33863.html>; El Universal. July 28, 2009. *Unesco condena crimen contra periodista mexicano*. Available at: <http://www.eluniversal.com.mx/notas/615389.html>.

⁴⁰⁰ Comisión Nacional de los Derechos Humanos de México [National Human Rights Commission of Mexico]. August 19, 2009. *Recomendación General No. 17/09: Sobre los casos de agresiones a periodistas y la impunidad prevaleciente*. Available at: <http://www.cndh.org.mx/recomen/general/017.htm>.

391. General Recommendation No. 17/09 indicates that between 2001 and July of 2009, the CNDH opened 492 complaint files for alleged violations of the right to freedom of expression in the practice of journalism. According to the CNDH, the number of complaints doubled when compared to the previous decade, during which only 245 files were opened. The CNDH stresses, however, that "the figure is most certainly higher, considering those cases that the state government human rights bodies have documented, plus those that go unreported."

392. The CNDH's diagnosis underscores that the growing tendency is "particularly serious" given that during the last decade it reviewed "the cases relating to the death of 52 journalists or media workers murdered, presumably, because of their work," and "the disappearance of 7 journalists during that time period, as well as 6 explosives attacks on newspaper facilities." In the opinion of the CNDH, the examination of the complaint files of the cases from the 2000-2009 period reveals a noticeable increase in the number of acts of violence against journalists, "in most cases without the justice system authorities clarifying the facts that motivated the crimes committed, which, by act or omission, encourages impunity." In this respect, the CNDH underscores that "the impact of this violence, expressed brutally by taking the lives of journalists, or by taking them away from their families, friends and colleagues, has a multiplier effect, with a climate of intimidation that hinders the informative work of the trade."

393. Indeed, according to General Recommendation No. 17/09, the CNDH observes that in only 17 of the 65 aforementioned cases do the different state and federal prosecutors' offices "report having conducted the appropriate preliminary investigations." The CNDH adds that only 9 of those cases resulted in convictions. In the organization's opinion, "the lack of diligence on the part of the prosecuting authorities has resulted, to a great extent, in the offenses being met with impunity, or in the failure to exhaust the proper lines of investigation, including those relating to freedom of expression."

394. With respect to the 48 other cases, the CNDH concludes that, in 10 of them, "the investigations are reported in secret by the prosecuting authorities," and that "the authorities argue that [those cases] lack sufficient evidence for them to criminally prosecute anyone." The organization added that in some of those 10 confidential cases it was "clear that the prosecuting authorities did not take all of the necessary steps to exhaust the proper lines of investigation, settling in many cases for taking statements from the relatives and requesting the investigation from the appropriate police authorities." The CNDH further notes that in some of those cases, it was not even confirmed "that an investigation was conducted with respect to the journalistic or work setting, or into the evidence arising from the investigation itself."

395. As for the other 38 cases, the CHDH concludes that in 9 there have been "prolonged periods of inactivity and omissions in the consolidation of the preliminary investigations opened," and in the remaining 29 cases "the appropriate preliminary investigation has not been concluded, the person or persons allegedly responsible for the acts committed against the members of the media have not been identified, and neither have the motives and reasons behind the attack."

396. According to General Recommendation No. 17/09, this lack of results is due fundamentally to four factors: (a) the prolonged periods of inactivity on the part of the prosecuting authorities; (b) the delays that arise when it is decided to substitute the government attorneys or public prosecutors who opened the investigation; (c) the inactivity or even the lack of preliminary investigation that arise in those cases in which the Office of the Attorney General of a particular state decides to forward the case to the Office of the Federal Attorney General but that office does not accept it for lack of jurisdiction or because there is no demonstrated nexus of the offenses with a federal crime; in these cases, jurisdiction again shifts to the local level, which can result in inactivity or even the failure to conduct a preliminary investigation; and (d) the failure of the prosecuting authorities to take statements, locate witnesses and check out the different leads that

arise from the investigation, as well as the deficient involvement of experts, who in some cases cause the investigation to be oriented or limited to specific facts, due to which, on the basis of an erroneous premise, the investigation is sent through the wrong channels or the lines of investigation are limited.

397. General Recommendation No. 17/09 thus notes "the urgent need to promote the effective, complete and independent pursuit of justice in light of the attacks perpetrated against the journalism trade. The investigative acts undertaken by the authorities—many or few, depending on the case—will never be enough as long as the attacks and crimes go unsolved and the perpetrators are not identified and punished, and so long as the whereabouts of the disappeared journalists remain unknown."

398. In the same respect, it concludes that "the authorities in charge of seeking justice are responsible for delays and for the deficient integration of the investigations in the cases of violence against journalists and communications media, which translates into the violation of the rights to personal safety and security, and to legal certainty. It is also noted that there is a widespread tendency to rule out in advance the possibility of journalistic work being the motive for the attacks, which in many cases prevents the establishment of a violation of the right to freedom of expression."

399. General Recommendation No. 17/09 contains several recommendations to various Mexican authorities at both the state and federal levels, among which the following are of particular note: "to take the necessary and proper measures to promote a decisive, direct and constant fight against impunity;" "to undertake the forceful and necessary actions to guarantee sufficient conditions of safety and prevention" for the exercise of freedom of expression; and "to provide human rights training to prosecutors, their assistants, police officers and experts, in order for the members of the justice system to preserve and guarantee the rights of journalists."

400. For its part, the Office of the Federal Attorney General submitted a report to the Office of the Special Rapporteur listing the activities undertaken by that institution to serve victims of crime. It detailed the jurisdiction of the Office of the Special Prosecutor for Crimes against Journalists (FEADP), described the various legislative initiatives on freedom of expression introduced before Congress during the last decade, and reported on the status of the investigations in the cases of threats against journalist Lydia Cacho, and the murders of media professionals Bradley Will and Eliseo Barrón Hernández.⁴⁰¹

401. On this point, the Office of the Special Rapporteur notes the recommendation of the Attorney General's Office, which states that: "There is a need to strengthen the exercise of journalistic activity through effective protection against the attacks that, through increasingly violent means, are perpetrated against media workers, and which have been reported not only by trade organizations and public bodies for the protection of human rights but also by the federal authorities themselves, through the Office of the Special Prosecutor for Crimes against Journalists within the Office of the Federal Attorney General."

402. Therefore, the Office of the Special Rapporteur urgently calls on the Mexican authorities to promptly and exhaustively investigate the crimes mentioned and to arrest and punish the perpetrators appropriately. Likewise, it urges the State to adopt, as soon as possible, essential measures to protect the press, such as the strengthening of the FEADP, the classification of crimes

⁴⁰¹ Office of the Federal Attorney General. Cooperation Meeting between the Office of the Federal Attorney General and Special Rapporteurs Catalina Botero (OAS) and Frank La Rue (UN).

against freedom of expression as federal offenses, and the implementation of permanent mechanisms of specialized protection to guarantee the life and safety of media professionals at risk.

403. In its 2006 Annual Report, the Office of the Special Rapporteur viewed the creation of the FEADP positively.⁴⁰² Nevertheless, according to the information received, four years after it was established, this office lacks the human and financial resources to carry out its work.⁴⁰³ This circumstance is of concern to the Office of the Special Rapporteur, bearing in mind the high number of cases still pending relative to murders, assaults and threats against journalists in Mexico and the growing number of murders reported during the course of this year. The Office of the Special Rapporteur considers it extremely important that such an office exists, with personnel assigned specifically to that issue, and it urges the State to provide this office with the legal framework, the personnel and the budgetary resources necessary for the investigation of these crimes.

404. In addition to the murders in 2009, the Office of the Special Rapporteur was aware of cases of serious assaults and threats against journalists. These acts of intimidation arose principally in the context of information published on organized crime (drug trafficking and human trafficking) and government corruption. References are made below to some of these cases.

405. In March of 2009, the director of the newspaper *Diario de los Altos*, of the municipality of Los Altos, state of Jalisco, received several threatening emails and telephone calls. According to the victim's statement to local communications media, the intimidation came from a local government official. Nevertheless, there are no known investigations or court decisions with respect to the matter.⁴⁰⁴

406. The Office of the Special Rapporteur learned that in May of 2009, journalist Lydia Cacho had received death threats for reasons associated with the practice of her profession. The CNDH indicated that the journalist was the victim of "acts of torture" and other serious violations of her human rights. These events occurred, according to the information received, in retaliation for having published a book in 2005 in which she denounced the existence of a network of pedophiles in the country.⁴⁰⁵ It is worth noting that on August 10, 2009, the IACHR granted precautionary measures to Lydia Cacho and her family as a result of these events. The IACHR requested that the State take the necessary measures to guarantee the beneficiaries' lives and personal safety, and to report on actions taken to investigate the events that gave rise to the adoption of precautionary

⁴⁰² Office of the Special Rapporteur – IACHR. 2006 Annual Report. Chapter II, para. 17. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=691&IID=2>.

⁴⁰³ CENCOS. December 9, 2008. *Pobres resultados de la FEADP en su informe 2008*. Available at: <http://cencos.org/es/node/19996>; Misión Internacional de Documentación sobre Ataques en Contra de Periodistas y Medios de Comunicación. August, 2008. *Libertad de Prensa en México: La Sombra de la Impunidad y la Violencia*, p. 25. Available at: <http://www.libertad-expresion.org.mx/downloads/informe-la%20sombra%20de%20la%20imp%20y%20la%20viole.pdf>.

⁴⁰⁴ Article 19/CENCOS. March 25, 2009. *Amenazas e intimidación a periodista en Jalisco*. Available at: <http://cencos.org/es/node/20531>; Amnesty International. March 25, 2009. *Miguel Ángel Casillas Báez, su familia y otros periodistas del Diario de los Altos*. Available at: <http://www.amnesty.org/fr/library/asset/AMR41/017/2009/fr/6363046b-4311-4945-809c-22a424f20136/amr410172009spa.html>; Diario La Jornada. March 26, 2009. *Director del Diario de Los Altos presentó denuncia por amenazas*. Available at: <http://www.lajornadajalisco.com.mx/2009/03/26/index.php?section=politica&article=003n3pol>.

⁴⁰⁵ Office of the Special Rapporteur – IACHR. May 29, 2009. Press Release No. R34/09. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=748&IID=2>; Article 19. May 27, 2009. *Mexico: ARTICLE 19 Concerned About Personal Safety of Lydia Cacho*. Available at: <http://www.article19.org/pdfs/press/mexico-article-19-concerned-about-personal-safety-of-lydia-cacho.pdf>.

measures.⁴⁰⁶ At the time this report went to press, the Office of the Special Rapporteur was keenly awaiting information on this situation.

407. On July 30, 2009, journalist David Ávila León was kidnapped for several hours and threatened. According to the information gathered, the journalist was investigating the illegal exploitation of a natural area.⁴⁰⁷

408. The Office of the Special Rapporteur also received information on the status of journalist Emilio Gutiérrez Soto, who after having received threats in June of 2008, left Mexico with his son and apparently entered the United States illegally. Gutiérrez, a correspondent for *El Diario* in Ciudad Juárez, spent seven months at the El Paso detention center and was released on January 30, 2009. Gutiérrez had denounced that the threats had been made by members of law enforcement. The reporter requested political asylum in the United States, and his proceedings are currently pending.⁴⁰⁸

409. The Office of the Special Rapporteur also received information indicating that on May 28, 2009, personnel from *El Diario* of Ciudad Juárez received threats after publicizing information related to individuals allegedly tied to drug trafficking in the municipality of Parral, in the state of Chihuahua.⁴⁰⁹

410. Furthermore, during the first few days of April, 2009, three journalists were attacked in separate incidents in the state of Oaxaca. The cases are those of Federico Cabrera, a correspondent for several media outlets in the region of La Cañada; Rebeca Luna Jiménez, a reporter for *Diario PM*; and Jaime Méndez, who was covering a meeting of *ejido* members in San José del Progreso.⁴¹⁰

411. In addition, five members of the military attacked the journalists who were covering the collision of a vehicle in which several members of the Army were traveling in Ciudad Juárez,

⁴⁰⁶ IACHR. *Precautionary Measures Granted During 2009. MC 192/09 – Lydia Cacho and others., Mexico.* Available at: <http://www.cidh.oas.org/medidas/2009.sp.htm>.

⁴⁰⁷ CEPET. August 6, 2009. *Levantán y amenazan de muerte a periodista; investigaba negocio ilegal de funcionario.* Available at: http://libex.cepet.org/index.php?option=com_content&view=article&id=679:levantan-y-amenazan-de-muerte-a-periodista-investigaba-negocio-ilegal-de-funcionario-&catid=36:alertas&Itemid=55; Revista Zócalo. August 11, 2009. *Amenazan de muerte a periodista en Guanajuato.* Available at: http://www.revistazocalo.com.mx/index.php?option=com_content&view=article&id=134:amenazan-de-muerte-a-periodista-en-guanajuato.

⁴⁰⁸ Committee to Protect Journalists. January 30, 2009. *Mexican reporter released from U.S. detention center.* Available at: <http://cpj.org/blog/2009/01/mexican-reporter-released-from-us-detention-center.php>; Reporters Without Borders. January 30, 2009. *Puesto en libertad el periodista mexicano Emilio Gutiérrez: Reporters Without Borders pide que se le conceda asilo.* Available at: <http://www.rsf.org/Puesto-en-libertad-el-periodista.html>; Committee to Protect Journalists. June 24, 2009. *Informar y Sobrevivir en Ciudad de Juárez.* Available at: <http://cpj.org/es/2009/06/informar-y-sobrevivir-en-ciudad-juarez.php>.

⁴⁰⁹ Committee to Protect Journalists. June 24, 2009. *Informar y Sobrevivir en Ciudad de Juárez.* Available at: <http://cpj.org/es/2009/06/informar-y-sobrevivir-en-ciudad-juarez.php>; CEPET. June 5, 2009. *Amenazan a diario por su cobertura del narcotráfico; militares agreden a periodistas.* Available at: http://libex.cepet.org/index.php?option=com_content&view=article&id=596:amenazan-a-diario-por-su-cobertura-del-narcotrafico-militares-agreden-a-periodistas-&catid=36:alertas&Itemid=55.

⁴¹⁰ CENCOS. April 22, 2009. *Más agresiones a periodistas en Oaxaca.* Available at: <http://cencos.org/es/node/20649>; CENCOS. August 14, 2009. *Libertad de prensa y militarización en México.* Available at: <http://cencos.org/es/node/21416>; CEPET. April 13, 2009. *CEPET preocupado por Series de agresiones contra periodistas en el estado de Oaxaca.* Available at: <http://www.ifex.org/mexico/2009/04/13/cepet-concerned-over-spate-of-attacks/es/>; CEPET. April 22, 2009. *Presuntos militantes partidistas golpean a caricaturista de un diario.* Available at: http://libex.cepet.org/index.php?option=com_content&view=article&id=525:presuntos-militantes-partidistas-golpean-a-caricaturista-de-un-diario&catid=36:alertas&Itemid=55.

Chihuahua. According to the information received, one journalist was knocked down and beaten on the ground, while another had his equipment taken away. Several days later, the Department of Defense punished the military members who were involved in the attack.⁴¹¹

412. On September 5, 2009, in Isla Mujeres, in the state of Quintana Roo, several public officials attacked and threatened the director of the newspaper *Respuesta* and prevented its circulation. According to the information received, the newspaper's director Alejandro Vargas González had arrived with the newspaper vendors to distribute it, when they were surrounded and beaten by a group of people who, according to the complaints, were employees of the town council who were protesting the publication of articles critical of the municipal government. These people destroyed the available copies, which reportedly numbered close to 500.⁴¹²

413. The Office of the Special Rapporteur also was made aware of cases of violence against journalists and communications media. According to the information received, journalist Guillermo Soto Bejarano, director of the weekly newspaper *De Opinión*, was the victim of an attack on the night of August 30, 2009, when unknown individuals shot at his house four times. These events took place in the municipality of Salina Cruz, in the state of Oaxaca. The journalist, who was unharmed, stated that there were several journalistic topics of significant public interest that could be related to this attack.⁴¹³

414. Likewise, the Office of the Special Rapporteur learned that on January 6, 2009, a group of hooded individuals fired upon and threw a grenade at the *Televisa* station in the city of Monterrey, Nuevo León. No one was killed in the attack.⁴¹⁴ In another case, in the early morning hours of September 7, 2009, unknown individuals threw a grenade at the headquarters of the newspaper *Ríodoce*, in the city of Culiacán, state of Sinaloa. No one was injured.⁴¹⁵

415. The Office of the Special Rapporteur expresses its concern regarding these events, and reminds the State that Principle 9 of the Declaration of Principles states that the "murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material

⁴¹¹ CEPET. June 15, 2009. *Sanciona la Secretaría de la Defensa a militares por agresión a periodistas*. Available at: http://libex.cepet.org/index.php?option=com_content&view=article&id=610:sanciona-la-secretaria-de-la-defensa-a-militares-por-agresion-a-periodistas&catid=36:alertas&Itemid=55; Diario La Jornada. June 6, 2009. *Militares agreden a periodistas que cubrían volcadura de una patrulla en Ciudad Juárez*. Available at: <http://www.jornada.unam.mx/2009/06/06/index.php?section=estados&article=024n3est>.

⁴¹² CEPET. September 16, 2009. *Empleados municipales impiden distribución de un diario y golpean a su director*. Available at: http://libex.cepet.org/index.php?option=com_content&view=article&id=731:empleados-municipales-impiden-distribucion-de-un-diario-y-golpean-a-su-director&catid=36:alertas&Itemid=55; Fundación para la Libertad de Expresión [Foundation for Freedom of Expression]. September 11, 2009. *La Fundación para la Libertad de Expresión manifiesta su solidaridad con la Asociación Mexicana de Editores de Periódicos y su socio activo diario 'Respuesta'*. Available at: http://www.fundalex.org/index.php?option=com_content&view=article&id=109:la-fundacion-para-la-libertad-de-expresion-manifiesta-su-solidaridad-con-la-asociacion-mexicana-de-editores-de-periodicos-ac-y-su-socio-activo-diario-respuesta&catid=4:novedades&Itemid=1.

⁴¹³ Reporters Without Borders. September 1, 2009. *Atentan contra el domicilio de un periodista del Estado de Oaxaca, obligado a esconderse*. Available at: <http://www.rsf.org/Atentan-contra-el-domicilio-de-un-periodista-del-estado-de-oaxaca-obligado-a-esconderse.html>; CEPET. August 31, 2009. *Atacan a balazos vivienda de periodista*. Available at: http://libex.cepet.org/index.php?option=com_content&view=article&id=708:atacan-a-balazos-vivienda-de-periodista&catid=36:alertas&Itemid=55.

⁴¹⁴ Reporters Without Borders. January 7, 2009. *Unos narcotraficantes atentan contra el canal Televisa en Monterrey: "Una prueba para la justicia federal"*. Available at: <http://www.rsf.org/Unos-narcotraficantes-atentan-contra-el-canal-televisa-en-monterrey-una-prueba-para-la-justicia-federal.html>; El Universal. January 7, 2009. *Atentado contra Televisa Monterrey*. <http://www.eluniversal.com.mx/primer/32292.html>.

⁴¹⁵ CENCOS. September 10, 2009. *Atentado con explosivos contra instalaciones de periódico, el cuarto en menos de 12 meses*. Available at: <http://cencos.org/es/node/21619>; CEPET. September 16, 2009. *Atacan con explosivo un semanario en Culiacán, Sinaloa*. Available at: http://www.ifex.org/mexico/2009/09/16/riodoce_explosivo/es/.

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." The Office of the Special Rapporteur recommends that the State adopt special mechanisms that can protect at-risk media professionals effectively and expediently.

416. During the course of this year, the Office of the Special Rapporteur also continued to receive information about acts of aggression and threats in the state of Guerrero. The Office of the Special Rapporteur was aware that the authorities of the state of Guerrero continued to make stigmatizing statements against human rights organizations critical of the local government. It also received complaints that the municipal police had engaged in acts of harassment against media professionals Baldomero Hernández Cruz, José Alberto Valtierra Cancela and Obed Valtierra Pineda, members of the Ñomndaa community radio. Finally, the Office of the Special Rapporteur was informed that on November 13 and 24 of 2009, Juan Angulo, director of the newspaper *El Sur* in Acapulco, received notices from the Chilpancingo Office of the Special Prosecutor for the Investigation of Serious Crimes to appear in the criminal investigation of the August 20, 2009 murder of the former President of the Government Commission of the Guerrero State Legislature. On September 3, 2009, Angulo had published an editorial piece in *El Sur* relating to Chavarría's assassination and suggesting some lines of investigation with regard to that crime. The information submitted to the Office of the Special Rapporteur indicates that Angulo had told the authorities that he "does not have evidence to contribute to the investigation, since the article was limited to expressing a political opinion in regard to the case. As such, [his] appearance would be meaningless." Angulo had been told that his failure to appear could result in "coercive measures." The complaint received asserts that the summonses were part of a campaign of harassment against *El Sur* as a result of articles published in the newspaper that reported alleged irregularities in the allocation of public works projects for the remodeling of schools, from which the brother of the governor of the state of Guerrero had benefited. The information received further states that on November 24, 2009, Angulo asked the State Human Rights Defense Commission to issue precautionary measures for him to prevent his appearance in the criminal investigation. The precautionary measures were granted and the State Attorney General's Office of Guerrero was ordered "to issue instructions to the Office of the Special Prosecutor for the Investigation of Serious Crimes to not engage in acts that violate freedom of expression, to adhere to the principles of legality in the murder investigations [...] and to prevent the enforcement of the coercive measures." Nevertheless, on November 26, 2009, the governor of the state of Guerrero stated that he would not implement the precautionary measures granted by the State Human Rights Commission.⁴¹⁶ On this point, the Office of the Special Rapporteur acknowledges the State's duty to conduct investigations into criminal acts. However, it recalls that Article 13.3 of the American Convention provides that, "The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions."

417. In addition, the Office of the Special Rapporteur learned of some cases of unlawful arrests of journalists and members of the media. According to the information received, in January of 2009, Miguel Badillo, the director of the magazine *Contralínea*, was arrested without a court order in Mexico City by alleged members of the police. On February 11, 2009, the magazine's offices were subject to a search.⁴¹⁷

⁴¹⁶ Information sent on September 15, November 2, November 24 and November 30, 2009 via email to the Office of the Special Rapporteur.

⁴¹⁷ CENCOS. February 11, 2009. *Representantes del Grupo Zeta intentaron ingresar a las instalaciones de la revista Contralínea*. Available at: <http://cencos.org/es/node/20257>; CENCOS. February 12, 2009. *Allanan las instalaciones de*

418. On March 27, 2009, two cameramen from the *TVC Noticias* channel were detained while working in Xochimilco. The information received indicates that the reporters were detained by members of a public entity without being given any explanation of the reason. The journalists were released after the channel's news editor intervened.⁴¹⁸

419. On May 9, 2009, Simón Tiburcio Chávez, director of the newspaper *Nuevo Amanecer* in Alvarado, state of Veracruz, was detained by municipal police for no apparent reason. The journalist stated that he was covering an event when police took him into custody. He was released after 25 hours of being detained without explanation. A few hours after his release, the mayor of the city filed a criminal complaint against the reporter for defamation and libel. The newspaper had published a caricature of the mayor a few days earlier.⁴¹⁹

420. Information was also received indicating that on June 14, 2009, reporters Daniel Adrián García Villalba and Filiberto Ortiz Vázquez from the newspaper *El Observador* were detained and assaulted by members of the Municipal Public Safety Office of Chihuahua who sought to prevent them from photographing arrests in a neighborhood. The municipal police officers disposed of the photographs. The journalists were released a few hours later after paying a fine.⁴²⁰ Principle 5 of the Declaration of Principles states that: "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

421. In addition, the Office of the Special Rapporteur was aware of some cases brought against journalists and communications media for the publication of information or opinions of interest to the public. According to the information received, the journalists from the magazine *Contralínea* were sued by the state-owned petroleum company PEMEX. It was also indicated that officials from the Thirteenth Civil Court in Guadalajara, state of Jalisco, committed irregularities in the case against the journalists. The CNDH decried the "judicial harassment" of the *Contralínea* journalists and requested the investigation of the actions of the court officials and the state petroleum company officials.⁴²¹

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Contralínea. Available at: <http://cencos.org/es/node/20259>; Diario La Jornada. January 19, 2009. *Contralínea mantendrá sus investigaciones a pesar de la intimidación, advierte Badillo*. Available at: <http://www.jornada.unam.mx/2009/01/19/index.php?section=politica&article=010n1pol>.

⁴¹⁸ W Radio. March 27, 2009. *Detiene SSP a reporteros de TVC Noticias*. Available at: <http://www.wradio.com.mx/nota.aspx?id=785605>; CEPET. May 14, 2009. *Exhorta Legislatura local a parar acoso contra periodistas que siguen acciones del secretario de Seguridad Pública federal*. Available at: http://libex.cepet.org/index.php?option=com_content&view=article&id=559:exhorta-legislatura-local-a-parar-acoso-contra-periodistas-que-siguen-acciones-del-secretario-de-seguridad-publica-federal&catid=36:alertas&Itemid=55.

⁴¹⁹ CENCOS. May 12, 2009. *Liberan a periodista tras detención arbitraria y lo denuncian por difamación y calumnia*. Available at: <http://cencos.org/es/node/20760>; CEPET. May 11, 2009. *Denuncia periodista detención ilegal*. Available at: http://libex.cepet.org/index.php?option=com_content&view=article&id=553:denuncia-periodista-detencion-ilegal&catid=36:alertas&Itemid=55; Committee to Protect Journalists. June 10, 2009. *Mexican journalist held for 25 hours after criticizing mayor*. Available at: <http://cpj.org/2009/06/mexican-journalist-held-for-25-hours-after-critici.php>.

⁴²⁰ CEPET. June 16, 2009. *En aumento, las agresiones de fuerzas de seguridad pública contra periodistas en Chihuahua*. Available at: http://libex.cepet.org/index.php?option=com_content&view=article&id=613:en-aumento-las-agresiones-de-fuerzas-de-seguridad-publica-contra-periodistas-en-chihuahua&catid=36:alertas&Itemid=55; CENCOS. June 18, 2009. *Policías municipales de Chihuahua detienen arbitrariamente a reportes gráficos*. Available at: <http://cencos.org/es/node/21020/>.

⁴²¹ CEPET. September 21, 2009. *Documenta CNDH acoso judicial y bloqueo publicitario contra la revista Contralínea*. Available at:

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422. In another case, the magazine *Reporte Índico* and its director Ramón Garza were sued for defamation and slander by Mauricio Fernández Garza, the *Acción Nacional* party's candidate in the mayoral race in San Pedro Garza García, in Nuevo León. The lawsuit was filed following the June 12, 2009 publication of an article in the magazine that denounced the candidate's alleged ties to illegal activities.⁴²²

423. The Office of the Special Rapporteur reiterates Principle 10 of the Declaration of Principles, which establishes that, "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news." It also underscores Principle 11, which asserts that, "Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as '*desacato* laws,' restrict freedom of expression and the right to information."

424. With regard to community broadcasting, as mentioned, in 2009 the Ministry of Interior approved licenses for the operation of six community radio stations. Notwithstanding this fact, during 2009 the Office of the Special Rapporteur continued to receive information about the shortcomings of the legal framework with regard to community radio broadcasting and about the imposition of criminal penalties against community media directors who operate without a license, as part of operations coordinated by the Federal Crime Prevention Police.⁴²³

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http://libex.cepet.org/index.php?option=com_content&view=article&id=739:comunicado-documenta-cndh-acoso-judicial-y-bloqueo-publicitario-contra-la-revista-contralineas-&catid=36:alertas&Itemid=55; Diario La Jornada. January 29, 2009. *En aumento, acoso judicial a periodistas.* Available at: <http://www.jornada.unam.mx/2009/01/29/index.php?section=politica&article=024n2pol>.

⁴²² CENCOS. June 19, 2009. *Denuncian por difamación y calumnia a Reporte Índigo y su director Ramón Alberto Garza.* Available at: <http://cencos.org/es/node/21033>; Diario La Jornada. June 16, 2009. *Panista denuncia penalmente al periodista Ramón Alberto Garza.* Available at: <http://www.jornada.unam.mx/2009/06/16/index.php?section=estados&article=032n3est>.

⁴²³ The Office of the Special Rapporteur learned that on June 30, 2009, a federal judge decided to issue an indictment and order to stand trial against Héctor Camero for the offense of use and exploitation of the radio spectrum without prior authorization. That offense is punishable by up to 12 years in prison under Articles 149 and 150 of the General Law of National Property. According to the information received, the community radio station *Tierra y Libertad* was shut down by members of the Federal Crime Prevention Police on June 6, 2008. AMARC. June 5, 2009. *Ministerio Público inició acciones legales contra integrante de emisora comunitaria.* Available at: http://www.ifex.org/mexico/2009/06/05/camero_haro_arrest_warrant/es/; IFEX. March 27, 2009. *México: gobierno "penaliza" la libre expresión al atacar estación de radio.* Available at: http://www.ifex.org/mexico/2009/03/27/mexico_gobierno_penaliza_la_libre/es/.

In January of 2009 the radio station *Eukakua*, the only station broadcasting in Purépecha in the Michoacán region, was also closed down by agents from the Federal Crime Prevention Police. Rosa Cruz, the person in charge of this community radio, is facing the possibility of incarceration for the same offense. Milenio. June 30, 2009. *Protestan 200 personas a favor de radio comunitaria en P.J.F.* Available at: <http://www.milenio.com/node/240684>; Proceso. June 29, 2009. *Acusan al gobierno de "criminalizar" a trabajadores de radios comunitarias.* Available at: http://www.proceso.com.mx/noticias_articulo.php?articulo=70110; AMARC. June 30, 2009. *Juez dicta orden de prisión contra integrante de la radio comunitaria.* Available at: <http://legislaciones.item.org.uy/index?q=node/1024>; Article 19. July 6, 2009. *México: Radiodifusores Comunitarios Perseguidos Penalmente.* Available at: <http://www.article19.org/pdfs/press/mexico-radiodifusores-comunitarios-perseguidos-penalmente.pdf>.

425. As the Office of the Special Rapporteur has stated on other occasions, community radios must act within a framework of legality facilitated by the States. In this respect, the Office of the Special Rapporteur recognizes the importance of enforcing the law and penalizing those who act unlawfully. Nevertheless, as the Office of the Special Rapporteur has reiterated, it is essential that the States not make disproportionate use of sanctions in matters related to the right to freedom of expression, and in this regard, it is urgent that the legal frameworks be consistent with the inter-American standards on equality and nondiscrimination.⁴²⁴ As indicated in prior reports, community or social broadcasting addresses the needs, interests, problems and expectations of sectors of society traditionally discriminated against and excluded from social benefits. In this context, it should be recalled that according to Principle 12 of the Declaration of Principles, the “Concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.” The Office of the Special Rapporteur underscores that, given the potential importance of these community channels in the exercise of freedom of expression, it is necessary to ensure the establishment of nondiscriminatory legal frameworks that are applied effectively so as to guarantee the equitable allocation of frequencies for community radio stations.

426. In this respect, the State is again reminded that on May 15, 2008, this office sent a communication to the Ministry of Foreign Affairs of the State, prompted by the congressional debate on the amendment of the Federal Radio and Television Act. In its note, the Office of the Special Rapporteur stated the following:

In the 2008 Annual Report, the Office of the Special Rapporteur recommended that States: “Legislate on matters of community broadcasting, so that part of the spectrum be designated for community radio, and that the assignment of these frequencies take into consideration democratic criteria to guarantee all individuals equal opportunity of access to such frequencies.”

⁴²⁴ In this same regard, on November 10, 2009, the CNDH sent a petition to the Federal Department of Communications and Transportation, stating that “although the authority has the power to enforce the legal provisions set forth under the law, it is noted that there is no legal or regulatory system, or institutional criteria for determining in which cases it is proper to exhaust administrative proceedings and in which cases it is proper to go to court, in the case of radio stations that operate without the respective permit,” and that “the assumptions referred to by [the authority] for opting for one forum or another do not find legal support under the laws currently in force. They are not provided for in the Federal Radio and Television Act or the regulations thereto; nor in any other provisions governing the issue. As such, their enunciation and implementation by the public servants of that office is an unfounded act of authority, which is therefore discretionary, and which lacks any criterion under the law that serves as the basis for the authority to opt for the administrative or criminal alternative. This is contrary to the principles of legality and legal certainty, which entail the obligation of the authority to conduct itself at all times in strict compliance with the established legal order.” See: Comisión Nacional de Derechos Humanos [National Human Rights Commission]. November 10, 2009. A petition is sent. CNDH/5/2009/2825/Q.

The CNDH adds that, in this context, “it is necessary to consider that in cases of community radio stations operating without the respective permit, there is a less harmful administrative procedure that affects only the physical assets of the radio station. This procedure is set forth in the Federal Radio and Television Act, and the Mexican State, under equality of circumstances, is required to opt for the proceeding that causes the least prejudice to the citizen’s sphere of rights, bearing in mind the *Pro Homine* principle. When there is more than one option applicable to the same case, it must give preference to the legal interpretation or standard that is more favorable to the person whose situation is provided for under the applicable law or the law that is interpreted. It is also necessary to consider the principles of minimal intervention and subsidiarity, which state that criminal law must be the *última ratio* of the social policy of the State in safeguarding the most important legally protected interests from the most serious attacks, as well as the last resort to be used in the absence of other less harmful ones. Accordingly, the intervention of criminal law in the life of society must be reduced to the minimum possible level. Finally, it is important to note that the absence of well-defined criteria supported by the regulatory framework for the operation of community media stations—which define the scope of discretion, especially in terms of the response times, requirements and decision-making bodies, and which grant legal certainty to the radio stations that seek to obtain permission to operate legally—can discourage the initiative of the members of those stations to engage in the exercise of free expression, and consequently have adverse effects on the right of communities to information.”

In the abovementioned report, the Office of the Special Rapporteur expressed that provisions regulating community broadcasting must recognize the special characteristics of this media and must contain, as a minimum, the following elements: the existence of simple procedures for obtaining licenses; no demand of stringent technological requirements that would prevent them, in practice, from even being able to file request for space with the State; and the possibility of using advertising as a means of financing their operations. All of these elements are contained in the *Joint Declaration on Diversity in Broadcasting*, signed by the Rapporteurs on Freedom of Expression of the OAS, the UN, Africa, and Europe, on December 2007. Accordingly, the Office of the Special Rapporteur added to that annual report: "Along the same lines, it is necessary to pass legislation that appropriately defines the concept of community radio and that includes its social purpose, its non-profit character, and its operational and financial independence." (IACHR. Annual Report 2007. Volume II. Chapter III. pp. 109-10).

Considering that your Illustrious State acceded to the American Convention on Human Rights [...] the Office of the Special Rapporteur has the honor to emphasize the importance that the previously mentioned standards be taken into account when considering the legislative reform that, according to the information received, is being debated by the Mexican Congress. Additionally, the Office of the Special Rapporteur would like to underscore the importance that this type of reform bill be broadly discussed, with participation from civil society and the sectors involved, so that they may contribute and thus strengthen the public debate on the matter.

Due to the relevance that the Office of the Special Rapporteur gives this matter, in full respect for freedom of expression, I have the honor to request that Your Excellency keep this Office informed of its development. Finally, Your Excellency is informed that the Office of the Special Rapporteur for Freedom of Expression will send a copy of this note to the Mexican Congress, and will also inform those people who submitted communications to the Office of the Special Rapporteur, copies of which accompany the present note, of its contents.

427. At the time this report went to press, regulations had still not been issued on the matter. Accordingly, the Office of the Special Rapporteur urges the State to take these considerations into account.

21. Nicaragua

428. On November 2, 2009, during its 137th period of sessions, the Inter-American Commission held a public hearing on the state of the right to freedom of expression in Nicaragua. The hearing included the participation of State representatives and non-governmental human rights organizations. The Office of the Special Rapporteur has used the information offered by these parties in the hearing to prepare this portion of the Annual Report 2009.⁴²⁵

429. In response to a request for information filed on December 16, 2008, the State sent communication to the Office of the Special Rapporteur on January 30, 2009, stating that the Public Prosecutor had halted the criminal investigation into alleged "irregularities discovered by the Public Prosecutor in the account balances submitted by the organization CINCO [*Centro de Investigaciones de la Comunicación*, Center for Media Research] on June 20, 2007." The State indicated, however, that the Public Prosecutor had concluded that there are still certain irregularities that need to be

⁴²⁵ The non-governmental human rights organizations that requested the public hearing were the Nicaraguan Center for Human Rights (*Centro Nicaragüense de Derechos Humanos*, CENIDH), the Center for Justice and International Law (*Centro por la Justicia y Derecho Internacional*, CEJIL), and the International Federation for Human Rights (*Federación Internacional de Derechos Humanos*, FIDH). An audio recording of the hearing is available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=117>.

investigated. For this reason, it “recommended that the Foreign Ministry’s Secretariat for Economic Relations and Foreign Aid review CINCO’s framework agreements with international donors. [It also recommended] that the Governance Ministry ‘set regulations for Law 147, the Law for the Registry and Regulation of Non-Profit Organizations, with the goal of clearly establishing and defining the rules of procedure and boundaries of operation for these organizations.’”⁴²⁶

430. In its Annual Report 2008, the Office of the Special Rapporteur reported that the Public Prosecutor had begun an investigation against “[the Center for Media Research] CINCO, its director, journalist Carlos Chamorro, and members of its board of directors [...] [w]ithout it ever being made clear what acts or offenses were [allegedly committed],” and that “[Carlos] Chamorro [had been] interrogated by the Office of the Public Prosecutor of the Republic, [that] CINCO’s bank secrecy [had been] lifted, and [that] its offices were searched by police officers who seized documents and computers that contained research and personal papers belonging to the journalist.”⁴²⁷ The Office of the Special Rapporteur appreciates the State’s reply in this case and reiterates its admonition as far as the intimidating effect that some actions can have on voices that are independent or critical of the government’s policies. In that sense, and notwithstanding the role that the State should play in enforcing the law, the Office of the Special Rapporteur emphasizes the importance of respecting Article 13(3) of the American Convention, which states that, “The right of expression may not be restricted by indirect methods or means, such as the abuse of government [...] controls.”

431. In 2009, the Office of the Special Rapporteur received information on attacks and threats allegedly carried out in retaliation against the exercise of freedom of expression. During the November 2, 2009 hearing, the petitioner organizations stated that attacks against those whose opinions differ from that of the governing party are multiple and worrisome. The groups stated that to this day, those responsible have not been punished, and neither have the authorities sent a clear message of tolerance and openness to critical speech.

432. As an example, petitioners pointed to October 22, 2009, when Leonor Martínez, a member of the Young Nicaraguan Coalition (*Coalición de Jóvenes Nicaragüenses*) was assaulted by three individuals in a vehicle who held “a flag of the governing party.” Martínez was assaulted while he was leaving a meeting of a locale of the Civil Coordinator (*Coordinador Civil*), an organization that opposes the reelection of President Daniel Ortega. According to the information received by the Office of the Special Rapporteur, Martínez received a death threat from the assailants and a broken arm from the beating. The petitioners also stated that law enforcement officials are investigating the case.⁴²⁸

433. The petitioners also reported that on February 28, 2009, groups aligned with the government attacked Congressman Luis Callejas and members of the Movement for Nicaragua

⁴²⁶ State communication with the IACHR, January 30, 2009. Annex: Resolución Fiscal Exp. No. 4805-JD-08.

⁴²⁷ It is worth noting that prior to October 13, 2008, the Office of the Special Rapporteur requested information from the State on this case, and that on October 22, 2008, the State submitted its reply. IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter II. paras. 188-192. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf> ; Committee for the Protection of Journalists. July 1, 2009. *Special Report: Daniel Ortega’s media war*. Available at: <http://cpj.org/reports/2009/07/daniel-ortegas-media-war.php>.

⁴²⁸ Information submitted by CENIDH, CEJIL, and FIDH to the Office of the Special Rapporteur for Freedom of Expression during the November 2, 2009, hearing; Information submitted by CENIDH to the Office of the Special Rapporteur for Freedom of Expression on November 14, 2009.

(*Movimiento por Nicaragua*), which was demonstrating in Chinandega against the results of the November 2008 elections.⁴²⁹

434. The petitioners also indicated that on July 2, 2009, members of the Civil Coordinator demonstrating against the coup d'état in the State of Honduras on the Rubén Darío roundabout were attacked by groups who, "armed with clubs, rocks, and mortars, attacked the demonstrators."⁴³⁰

435. On that same topic, the petitioners indicated that on August 8, 2009, during a cultural act held by the Civil Coordinator outside the Managua Cathedral, "shock troops" aligned with the government attacked journalist Mario Sánchez Paz and members of the Movement for Nicaragua (*Movimiento por Nicaragua*) with "rocks, clubs, kicks, and punches" and "in the presence of government authorities."⁴³¹

436. During the hearing, the petitioning organizations also indicated that President Daniel Ortega has frequently used "aggressive language [...] to delegitimize civil society organizations, other political parties" in the opposition, and media outlets whose editorial position is critical of the government.⁴³²

437. On this point, State representatives expressed that, "Suppressing one group or another of individuals independent of their ideology or political party entails violence [...], something which should not be allowed, neither as a policy nor as a method." The State also indicated that, "Neither can the Government be blamed for the acts of a group or of individuals who sympathize with it." Likewise, State representatives said that, "In Nicaragua, some media outlets [have] drop[ped] their role as communicators and purveyors of information to act as political parties in opposition to the government. Because of this, the people do not see them as independent media outlets, but rather as partisan, ideological instruments of the opposition." They added that, "These politicized media outlets [...] [u]se the pejorative and discriminatory expression 'mobs' to describe the population that supports the government. In contrast, they self-describe themselves as civil and democratic. If the people march in the street, they are called 'shock troops' ('*fuerza de choque*'). If they do it, it's called a civic march. This is a discriminatory attitude and an expression of intolerance against the Nicaraguans who identify with their government and support its social projects."⁴³³

⁴²⁹ Information submitted by CENIDH, CEJIL, and FIDH to the Office of the Special Rapporteur for Freedom of Expression during the November 2, 2009, hearing; Inter-American Press Association. *Country Reports: Nicaragua. 65th General Assembly, November 6-10, 2009, Buenos Aires, Argentina.* Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=24&inford=381&idioma=us.

⁴³⁰ Information submitted by CENIDH, CEJIL, and FIDH to the Office of the Special Rapporteur for Freedom of Expression during the November 2, 2009, hearing; Inter-American Press Association. *Country Reports: Nicaragua. 65th General Assembly, November 6-10, 2009, Buenos Aires, Argentina.* Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=24&inford=381&idioma=us.

⁴³¹ Information submitted by CENIDH, CEJIL, and FIDH to the Office of the Special Rapporteur for Freedom of Expression during the November 2, 2009, hearing; Inter-American Press Association. *Country Reports: Nicaragua. 65th General Assembly, November 6-10, 2009, Buenos Aires, Argentina.* Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=24&inford=381&idioma=us.

⁴³² Information submitted by CENIDH, CEJIL, and FIDH to the Office of the Special Rapporteur for Freedom of Expression during the November 2, 2009, hearing.

⁴³³ Information submitted by the State to the Office of the Special Rapporteur for Freedom of Expression during the November 2, 2009, hearing.

438. Regarding the acts of violence that took place on February 28, 2009, in Chinandega, the State indicated that law enforcement personnel were present to protect the demonstration. However, the State said that, "During [the march] [...] there was a tremendous brawl between followers of the Movement for Nicaragua and the Sandinista Front (*Frente Sandinista*). The brawl could not be controlled by the National Police as they were overwhelmed by the number of people." The State also maintains that although the National Police received a complaint from Congressman Luis Callejas, he "said that he could not identify the individuals who had assaulted him," and that on March 6, 2009, a police report was handed over to the Public Prosecutor detailing the actions taken in the investigation.⁴³⁴

439. Regarding the incidents that took place on July 2, 2009, in the Rubén Darío roundabout, the representatives of the State indicated that the National Police did not have any complaint on file referring to those incidents. Neither "was any request or permit for a demonstration or political activity requested from the National Police."⁴³⁵

440. As far as the incidents that took place on August 8, 2009, the representatives of the State indicated that the "National Police had no prior knowledge of, nor had they authorized, any demonstration in that area, for which reason they were not present there," but that, "upon learning of the incidents, a patrol car was sent, but due to the number of people, it could not control the situation." The representatives also indicated that on August 19, 2009, the Public Prosecutor responded to the complaint from journalist Mario Sánchez Paz by issuing an official letter instructing the Department of Legal Assistance to investigate the incident. The State added that on October 6, 2009, a report laying out the actions taken in the investigation was sent to the Public Prosecutor.⁴³⁶

441. On November 18, 2009, the Office of the Special Rapporteur received communication from CENIDH indicating that law enforcement personnel and groups aligned with the government had carried out new acts of physical violence and threats against journalists⁴³⁷ and members of civil society organizations⁴³⁸ critical of the government.

⁴³⁴ Information submitted by the State to the Office of the Special Rapporteur for Freedom of Expression during the November 2, 2009, hearing.

⁴³⁵ Information submitted by the State to the Office of the Special Rapporteur for Freedom of Expression during the November 2, 2009, hearing.

⁴³⁶ Information submitted by the State to the Office of the Special Rapporteur for Freedom of Expression during the November 2, 2009, hearing.

⁴³⁷ Information submitted by CENIDH to the Office of the Special Rapporteur for Freedom of Expression on November 14, 2009. CENIDH stated that on August 14, 2009, journalist María Acuña and cameraman Santos Padilla, both with *Canal 10*, were attacked by law enforcement personnel in District V of the City of Managua while covering an eviction. According to the information received, the journalists' video camera was also destroyed.

In the same communication, the Office of the Special Rapporteur was informed that on October 29, 2009, Romel Sánchez and Santos Padilla, with *Canal 10*, were assaulted by "shock troops" that attacked the vehicle in which they were riding. The communication adds that on November 8, 2009, "shock troops" armed with mortars and bricks attacked a group of demonstrators meeting in Nagarote to protest against the recent election results. The information received by the Office of the Special Rapporteur indicates, however, that law enforcement personnel were able to repel the mob and guarantee "the safety of the demonstrators." The communication also indicated that on November 9, 2009, groups aligned with the government attacked journalist Junaysi García and cameraman Fausto Fletes – both with *Canal 2* – and journalist Leonor Álvarez – with *El Nuevo Diario* – with rocks and eggs as they covered a student demonstration near the seat of the National Police. According to the information received by the Office of the Special Rapporteur, that same day, the headquarters of daily newspapers *La Prensa* and *El Nuevo Diario* were attacked with mortars and rocks by government sympathizers from a "caravan of vehicles." It also indicated that during that afternoon, a sport utility vehicle—property of television channel *100% Noticias*—was attacked by unknown assailants while one of its reporting teams was covering several incidents of violence at the Rigoberto López Pérez roundabout.

⁴³⁸ Information submitted by CENIDH to the Office of the Special Rapporteur for Freedom of Expression on November 14, 2009. CENIDH indicated that on October 30, 2009, Patricia Orozco, Lorna Norori, and Ana Eveling Orozco, all

442. In the aforementioned communication, CENIDH also stated that whereas civil society groups and opposition parties have to request and obtain permission from law enforcement to hold demonstrations, the Managua Police Commissioner, Vilma Reyes, has stated that “government groups have permanent permission to be round about” Managua.⁴³⁹

443. The Office of the Special Rapporteur appreciates the information provided by the State regarding the investigations into the violent incidents that have been reported. At the same time, the Office of the Special Rapporteur calls attention to the fact that at the time this report went to press, it was not aware of effective sentences against those responsible for the attacks. Therefore, the Office of the Special Rapporteur urges the State to investigate these serious acts of violence committed against journalists, defenders of human rights, and demonstrators and to identify, try, and duly punish those responsible. Likewise, the Office of the Special Rapporteur reminds the State, as it has repeatedly stated, that diversity, pluralism, and respect for the distribution of all ideas and opinions are essential for a democratic society to function. Government authorities should contribute conclusively to building an environment of tolerance and respect in which all individuals can express their thoughts and opinions, without fear of being assaulted, punished, or stigmatized. The State’s duty to foster conditions that allow all ideas and opinions to be distributed freely includes the obligation to investigate and duly punish those who use violence to silence social communicators or media outlets. The Office of the Special Rapporteur wishes to emphasize the fact that Principle 9 of the Declaration of Principles states that, “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

444. The Office of the Special Rapporteur received information indicating that Nicaragua’s current telecommunications regulatory framework⁴⁴⁰ “does not establish an independent regulatory body to promote the development of a public broadcast system,” nor does it “explicitly recognize community broadcast services.” However, the information also indicated that the Executive will be studying the possibility of sending a bill to Congress to replace Law No. 200.⁴⁴¹

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members of the Autonomous Women’s Movement of Nicaragua (*Movimiento Autónomo de Mujeres de Nicaragua*, MAM) were arrested by law enforcement personnel when they were traveling in a vehicle after doing a training session with representatives of civil society on the defense of women’s rights. According to the information received by the Office of the Special Rapporteur, the MAM representatives were taken to the León Police station without being informed of the reasons for their arrest. After several hours in the police station, the activists were set free on orders of the General Director of the National Police. According to CENIDH, Orozco, Norori, and Orozco later filed a complaint with the Police Internal Affairs Department.

⁴³⁹ Information submitted by CENIDH to the Office of the Special Rapporteur for Freedom of Expression on November 14, 2009. Other sources indicated that Commissioner Vilma Reyes had stated that “There have been permanent permits for the roundabouts for some time. The permits are for the groups that support the government.” See: *El Nuevo Diario*. November 12, 2009. *Rotondas tienen dueño*. Available at: <http://www.elnuevodiario.com.ni/politica/61620>; 100% Noticias. November 12, 2009. *Reyes: ‘Simpatizantes sandinistas tienen permiso a manifestarse en rotondas.’* Available at: <http://www.canal15.com.ni/videos/6984>; *La Prensa*. November 13, 2009. *Sociedad civil insiste: Marcha es pacífica*. Available at: <http://www.laprensa.com.ni/2009/11/13/politica/7703>.

⁴⁴⁰ Nicaraguan Institute for Telecommunications and Mail (*Instituto Nicaragüense de Telecomunicación y Correos*). *Ley No. 200, Ley General de Telecomunicaciones y Servicios Postales*. Available at: http://www.telcor.gob.ni/MarcoLegal.asp?Accion=VerRecurso&REC_ID=178.

⁴⁴¹ Article 19, CENIDH, CINCO, and Violeta Barrios de Chamorro Foundation (*Fundación Violeta Barrios de Chamorro*). October 2, 2009. *Nicaragua: Article 19 y socios presentan Informe para el Examen Periódico Universal de la ONU*. Available at: <http://www.article19.org/pdfs/submissions/nicaragua-upr-submission.pdf>; Center for Media Research (*Centro de Investigación de la Comunicación*). *Estado de la Libertad de Expresión en Nicaragua (2007-2008)*, p. 15. Available

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445. In this context, the Office of the Special Rapporteur wishes to remind the Nicaraguan authorities that the need for impartial, autonomous, and independent telecommunications regulatory bodies comes from the State's duty to guarantee the highest level of pluralism and diversity in media outlets involved in public discourse. The safeguards necessary to prevent the co-opting of media outlets by political or economic power constitute a functional and institutional guarantee to promote the free forming of public opinion, the flowing and depth of social communication processes, and the exchange and distribution of all variety of information and ideas. The existence of an impartial and independent regulatory body safeguards the right of all citizens to have media outlets that are not indirectly controlled by political or economic groups.⁴⁴²

446. As far as the right to access to information, the Office of the Special Rapporteur received information indicating that during 2009, "out of the 51 institutions that make up the Executive, 37 have offices for access to public information (OAPI) with an official in charge," but that "of the 37 OAPI officials, only 16 are independent. Of the 51 institutions of the Executive, 46 have a website but only two of those sites have complete information [...]. Only one entity has both an office for access to information and a complete Web site."⁴⁴³ The information also maintained that the State "has not set aside a specific budget to set up these offices."⁴⁴⁴ Principle 4 of the Declaration of Principles holds that, "Access to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right."

447. The Office of the Special Rapporteur received information regarding the possible use of state advertising "to reward pro-government media outlets and punish the critical ones." According to the information received during the November 2, 2009 hearing, "most government advertising spending goes to *Canal 4*" – whose editorial slant is pro-government and which, according to the petitioners, is wholly or partially owned by family members of the President – "which has an audience of less than 3%." Likewise, the petitioners indicated that "after a circular

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at: <http://www.cinco.org.ni/archive/146.pdf>; Confidencial. May 10-16, 2009. *Nueva Ley 200 conduce al monopolio*. Available at: <http://www.confidencial.com.ni/2009-632/enCaliente/632.html>; La Prensa. April 22, 2009. *Telcor iniciará consulta para reformar Ley 200*. Available at: http://www.laprensa.com.ni/archivo/2009/abril/22/noticias/nacionales/323197_print.shtml; Amarc. May 6, 2009. *UNIR preocupada ante la promulgación de una nueva Ley referida a Telecomunicaciones*. Available at: <http://legislaciones.item.org.uy/index?q=node/967>; Amarc. May 12, 2009. *Borrador sobre nueva ley de Telecomunicaciones plantea otorgar concesiones mediante licitación o subasta pública*. Available at: <http://legislaciones.item.org.uy/index?q=node/980>.

⁴⁴² Currently, the Nicaraguan Institute for Telecommunications and Mail (*Instituto Nicaragüense de Telecomunicación y Correos*, TELCOR) regulates telecommunications and mail services in Nicaragua. TELCOR is defined as an "autonomous entity under the supervision of the Presidency of the Republic." Nicaraguan Institute for Telecommunications and Mail. Legal Framework. Available at: http://www.telcor.gob.ni/Desplegar.asp?PAG_ID=9; IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter II. para. 200. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

⁴⁴³ Article 19, CENIDH, CINCO and the *Fundación Violeta Barrios de Chamorro*. October 2, 2009. *Nicaragua: Article 19 y socios presentan Informe para el Examen Periódico Universal de la ONU*. Available at: <http://www.article19.org/pdfs/submissions/nicaragua-upr-submission.pdf>.

⁴⁴⁴ Center for Media Research (*Centro de Investigación de la Comunicación*). "Estado de la Libertad de Expresión en Nicaragua (2007-2008)," pp. 13 and 23. Available at: <http://www.cinco.org.ni/archive/146.pdf>. The report concludes that, "the different parts of government and the State should as soon as possible create corresponding offices to guarantee the applicability of the Access to Public Information Law. Likewise, the APIL should be used as a tool by media outlets and journalists in their work. The use of the APIL is vital for informing the citizenry on the management of government. It is a valuable resource considering the hermeticism and secretism with which the State manages its affairs."

was issued by the Secretariat for the Communication and Citizenship Council [...], which was later implemented by the Finance Ministry, no governmental agency can make direct payments for advertising or publicity without the prior authorization of the coordinator of the council, First Lady Rosario Murillo.”⁴⁴⁵ Principle 13 of the Declaration of Principles states clearly that, “the arbitrary and discriminatory placement of official advertising and government loans; [...] among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

448. Finally, the Office of the Special Rapporteur wishes to mention Article 52 of the current Political Constitution of Nicaragua, the pertinent part of which states that, “Citizens have the right, individually or collectively, to [...] *make constructive criticism* of the State or any authority.”⁴⁴⁶ With respect to the article, the State should recall that the right to freedom of expression is not limited to protecting information and opinions that are favorable or pleasant. It also protects statements that are offensive, disturbing, and disruptive for the State. These are the demands of a democracy founded on diversity and pluralism.⁴⁴⁷ Principle 5 of the Declaration of Principles holds that, “Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

22. Panama

449. On January 27, 2009, the Inter-American Court of Human Rights handed down its ruling on the preliminary objections, merits, reparations and costs in the case *Tristán Donoso v. Panama*. In the ruling, the tribunal found that the Panamanian State had violated the “right to freedom of expression enshrined in Article 13 of the American Convention, in relation to Article 1(1) thereof, regarding the criminal conviction [for the crime of defamation] entered against Mr. Tristán Donoso....” According to the facts of the case, on March 26, 1999, the current Attorney General of the Republic pressed charges against Santander Tristán Donoso for the crime of defamation after Tristán Donoso held a press conference to accuse the Attorney General of intercepting and recording his phone calls. On April 1, 2005, the Second Superior Court of Justice of Panama sentenced Tristán Donoso “to a prison term of 18 months and ban[ned] [him] from exercising [his] public duties during the same time period as guilty of the crime of defamation in detriment to [the current Attorney General of the Republic, commuting the prison term in exchange for a 75-day

⁴⁴⁵ Information submitted by CENIDH, CEJIL and the FIDH to the Office of the Special Rapporteur for Freedom of Expression during the November 2, 2009, hearing; Information submitted by CENIDH to the Office of the Special Rapporteur for Freedom of Expression on November 14, 2009; Inter-American Press Association. *Country reports: Nicaragua. 65th General Assembly, November 6-10, 2009, Buenos Aires, Argentina*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=24&inford=381&idioma=us; Inter-American Press Association. *Country reports: Nicaragua. Mid-year Meeting, March 13-16, 2009, Asunción, Paraguay*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inford=354&idioma=us.

⁴⁴⁶ Nicaragua National Assembly. Political Constitution of the Republic of Nicaragua (*Constitución Política de la República de Nicaragua*). Available at: <http://www.asamblea.gob.ni/opciones/constituciones/Constitucion%20Politica%20y%20sus%20reformas.pdf>. Emphasis added.

⁴⁴⁷ I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. para. 69; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 113.

fine.” The Inter-American Court found that the case represented a disproportional use of criminal law and ordered the state, among other measures, to “set aside the criminal conviction entered [...] and all the consequences arising therefrom, within one year of notice of the instant Judgment be served [...].” The Office of the Special Rapporteur urges the State to adopt the measures necessary for full compliance with the Inter-American Court’s decision and expects to receive information on the progress of this process.⁴⁴⁸

450. The Office of the Special Rapporteur received information indicating that on February 18, 2009, the Second Court of the Chorrera Criminal Circuit handed down a ruling that sentenced journalist Jean Marcel Chéry, director of daily newspaper *El Siglo*, to two years in prison for the crime of trespassing to the detriment of Supreme Court Justice Winston Spadafora. On March 8, 2001, Chéry published an article in daily newspaper *Panamá América* in which he revealed the construction, with public funds, of a road to property owned by then-Minister of Justice and Governance Winston Spadafora in the Chorrera district. According to Spadafora, the journalist had secretly entered his property. Chéry, on the other hand, stated that the security guards had authorized his entry onto Spadafora’s property. Later, the then-Minister of Justice and Governance brought two charges against Chéry, one for defamation and one for trespassing. He also launched a civil suit for damages against daily newspaper *Panamá América*. The criminal proceedings for defamation ended in 2003 with the court sentencing Chéry to one year in prison. In 2004, however, Panamanian President Mireya Moscoso pardoned him. According to the information received by the Office of the Special Rapporteur, Chéry has appealed the verdict that condemned him for trespassing on the property of the government official.⁴⁴⁹

451. On September 28, 2009, the Second Superior Court of Justice upheld the decision of the Seventeenth Criminal Court, handed down on May 22, 2009, that ordered the definitive dismissal of the criminal defamation case against Angélica Maytín, executive president of the Foundation for the Development of Citizen Liberty (*Fundación para el Desarrollo de la Libertad Ciudadana*). On October 7, 2008, the Minister of Justice and Governance at the time, Daniel Delgado Diamante, had brought criminal charges against Maytín after, through a press release publicized in several media outlets, she called for him to be removed from his position.⁴⁵⁰ The Office of the Special Rapporteur received information to the effect that the charges were dismissed based on Article 195 of the Criminal Code of 2007, which holds that, “Arguments, criticisms, and opinions on official acts or omissions of public servants relative to the exercise of their duties do not

⁴⁴⁸ I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193.

⁴⁴⁹ *El Siglo*. April 29, 2009. *Condena contradictoria*. Available at: <http://www.elsiglo.com/>; Committee for the Protection of Journalists. April 30, 2009. *Panamanian journalist sentenced to two years in prison*. Available at: <http://cpj.org/2009/04/panamanian-journalist-sentenced-to-two-years-in-pr.php>; Inter-American Press Association. April 29, 2009. *IAPA censures conviction of Panamanian journalist*. Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4176&idioma=us; La Estrella - Panama Star. May 1, 2009. *When Justice dons dark glasses*. Available at: <http://www.laestrella.com.pa/mensual/2009/05/01/contenido/93725.asp>; Reporters Without Borders. *Panama- World Report 2009*. Available at: http://arabia.reporters-sans-frontieres.org/article.php?id_article=31344.

⁴⁵⁰ Prensa. October 11, 2009. *Tribunal avala sobreseimiento a favor de Angélica Maytín*. Available at: <http://mensual.prensa.com/mensual/contenido/2009/10/11/hoy/panorama/1953635.asp>; Prensa. May 30, 2009. *Sobreseen a Maytín de calumnia e injuria*. Available at: <http://mensual.prensa.com/mensual/contenido/2009/05/30/hoy/panorama/1802830.asp>; EFE/Soitu. February 5, 2009. *Una Fundación Denuncia que la libertad de expresión está amenazada en Panamá*. Available at: http://www.soitu.es/soitu/2009/02/05/info/1233790659_104896.html; EFE/El Confidencial. 17 de febrero de 2009. *Transparencia Internacional, preocupada por libertad de expresión en Panamá*. Available at: http://www.elconfidencial.com/cache/2009/02/17/10_transparencia_internacional_preocupada_libertad_expresion_panamah.html#

comprise crimes against honor. Neither do literary, artistic, historic, scientific, or professional criticisms.”⁴⁵¹

452. In this context, the Office of the Special Rapporteur received information indicating that the implementation of Article 195 of the Penal Code is causing discrepancies among court officials. Some prosecutors in the Office of the Public Prosecutor assume it necessary to let the different phases of the legal process play out before the aforementioned mechanism comes into effect as an “exception of non-criminal conduct.” Other prosecutors and representatives of the Ombudsman’s Office understand it to mean that once an exception found in Article 195 is satisfied, the investigation should be closed immediately, without regard to its current status. The Office of the Special Rapporteur considers that the procedural mechanisms for implementing the provisions of the Criminal Code should not become tools that can inhibit opinions or expressions that critique state authorities. As the IACHR and the Inter-American Court have indicated previously, in the debate on matters of public interest, the mere initiation of criminal proceedings against individuals for crimes of libel, slander, defamation or contempt can result in an undue limit on the legitimate exercise of the right to freedom of expression.⁴⁵²

453. Principle 10 of the Declaration of Principles holds that, “Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.” In the same sense, Principle 11 states that, “Public officials are subject to greater scrutiny by society.”

23. Paraguay

454. On August 6, 2008, the Inter-American Court declared that the process of monitoring compliance with the judgment in the case of *Ricardo Canese v. Paraguay* had been completed, and that, “the State has fully complied with the Judgment on the merits, reparations and costs issued [...] on August 31, 2004 [...].” In its ruling, the court indicated that the State paid the “interest on arrears resulted from the delay in the payment of compensation for the non-pecuniary damage and reimbursement of the expenses and costs,” which was “the only issue pending compliance with the Judgment.”⁴⁵³ The Office of the Special Rapporteur views positively

⁴⁵¹ In *Vista Fiscal* No. 074, the Public Prosecutor concluded that, “pursuant to Article 195 of the Penal Code currently in force, the words issued by Mrs. ANGELICA MAYTIN JUSTINIANI are lacking of a criminal or damaging character and fit within the context of the criticism and opinion that she distributes on certain situations that were taking place on the national level regarding the individual DANIEL DELGADO DIAMANTE, who was at that time serving as the Minister of Governance and Justice.” Public Prosecutor. Seventh Prosecutor of the First Judicial Circuit of Panama. *Vista Fiscal* No. 074. February 27, 2009.

⁴⁵² IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. para. 101. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf> ; I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 106.

⁴⁵³ I/A Court H.R., *Case of Ricardo Canese v. Paraguay. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of August 06, 2008. Available at: http://www.corteidh.or.cr/docs/supervisiones/canese_06_08_ing.pdf

this progress by the Paraguayan State in its compliance with the decisions issued by organs of the inter-American system.

455. The Office of the Special Rapporteur applauds President of the Republic Fernando Lugo for signing the Declaration of Chapultepec on March 15, 2009.⁴⁵⁴ The Office of the Special Rapporteur was also informed that on April 24, 2009, the State created the "Santiago Leguizamón Prize," to be awarded annually to outstanding communicators for accomplishments in investigative journalism.⁴⁵⁵

456. Notwithstanding this progress, on January 12, 2009, in an incident the Office of the Special Rapporteur condemns, Martín Ocampos Páez, director of the community radio station *Hugua Ñandú FM*, was shot to death by unknown assailants in his home. The Office of the Special Rapporteur received information indicating that Ocampos had received death threats due to the fact that the radio station frequently reported on the presence of drug traffickers in the Concepción area.⁴⁵⁶ The Office of the Special Rapporteur urges the Paraguayan authorities to investigate this crime and take all necessary measures to identify, try, and punish those responsible.

457. The Office of the Special Rapporteur also received information indicating that on February 5, 2009, journalist Richard Villasboa and cameraman Blas Salcedo, both with *Channel 13*, were assaulted by security guards of the La Esperanza Penitentiary while reporting on the prison. According to the information received, the social communicators had authorization to do the reporting from the penitentiary's director. Also, on February 8, 2009, journalist Aldo Lezcano, correspondent for daily newspaper *ABC Color*, had been physically assaulted by an individual mentioned in an article that exposed alleged irregularities in the Acahay locale of the Paraguayan Union for Veterans of the Chaco War. Later, the journalist received a death threat via telephone.⁴⁵⁷

⁴⁵⁴ *La Nación*. March 15, 2009. *Fernando Lugo estampó su firma en la Declaración de Chapultepec*. Available at: http://www.lanacion.com.py/noticias_um-235394.htm; *ABC Color*. March 15, 2009. *El Presidente firmó la Declaración de Chapultepec*. Available at: <http://archivo.abc.com.py/2009-03-15/articulos/504139/El%20Presidente%20firm%20la%20Declaracin%20de%20Chapultepec>; Inter-American Press Association. March 15, 2009. *Speech by President Lugo*. Available at: http://www.declaraciondechapultepec.org/v2/admin/upload/cronologia/483_adj_Discurso%20del%20Presidente%20Fernando%20Lugo.pdf.

⁴⁵⁵ *Radio Mburucuyá* journalist Santiago Leguizamón was murdered on April 26, 2001, in the Pedro Juan Caballero area, close to the Brazilian border. IACHR, Third Report on the Situation of Human Rights in Paraguay. OEA/Ser.L/V/II.110. Doc.52. 9 March 2001. Chapter III. paras. 14-16. Available at: <http://www.cidh.oas.org/countryrep/Paraguay01eng/chap3.htm>; See also: Viva Paraguay. April 24, 2009. *Gobierno instituye premio en homenaje a desaparecido periodista Santiago Leguizamón*. Available at: http://www.vivaparaguay.com/new/index.php?option=com_content&view=article&id=1470:gobierno-instituye-premio-en-homenaje-al-desaparecido-periodista-santiago-leguizamon&catid=4:nacionales&Itemid=7; Última Hora. April 24, 2009. *Gobierno lanza para la prensa el Premio Leguizamón*. Available at: <http://www.ultimahora.com/notas/216142-Gobierno-lanza-para-la-prensa-el-premio--Santiago-Leguizam-n->; Presidency of the Republic of Paraguay. April 24, 2009. *Gobierno instituye premio en homenaje a desaparecido periodista Santiago Leguizamón*. Available at: <http://www.presidencia.gov.py/detalle.asp?codigo=100000265>.

⁴⁵⁶ Reporters Without Borders. February 17, 2009. *Asesinan al director de una radio comunitaria*. Available at: <http://www.rsf.org/Asesinan-al-director-de-una-radio.html>; Inter-American Press Association. *Impunity- Murders. Mid-year Meeting, March 13-16, 2009, Asunción, Paraguay*. Available at: http://www.sipiapa.com/v4/index.php?page=det_resolucion&asamblea=22&resid=328&idioma=sp; Asociación Paraguaya de Comunicaciones Comunitaria. January 16, 2009. *COMUNICA repudia el asesinato de Martín Ocampos Páez*. Available at: <http://legislaciones.item.org.uy/index?q=node/883>; International Federation of Journalists. February 13, 2009. *Director de radio comunitaria Martín Ocampos Páez es asesinado*. Available at: [http://ifex.org/paraguay/2009/02/16/community radio director mart n/es/](http://ifex.org/paraguay/2009/02/16/community%20radio%20director%20mart%C3%ADn%20p%C3%A9z%20es%20asesinado); *La Nación*. February 10, 2009. *SPP condena agresiones*. Available at: <http://www.lanacion.com.py/noticias.php?not=229223>.

⁴⁵⁷ *ABC Color*. March 3, 2009. *Periodista ratifica denuncia sobre amenaza de muerte*. Available at: <http://www.abc.com.py/2009-03-03/articulos/500618/periodista-ratifica-denuncia-sobre-amenaza-de-muerte>; Paraguay

On June 21, 2009, Santiago Benítez, a journalist with *Radio Mburucuyá*, in the Pedro Juan Caballero area, was, along with his family, the subject of attempted murder when unidentified individuals fired on his home. According to the information received, the attack could be linked to Benítez's work as a journalist. He hosts a radio program that has reported on the region's crime problems.⁴⁵⁸

458. Regarding these facts, the Office of the Special Rapporteur wishes to remind the state that Principle 9 of the Declaration of Principles holds that, "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

459. Finally, on March 24, 2009, oral arguments began in the criminal defamation trial of journalist Rosendo Duarte, with *ABC Color*, brought by Marciano Godoy, politician with the National Republican Association – Colorado Party (*Asociación Nacional Republicana – Partido Colorado*). According to the information received by the Office of the Special Rapporteur, Duarte had published an article that linked Godoy to alleged acts of corruption in the Salto Guairá area. In April of 2009, the judge hearing the criminal case was recused, and the criminal proceedings were ordered to be restarted.⁴⁵⁹

460. The Office of the Special Rapporteur wishes to remind the State that Principle 10 of the Declaration of Principles holds that, "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news." Likewise, Principle 11 holds that, "Public officials are subject to greater scrutiny by society."

24. Peru

461. On November 3, 2009, during the 137th period of sessions, the IACHR held a public hearing on the freedom of expression situation in Peru. Representatives of both the State and civil

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Journalists' Union. February 10, 2009. *El corresponsal Aldo Lezcano agredido, recibe amenaza de muerte; el periodista Richard Villasboa y el camarógrafo Blas Salcedo agredidos, expulsados de penitenciaría*. Available at: http://www.ifex.org/paraguay/2009/02/11/correspondent_aldolezcano_assaulted/es/.

⁴⁵⁸ Paraguay Journalists' Union. June 21, 2009. *El SSP repudia atentado contra periodista Santiago Benítez*. Available at: http://www.ifex.org/paraguay/2009/06/25/benitez_house_attacked/es/; *La Nación*. June 22, 2009. *Sicarios atentan a tiros contra la casa de un locutor de radio en Pedro Juan*. Available at: <http://www.lanacion.com.py/noticias-252592.htm>.

⁴⁵⁹ Paraguay Journalists' Union. March 26, 2009. *SPP repudia utilización de la justicia para censurar a periodistas*. Available at: http://www.ifex.org/paraguay/2009/03/27/journalists_rosendo_duarte_and/es/; *ABC Color*. March 25, 2009. *Juez allana el camino para condenar a periodista querrellado por político*. Available at: <http://www.abc.com.py/2009-03-25/articulos/506958/la-mafia-fronteriza-busca-acallar-a-corresponsal-de-abc-color>; *ABC Color*. April 23, 2009. *Nuevo Juez deberá atender juicio seguido a periodista*. Available at: <http://www.abc.com.py/2009-04-23/articulos/515185/nuevo-juez-debera-atender-juicio-seguido-a-periodista>.

society participated in the hearing. In preparing this section of the Annual Report 2009, the Office of the Special Rapporteur has used information submitted by the parties at the hearing.⁴⁶⁰

462. The Office of the Special Rapporteur received information on the progress of the legal proceedings in the murder of journalist Alberto Rivera Fernández, who was killed in 2004. In October of 2009, after some procedural delays due to the absence of the representative of the Public Prosecutor, the oral proceedings against the suspended mayor of Colonel Portillo, Luis Valdez Villacorta, were restarted. Valdez Villacorta has been charged with being the mastermind of the crime.⁴⁶¹ The Office of the Special Rapporteur also notes that in April of 2009, the Supreme Court of Justice ruled that a new trial should be held in the judicial district of Lima, due to the fact that questions had been raised about the trial taking place in Ucayali.⁴⁶²

463. During 2009, the Office of the Special Rapporteur received information about threats against journalists who had been reporting on alleged acts of corruption. On February 5, 2009, Julio Vásquez Calle, a journalist with radio broadcaster *Cutivalú*, revealed that he had received telephoned death threats after having publicized photographs implicating the Piura police and officials of Majaz (at the time a mining company) in a 2005 kidnapping and torture case.⁴⁶³

464. On March 21, 2009, Jaime Abanto Padilla, a journalist and the director of daily newspaper *Panorama Cajamarquino*, received repeated telephoned death threats for several weeks. Padilla had been reporting on acts of corruption allegedly committed by officials of the National Penitentiary Institute (*Instituto Nacional Penitenciario*, INPE) at the Huacariz prison in Cajamarca.⁴⁶⁴

465. Likewise, in August of 2009, Elías Asmat Goicochea, a journalist with daily newspaper *Últimas Noticias*, was threatened after reporting on alleged irregularities in the purchase of machinery by authorities in the city of Pacasmayo.⁴⁶⁵

⁴⁶⁰ The non-governmental human rights organization that requested the public hearing was the Legal Defense Institute (*Instituto de Defensa Legal*, IDL). An audio recording of the hearing is available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=117>.

⁴⁶¹ Inter-American Press Association. June 23, 2009. *Piden 20 años para presunto asesino de Alberto Rivera*. Available at: <http://www.impunidad.com/index.php?shownews=314&idioma=sp>; El Comercio. June 3, 2009. *El 22 comienza juicio a Luis Valdez Villacorta*. Available at: <http://elcomercio.pe/impresa/notas/22-comienza-juicio-luis-valdez-villacorta/20090603/295345>; Asociación Nacional de Periodistas del Perú. October 2009. *Este viernes reanudan juicio contra Valdez por crimen de periodista*. Available at: <http://www.anp.org.pe/noticias/nacionales/230-este-viernes-reanudan-juicio-contra-valdez-por-crimen-de-periodista>.

⁴⁶² Asociación Nacional de Periodistas del Perú. April 16, 2009. *Corte Suprema determinó el traslado a Lima del juicio por crimen de periodista Rivera Fernández*. Available at: <http://www.consejoprensaperuana.org.pe/tempo/detnoticia.php?item=NDQ>.

⁴⁶³ Amnesty International. February 11, 2009. *Amenazas de muerte, Julio César Calle, periodista. 28 miembros de comunidades campesinas de la región de Piura*. Available at: <http://www.amnesty.org/fr/library/asset/AMR46/003/2009/fr/a9358c2d-f90e-11dd-92e7-c59f81373cf2/amr460032009spa.html>; Instituto Prensa y Sociedad. February 10, 2009. *Amenazan a periodista que denunció torturas de policías a comuneros*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1731>.

⁴⁶⁴ Instituto Prensa y Sociedad. April 6, 2009. *Amenazan a director de diario tras denunciar corrupción de funcionarios penitenciarios*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1805>; Asociación Nacional de Periodistas del Perú. Unspecified date. *Periodista es amenazado a través de llamadas telefónicas anónimas*. Available at: <http://www.anp.org.pe/ofip/alertas/127-periodista-es-amenazado-a-traves-de-llamadas-telefonicas-anonimas-alerta-peru-cajamarca>.

⁴⁶⁵ Diario La Industria. September 1, 2009. *Amenazan de muerte a periodista*. Available at: http://www.laindustria.pe/index.php?option=com_content&task=view&id=6255&Itemid=7; Instituto Prensa y Sociedad. September 1, 2009. *Amenazan de muerte a periodista tras publicar denuncia sobre presunta sobrevaloración en compra de maquinaria*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1979>.

466. In 2009, the Office of the Special Rapporteur also learned that several journalists had been victims of threats and violence for reporting on protests and demonstrations. On May 20, 2009, several communicators complained of having been threatened by demonstrators belonging to the Yurimaguas Amazonian communities in Loreto. According to the information received by the Office of the Special Rapporteur, the directors of the march had accused the journalists of misinforming people about the protests.⁴⁶⁶ Also, in another case, a group of demonstrators burst into the offices of *Radio Stación X* and threatened communicator María Nancy Chasnamote, who was in the middle of broadcasting her program. The information submitted to the Office of the Special Rapporteur indicates that the unknown individuals were at the point of physically assaulting the journalist.⁴⁶⁷

467. On June 11, 2009, radio journalist Miguel Ángel Buitrón was threatened by unknown individuals who warned him not to continue reporting on a peasant protest. Otherwise, the broadcaster's license would be revoked. According to the information received by the Office of the Special Rapporteur, the protest was taking place in the municipality of Andahuaylas, in Apurímac. Three days later, several media outlets were accused by the demonstrators of being "sold out to the government" for not reporting favorably on the protest.⁴⁶⁸

468. The Office of the Special Rapporteur also expresses concern over the acts of violence that took place in 2009 against journalists covering public demonstrations. The attacks came from public officials, private security guards, and demonstrators who were supposedly unhappy with the editorial slant of a news outlet or the coverage given to a particular story.

469. On February 24, 2009, Sánchez and Reynaldo Poma, reporters with *Radio Uno*, were attacked and insulted by a group supposedly composed of employees of the regional Tacna government.⁴⁶⁹ On April 29, 2009, a group of demonstrators of the peasant patrols (*rondas campesinas*) of the Education Workers Union assaulted journalists with *RTC Canal 13*;⁴⁷⁰ and on

⁴⁶⁶ Instituto Prensa y Sociedad. May 21, 2009. *Periodistas denuncian amenazas de muerte por cubrir protesta de comunidades amazónicas*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1848>; Consejo de la Prensa Peruana. September 22, 2009. *Periodistas de Yurimaguas denuncian agresiones y amenazas de muerte contra la prensa que cubre paro indefinido*. Available at: <http://www.consejoprensaperuana.org.pe/tempo/detnoticia.php?item=NDU=>; Asociación Nacional de Periodistas del Perú. April 23, 2009. *ANP exige se investigue atropellos a periodistas en Yurimaguas*. Available at: <http://www.anp.org.pe/noticias/pronunciamientos-anp/141-anp-exige-se-investigue-atropellos-a-periodistas-en-yurimaguas>.

⁴⁶⁷ Instituto Prensa y Sociedad. April 29, 2009. *Huelguistas irrumpen en emisora y amenazan de muerte a periodista*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1825>; Diario La Región. April 21, 2009. *Comunicadora social es amenazada de muerte por huelguistas*. Available at: http://www.diariolaregion.com/index.php?option=com_content&task=view&id=14676.

⁴⁶⁸ Instituto Prensa y Sociedad. June 16, 2009. *Amenazan a periodistas y medios por informar sobre protesta campesina*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1872>; Diario La República. June 21, 2009. *La prensa en peligro*. Available at: <http://www.larepublica.pe/archive/all/domingo/20090621/4/node/201343/todos/1558>.

⁴⁶⁹ Radio Uno. February 25, 2009. *Medios de Comunicación rechazaron agresión a periodista de Radio Uno*. Available at: http://www.radiouno.com.pe/index.php?option=com_content&task=view&id=8701&Itemid=26; Instituto Prensa y Sociedad. February 27, 2009. *Regional government workers assault reporters Marco Sánchez and Reynaldo Poma; copies of bulletin that covered university corruption allegations seized by security guard*. Available at: <http://www.ifex.org/peru/2009/02/27/regional-government-workers-assault/>.

⁴⁷⁰ Instituto Prensa y Sociedad. April 30, 2009. *Campesinos y sindicalistas agreden a reporteros y se roban videogradora*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1826>; International Freedom of Expression Exchange. May 4, 2009. *Demonstrators beat reporters, steal videocamera*. Available at: <http://www.ifex.org/peru/2009/05/04/demonstrators-beat-reporters-steal/>.

May 7, 2009, in the city of Trujillo, several reporters with the channel *TV Perú* were assaulted by security personnel employed by the Comarsa mining company.⁴⁷¹

470. Likewise, the Office of the Special Rapporteur received information indicating that on April 9, 2009, in the early hours of the morning, the residence of Walter Castillo Chávez, a journalist with *Radio Libertad* in Arequipa, was attacked by unknown individuals who threw rocks and broke several windows. Castillo Chávez stated that several days prior he had received death threats apparently related to a series of criticisms of former president Alberto Fujimori.⁴⁷²

471. In March of 2009, Lillian Luna Villafuerte, a correspondent with daily newspaper *La República*, was punched in the stomach by an INPE official while taking photographs of an incident nearby. The same official tried to hit Miguel Ángel De la Cruz, with *Teve Solar*, to prevent him from filming it.⁴⁷³

472. Likewise, on September 25, 2009, José Lorenzo Fernández, a journalist with *Canal 33* as well as a correspondent with the channel *Frecuencia Latina* in the province of Pisco, in Ica, was shot at by an unknown assailant as he was leaving the offices of *Canal 33*. According to the information received by the Office of the Special Rapporteur, the hired assassin fired at him twice, but both shots missed and the journalist was unharmed.⁴⁷⁴

473. The Office of the Special Rapporteur urges the authorities to launch legal investigations into the aforementioned incidents and identify, try, and punish those responsible. Principle 9 of the Declaration of Principles states that, "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

474. The Office of the Special Rapporteur wishes to express concern regarding the alleged detention and obstruction suffered by some journalists. Public officials and candidates for public office were allegedly involved in some of these incidents. For example, according to the information received by the Office of the Special Rapporteur, on January 21, 2009, Ana Yuffra, a candidate for mayor in San Juan Bautista, in the province of Maynas, allegedly detained several journalists in her house so that they could not report on a protest against her that was taking place

⁴⁷¹ Consejo de la Prensa Peruana. May 7, 2009. *Reporteros de TV Perú agredidos por seguridad de Minera Comarsa en Trujillo*. Available at: <http://www.consejoprensaperuana.org.pe/tempo/detnoticia.php?item=NDk=>; Instituto Prensa y Sociedad. May 8, 2009. *Seguridad de minera agrade a periodistas y les arrebató equipos*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1837>.

⁴⁷² Asociación Nacional de Periodistas del Perú. Unspecified date. *Sujetos no identificados atacan vivienda de periodista radial*. Available at: <http://www.anp.org.pe/ofip/alertas/131-sujetos-no-identificados-atacan-vivienda-de-periodista-radial>; Instituto Prensa y Sociedad. April 17, 2009. *Amenazan a periodista por criticar a ex presidente Fujimori y apedrean su casa*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1818>.

⁴⁷³ Instituto Prensa y Sociedad. March 6, 2009. *Funcionario penitenciario agrade a los periodistas Lillian Luna Villafuerte y Humberto De la Cruz; el periodista Roberto Chalco denuncia acoso de policías tras criticar inseguridad ciudadana*. Available at: [http://www.ifex.org/peru/2009/03/06/journalists lillian luna villafuerte/es/](http://www.ifex.org/peru/2009/03/06/journalists%20lilian%20luna%20villafuerte/es/); Asociación Nacional de Periodistas de Perú. March 4, 2009. *Agente de seguridad de Instituto Nacional Penitenciario agrade a periodistas*. Alert sent by e-mail to the Special Rapporteur.

⁴⁷⁴ Diario Correo. September 28, 2009. *Con 2 balazos intentan asesinar a periodista*. Available at: http://www.correoperu.com.pe/correo/nota.php?txtEdi_id=27&txtSecci_parent=&txtSecci_id=69&txtNota_id=142474; Asociación Nacional de Periodistas del Perú. Unspecified date. *Corresponsal de Frecuencia Latina sufre atentado criminal*. Available at: <http://www.anp.org.pe/ofip/alertas/183-corresponsal-de-frecuencia-latina-sufre-atentado-criminal>.

in front of her house. Two collaborators also tried to take the journalists' equipment and erase the recorded material.⁴⁷⁵

475. On October 11, 2009, Roger Chávez, a journalist with weekly newspaper *Visión Regional*, based in the municipality of Florencia de Mora in La Libertad, was detained by local police personnel. According to sources consulted by the Office of the Special Rapporteur, the incident took place while Chávez was covering a meeting of the local mayor's sympathizers. Chávez was allegedly detained and transported to a station where he was held for more than three hours.⁴⁷⁶

476. The Office of the Special Rapporteur also learned of an incident which took place on March 17, 2009. Journalists from Tarapoto and Yurimaguas were not able to enter an inauguration ceremony for a public work where President Alan García was going to be in attendance. According to the information received by the Office of the Special Rapporteur, law enforcement personnel blocked the journalists from entering, saying they had orders to do so.⁴⁷⁷

477. In January of 2009 in Lima's Chosica district, a group of unknown individuals purchased every copy of daily newspaper *Perú 21* available in the area's stores and newsstands. That day, the newspaper reported on the illegal trafficking of fuel, which, according to the article, could have implicated some of the district's authorities.⁴⁷⁸

478. Regarding these cases, the Office of the Special Rapporteur wishes to reiterate that Principle 5 of the Declaration of Principles holds that, "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

479. The Office of the Special Rapporteur received information on the June 8, 2009 decision of the Ministry of Transportation and Communication to cancel the authorization of radio station *La Voz* to do audio broadcasts in Utcubamba, in Bagua. According to the information submitted by the State to the Office of the Special Rapporteur, the administrative decision was made because the broadcaster had not complied with technical requirements provided for in the law currently in effect.⁴⁷⁹ The ruling to cancel the broadcasting permit was adopted after serious acts of

⁴⁷⁵ Instituto Prensa y Sociedad. January 23, 2009. *Candidata a alcaldía retiene a periodistas en su casa para que no informen sobre protesta en su contra*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1715>; Inter-American Press Association. March 16, 2009. *Mid-year Meeting, March 13-16, 2009, Asunción, Paraguay. Country: Peru*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inoid=357&idioma=us.

⁴⁷⁶ Asociación Nacional de Periodistas. Date not specified. *Arrestan a periodista cuando cubría evento público*. Available at: <http://www.anp.org.pe/noticias/nacionales/206-arrestan-a-periodista-cuando-cubria-evento-publico>; Instituto Prensa y Sociedad. October 13, 2009. *Detienen a periodista cuando cubría evento público de partidarios de alcalde*. Available at: <http://www.ipys.org/alertas/atentado.php?id=2032>.

⁴⁷⁷ Instituto Prensa y Sociedad. March 20, 2009. *Medios independientes impedidos de cubrir ceremonia de inauguración de carretera*. Available at: http://www.ifex.org/peru/2009/03/20/independent_media_outlets_barred/; Asociación Nacional de Periodistas de Perú. March 18, 2009. *Independent media outlets barred from covering opening of highway*. Alert sent by e-mail to the Special Rapporteur for Freedom of Expression.

⁴⁷⁸ Instituto Prensa y Sociedad. January 6, 2009. *Compran ejemplares de diario para impedir difusión de denuncia*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1697>; Inter-American Press Association. March 16, 2009. *Mid-year Meeting, March 13-16, 2009, Asunción, Paraguay. Country: Peru*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inoid=357&idioma=us.

violence took place in Bagua on June 5, 2009. The Office of the Special Rapporteur was also informed that some state authorities had stated that *La Voz* had incited the incidents. However, the aforementioned administrative decision refers solely to non-compliance with technical requirements not related to the violence.⁴⁸⁰ The radio station's directors feel that the cancellation was "punishment" from the authorities, and indicated that at the time of the Ministry's resolution, they were processing the license. Some freedom of expression organizations, both local and international, petitioned the government to annul the administrative resolution that cancels the broadcaster's authorization. However, as of the date of this report, the radio station remains closed and the Ministry of Transportation and Communications' resolution stands.⁴⁸¹

480. The Office of the Special Rapporteur wishes to reiterate its concern about this case and remind the State that Principle 13 of the Declaration of Principles states that, "The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression."

481. The Office of the Special Rapporteur also wishes to express its concern about the cases of journalists taken to court after reporting or opining on matters of public interest. Raúl Wiener, a journalist with daily newspaper *La Primera*, published an article revealing that the courts had called 13 leftwing Peruvian leaders to a first examination of the accused for alleged links with the Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarias de Colombia*, FARC). After having published the report, the journalist was summoned to trial to be investigated for having close links to the illegal armed group.⁴⁸²

...continuation

⁴⁷⁹ Order (*resolución*) of the Vice Minister No. 211-2009MTC/03. June 8, 2009. Information submitted on November 3, 2009, by the State to the Office of the Special Rapporteur during the 137th period of sessions of the IACHR.

⁴⁸⁰ Office of the Special Rapporteur – IACHR. Press release No. R41/09. Available at: <http://www.cidh.oas.org/Relatoria/showarticle.asp?artID=751&IID=1>; Reporters Without Borders. *Censura de una radio de la región Amazonas, por "razones técnicas" falaces*. Available at: <http://www.rsf.org/Censura-de-una-radio-de-la-region.html>; Human Rights Watch. June 24, 2009. *Peru: Radio Closure Could Undermine Press Freedom*. Available at: <http://www.hrw.org/en/news/2009/06/24/peru-radio-closure-could-undermine-press-freedom>; Information submitted on November 3, 2009, by the Instituto de Defensa Legal to the Office of the Special Rapporteur for Freedom of Expression during the 137th period of sessions of the IACHR.

⁴⁸¹ Instituto Prensa y Sociedad. June 12, 2009. *Cancelan licencia a radio. Consideran medida un castigo por cómo informaron sobre conflicto amazónico*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1869>; Reporters Without Borders. June 25, 2009. *Open letter to minister about discrimination against Amazon radio station*. Available at: <http://www.rsf.org/Open-letter-to-minister-about.html>; Reporters Without Borders. September 21, 2009. *Government maintains ban on Amazonian radio station silenced since June*. Available at: <http://www.rsf.org/Amazon-radio-taken-off-air-for.html>.

⁴⁸² El Comercio. January 14, 2009. *Consejo de la Prensa Peruana denuncia censura previa contra periodista*. Available at: <http://elcomercio.pe/ediciononline/HTML/2009-01-14/consejo-prensa-peruana-denuncia-censura-previa-contra-periodista.html>; Reporters Without Borders. January 15, 2009. *Terrorism charges laid against left-wing investigative journalist after he reports on individuals with alleged links to the FARC*. Available at: <http://www.ifex.org/peru/2009/01/15/terrorism-charges-laid-against/>.

482. On August 13, 2009, blogger José Alejandro Godoy was sued by Jorge Mufarech, a former congressman and Labor Minister during the Alberto Fujimori government. Mufarech filed the lawsuit after Godoy published information about the former public official on his Web site. The politician argued that Godoy had defamed him and demanded US\$1 million in reparation. The suit is currently in progress and no rulings have yet been made.⁴⁸³

483. The Office of the Special Rapporteur was informed that a member of Parliament, Hilaria Supa Huamán, filed a lawsuit against Lima-based daily newspaper *Correo*. According to the lawsuit, the newspaper published a photograph showing a note presumably written by her that included spelling mistakes. Supa argued that the newspaper violated her privacy.⁴⁸⁴

484. Regarding this matter, the Office of the Special Rapporteur wishes to remind the State that Principle 10 of the Declaration of Principles holds that, "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news." Likewise, Principle 11 holds that, "Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as 'desacato laws,' restrict freedom of expression and the right to information."

485. The Office of the Special Rapporteur learned that on October 20, 2009, the Justice Ministry filed a criminal complaint with the Public Prosecutor requesting the dissolution of the Interethnic Association for the Development of the Peruvian Jungle (*Asociación Interétnica de Desarrollo de la Selva Peruana*, AIDSESEP) "for promoting incidents contrary to public order." According to the Justice Ministry, "Far from directing its complaints, proposals, or protests through the normal legal channels, [AIDSESEP] [...] blocks highways, calls the population to insurrection, and justifies crimes." Civil society organizations have expressed that the measure is an act "of government hostility" toward AIDSESEP "for the work that this institution does defending the rights of the Amazonian indigenous peoples."⁴⁸⁵ On November 20, 2009, the State informed the Office of

⁴⁸³ Reportaje al Perú. August 21, 2009. *Mufarech querrela al blogger José Godoy. ¿Lo sabrá Velásquez Quesquén?* Available at: <http://www.reportajealperu.com/2009/08/mufarech-querrela-al-blogger-jose-godoy-¿lo-sabra-velasquez-quesquen.html>; Instituto Prensa y Sociedad. August 20, 2009. *Querrelan a director de blog político y piden US\$ 1 millón de reparación civil*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1960>.

⁴⁸⁴ Instituto Prensa y Sociedad. April 24, 2009. *Parlamentaria anuncia querrela contra diario que ejerció derecho de opinión*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1824>; El Comercio. April 24, 2009. *Congreso rechaza agravio contra la congresista Supa*. Available at: <http://elcomercio.pe/impresas/notas/congreso-rechaza-agravio-contra-congresista-supu/20090424/277522>.

⁴⁸⁵ According to the Justice Ministry, on May 15, 2009, AIDSESEP "called for the population to rise up, calling it 'Amazonian insurgence'" and demanding the repeal of Legislative Decrees Nos. 994, 995, 1020, 1060, 1064, 1080, 1081, 1082, and 1089. Also, on May 19, 2009, AIDSESEP advocated a "call to insurgence" on its Web site that resulted in "road blocks in the Amazon Region and attacks on private and public property." The Justice Ministry also maintained that AIDSESEP had "been organizing the taking of highways, which is normally [the] crime [of hindering the function of public services.]" Finally, the Justice Ministry indicated that on June 6, 2009, AIDSESEP "called the mass media to a press conference to justify the crimes committed during the vandalistic attack of 2,000 natives that caused the death of two locals and eight police officers, with 24 civilians seriously injured in the area known as Devil's Curve (*Curva del Diablo*) [...] in the Utcubamba Province, Amazonas department. The group based its justification of the incident on the fact that the Congress of the Republic had postponed debate on the repealing of the Legislative Decrees that supposedly damage the interests of the native population." Information submitted on November 3, 2009 by the IDL to the Office of the Special Rapporteur for Freedom of Expression during the 137th period of sessions of the IACHR. Annex A-6: Public attorney of the Justice Ministry. June 11, 2009. Request for dissolution of Association in keeping with Article 96 of the Civil Code.

the Special Rapporteur that on November 17, 2009, the Justice Ministry filed a writ of voluntary dismissal with the Public Prosecutor, requesting that the request for dissolution be shelved.⁴⁸⁶

486. Finally, the Office of the Special Rapporteur notes the consideration of Bill No. 2971/2008-CR, which would have increased the punishment in cases related to the right of reply, before the national Congress. According to the information received by the Office of the Special Rapporteur, civil organizations and media outlets have stated to the legislature that the project would restrict freedom of expression by establishing disproportionate conditions for the right of reply. The Office of the Special Rapporteur notes the fact that this initiative has been withdrawn by its own sponsor.⁴⁸⁷

487. The Office of the Special Rapporteur was also informed that on January 23, 2009, Bill No. 2993/2008-PE was presented before the Congress of the Republic. The bill modifies Article 162 of the Penal Code. The bill's sole article proposes to, among other measures, punish "with a prison term of no less than three years or greater than five those who do harm to a third party by selling, transferring, reproducing, or acquiring directly or indirectly, for personal benefit or the benefit of a third party [...] information registries obtained inappropriately." According to the information received by the Office of the Special Rapporteur, the bill is currently under debate in the Congress of the Republic's Justice and Human Rights Commission. The Office of the Special Rapporteur brings the State's attention to the fact that, should this bill be approved, it could disproportionately restrict freedom of expression.⁴⁸⁸ In this respect, the State should recall that, according to the Declaration of Principles on Freedom of Expression, the State must respect and guarantee the right to keep sources confidential (Principle 8). Also, the State should recall that a ban on illegally obtaining classified information cannot be used as an excuse for criminalizing the mere distribution of the information when it is in the public interest.⁴⁸⁹

25. Dominican Republic

488. The Office of the Special Rapporteur observes with satisfaction the fact that on May 22, 2009, the Second Court of the Civil and Commercial Lower Circuit of the National District found in favor of a writ of amparo filed by three journalists against a senator of the San Pedro de Macoris province. The court ordered the senator to withdraw his legal actions seeking the revelation of the identity of a source who had told the journalists that the senator was going to be investigated in the United States for tax evasion. According to the information received by the Office of the Special Rapporteur, María Isabel Soldevilla, with *Listín Diario*; Margarita Cordero, with the news Web site *7días.com.do*; and Norma Sheppard, with *Radio Mil*, had previously revealed that they had been approached separately by two men claiming to be agents with the Federal Bureau of Investigation

⁴⁸⁶ Justice Minister. November 17, 2009. *Denuncia* 936-2009. Writ of voluntary dismissal. Information submitted on November 20, 2009, by the State to the Office of the Special Rapporteur.

⁴⁸⁷ Congress of the Republic of Peru. Bill (*Proyecto de Ley*) No. 2971/2008-CR. Bill that regulates the right of reply for people affected by the inexact or libelous statements in media outlets. Available at: <http://www2.congreso.gob.pe/Sicr/TraDocEstProc/CLProLey2006.nsf>; Reporters Without Borders. August 20, 2009. *Controversial bill would restrict freedom of opinion*. Available at: <http://www.rsf.org/Controversial-bill-would-restrict.html>; Instituto Prensa y Sociedad. August 19, 2009. *Pronunciamento del IPYS: Proyecto de ley de rectificación es una clara amenaza a la libertad de expresión*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1955>.

⁴⁸⁸ Congress of the Republic of Peru. Bill (*Proyecto de Ley*) No. 2993/2008-PE. Bill modifying Article 162 of the Penal Code to include aggravating circumstances. Available: <http://www2.congreso.gob.pe/Sicr/TraDocEstProc/CLProLey2006.nsf>; Information submitted on November 3, 2009 by the IDL to the Office of the Special Rapporteur for Freedom of Expression during the 137th period of sessions of the IACHR.

⁴⁸⁹ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. para. 19 Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20ORELE%20-%20version%20final.pdf>

(FBI) who strongly rebuked them for having written about the senator.⁴⁹⁰ Principle 8 of the Declaration of Principles states that, “Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential,” while Principle 11 holds that, “Public officials are subject to greater scrutiny by society.”

489. The Office of the Special Rapporteur also received information indicating that in the first half of March 2009, journalist Manuel Antonio Vega received a death threat via telephone because of his reporting on drug trafficking. The information received by the Office of the Special Rapporteur indicates that those suspected of making the threatening phone calls were in prison at the time. The Office of the Special Rapporteur views positively the authorities' quick response in providing Vega with police protection.⁴⁹¹ The Office of the Special Rapporteur wishes to express its concern at these threats. It urges the State to keep the special protection in place and move the investigation along quickly to identify, try, and punish those responsible.

490. The Office of the Special Rapporteur received information indicating that the Santo Domingo home of reporter and radio commentator Franklin Guerrero was fired on during the first week of November 2009 by an individual supposedly linked to drug trafficking. The Office of the Special Rapporteur observes with satisfaction the rapid response of the authorities, who arrested the alleged gunman on November 8, 2009.⁴⁹²

491. The Office of the Special Rapporteur received information indicating that on November 11, 2009, the country's two main journalist unions – the National Press Workers Union (*Sindicato Nacional de Trabajadores de Prensa*) and the Dominican Journalists Association (*Colegio Dominicano de Periodistas*) –expressed concern at the increase in threats and attacks targeted toward journalists in the Dominican Republic. One of their complaints indicates that on November 7, 2009, journalists and cameramen with channels 11 and 37 were beaten and threatened by group of individuals while covering an incident related to tree felling in Puerto del Plata province.⁴⁹³

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

⁴⁹⁰ El Nuevo Diario. May 22, 2009. *Acogen recurso de amparo interpuesto contra senador Alejandro Williams*. Available at: <http://www.elnuevodiario.com.do/app/article.aspx?id=152932>; La Nación Dominicana. May 22, 2009. *Juez acoge recurso de amparo contra senador Alejandro Williams*. Available at: http://www.lanaciondominicana.com/ver_noticia.php?id_noticia=8952; Inter-American Press Association. April 2, 2009. *Periodistas intimidados tras informar que un senador está bajo investigación por supuesto fraude*. Available at: http://www.ifex.org/dominican_republic/2009/04/02/three_journalists_harassed_after/es/.

⁴⁹¹ Knight Center for Journalism. March 16, 2009. *Narcotraficantes encarcelados amenazan a reportero dominicano*. Available at: <http://www.knightcenter.utexas.edu/blog/?q=en/node/3341>; Reporters Without Borders. March 13, 2009. *Narcotraficantes encarcelados amenazan a un periodista*. Available at: <http://www.rsf.org/Narcotraficantes-encarcelados.html>.

⁴⁹² Agencia Antena. November 8, 2009. *PN apresa autor de atentado contra fotorreportero Franklin Guerrero*. Available at: <http://www.antenaenlinea.com/index.php/pedrocaba/5801-pn-apresa-autor-de-atentado-contra-fotorreportero-franklin-guerrero>; Inter-American Press Association. *65th General Assembly, November 6-10, 2009, Buenos Aires. Dominican Republic*. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=24&inforid=386&idioma=us.

⁴⁹³ Cable from EFE News Agency, published on the homepage of Web site Noticias MSN Latino. November 11, 2009. *Denuncian aumento de agresiones a periodistas dominicanos*. Available at: <http://noticias.latino.msn.com/latinoamerica/dominicana/articulos.aspx?cp-documentid=22570356>; El Caribe. November 9, 2009. *Comunicadores y Jefe PN condenan agresión a prensa*. Available at: http://www.elcaribe.com.do/site/index.php?option=com_content&view=article&id=227083:comunicadores-y-pn-condenan-agresion-a-equipo-de-prensa&catid=104:nacionales&Itemid=115.

26. Saint Lucia

493. The Office of the Special Rapporteur received information indicating that on August 12, 2009, Novita Emmanuel, a journalist with *Think Caribbean Television (TCT)*, was attacked by an individual whom she had photographed parking his vehicle in an area reserved for people with disabilities. According to the information received by the Office of the Special Rapporteur, while Emmanuel was engaged in another journalistic assignment, the same individual took her camera and struck her in the face. The incident was witnessed by the local police who, according to the information received, did not try to stop the individual from striking the journalist.⁴⁹⁴ The Office of the Special Rapporteur reminds the State that Principle 9 of the Declaration of Principles indicates that, "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

27. Suriname

494. The Office of the Special Rapporteur notes the January 2009 ruling by a military tribunal rejecting a request to block the media from covering public hearings in the legal proceedings against former dictator Desi Bouterse. Bouterse is on trial for the 1982 murder of 15 people, among them four journalists. According to the information received by the Office of the Special Rapporteur, the request had argued that the press felt "profound animosity" toward Bouterse, for which reason it was requested that the media be denied access to the trial.⁴⁹⁵ The Office of the Special Rapporteur recalls that Principle 5 of the Declaration of Principles clearly holds that, "Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

495. The Office of the Special Rapporteur received information indicating that in November of 2009, Ivan Cairo, a journalist with daily newspaper *De Ware Tijd*, was threatened by telephone after publishing several articles on the disappearance of more than 90 kilograms of cocaine from a police vault.⁴⁹⁶ Principle 9 of the Declaration of Principles indicates that, "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

⁴⁹⁴ Caribbean Net News. August 12, 2009. Media worker attacked in Saint Lucia. Available at: http://www.caribbeanetnews.com/stlucia/stlucia.php?news_id=18179&start=40&category_id=20; Nation News. *Photographer attacked on job*. Available at: <http://www.nationnews.com/print/tv-assault-copy-for-web>.

⁴⁹⁵ Caribbean Net News. January 26, 2009. *Suriname* Court dismisses request to ban media from murder trial. Available at: <http://www.caribbeanetnews.com/news-13750--36-36--.html>; World News This Week. February 3, 2009. *Suriname Court Dismisses Request to Ban Media from Murder Trial*. Available at: <http://8thworldnews.blogspot.com/2009/02/suriname-court-dismisses-request-to-ban.html>.

⁴⁹⁶ Knight Center for Journalism in the Americas. *Reportero en Suriname es amenazado luego de denunciar pérdida de cocaína decomisada por la policía*. November 17, 2009. Available at: <http://knightcenter.utexas.edu/blog/?q=es/node/5821>; Association of Caribbean Media Workers. November 13, 2009. *Journalist threatened after reporting on cocaine missing from police vault*. Available at: http://www.ifex.org/suriname/2009/11/13/cairo_threatened/.

28. Uruguay

496. The Office of the Special Rapporteur views positively the fact that the Uruguayan State has taken legislative measures to incorporate the freedom of expression standards of the inter-American system into its domestic legal system. In June of 2009, the General Assembly of the Legislature passed Law No. 18.515, which adopts important reforms to the Penal Code and the Press Law. The new legal framework eliminates sanctions for the dissemination of information about or opinions on state officials and matters of public interest, except for when the person presumably affected is able to demonstrate the existence of “actual malice.” Likewise, although this legislation does not repeal all forms of *desacato*, it substantially reduces its application and expressly holds that no one will be punished for disagreeing with or questioning authority. Law No. 18.515 also repeals sanctions for insulting patriotic symbols or for attacking the honor of foreign authorities. Finally, the reform adds that human rights treaties form the principal guides for the interpretation, application, and integration of civil, procedural, and criminal law on freedom of expression, recognizing as well the relevance of the rulings and recommendations of the Inter-American Court of Human Rights and the IACHR in this matter.⁴⁹⁷

497. The Office of the Special Rapporteur applauds the fact that on September 18, 2009, the State and journalist Carlos Dogliani signed a friendly settlement, closing the case brought before the IACHR under petition P-228/07. On March 25 and April 1, 2005, Dogliani published two articles in weekly newspaper *El Regional* accusing the then mayor of the department of Paysandú, Álvaro Lamas, of abuse of power. The journalist was subject to a criminal trial and sentenced to three months in prison as guilty of four counts of defamation according to the Penal Code and the Press Law. With internal legal remedies exhausted, in February of 2007, the reporter turned to the IACHR, invoking Article 13 of the American Convention. After analyzing the case, the State expressed to the IACHR its willingness to start a dialogue with the petitioner to reach a friendly settlement. In this context, in June of 2009, the State approved the aforementioned Law No. 18.515, which repealed the criminal regulation that had given rise to the journalist’s conviction. The State also recognized its responsibility in the case and committed itself to paying Dogliani damages.⁴⁹⁸

498. Despite this progress, during 2009 the Office of the Special Rapporteur continued to receive information on legal procedures brought against social communicators for publishing information in the public interest. On May 6, 2009, journalist Álvaro Alfonso was convicted for the crime of defamation after a Montevideo city councilman brought him to trial. The state official believed himself to have suffered damages because of the information that Alfonso had published about him in the book, *Secrets of the Uruguayan Communist Party (Secretos del Partido Comunista del Uruguay)*. The information received by the Office of the Special Rapporteur adds that the sentence was suspended and that Alfonso’s defense has appealed the ruling making reference to

⁴⁹⁷ Legislative Power of the Oriental Republic of Uruguay. July 15, 2009. Law Number 18.515. *Media Outlets*. Available at: <http://www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=18515&Anchor=>; Office of the Special Rapporteur – IACHR. Press Release No. R38/09. June 22, 2009. Office of the Special Rapporteur for Freedom of Expression Expresses its Satisfaction with the Recent Legislative Reforms in Uruguay and in Quebec, Canada, and with the Decisions by the Highest Courts of Brazil and Mexico Concerning Freedom of Expression. Available at: <http://www.cidh.oas.org/Relatoria/showarticle.asp?artID=750&IID=1>; Committee for the Protection of Journalists. June 11, 2009. *CPJ hails approval of press law by Uruguayan Congress*. Available at: <http://www.cpj.org/2009/06/cpj-hails-approval-of-press-law-by-uruguayan-congr.php>; Reporters Without Borders. July 12, 2009. *La despenalización de los delitos de prensa ha sido promulgada por el Jefe del Estado*. Available at: <http://www.rsf.org/La-despenalizacion-de-los-delitos.html>; Federación Internacional de Periodistas. June 24, 2009. *La FIP da la bienvenida a la eliminación de los delitos de prensa*. Available at: http://www.ifex.org/uruguay/2009/06/26/press_crimes_eliminated/es/.

⁴⁹⁸ Presidency of the Oriental Republic of Uruguay. September 22, 2009. *Estado uruguayo derogó norma relativa a delitos de comunicación*. Available at: <http://www.presidencia.gub.uy/web/noticias/2009/09/2009092202.htm>; Asociación de la Prensa Uruguaya. September 15, 2009. Available at: <http://www.apu.org.uy/noticias/reconocimiento-historico-del-estado-uruguayo-sobre-caso-libertad-de-expresion>.

the aforementioned legal reform.⁴⁹⁹ Principle 11 of the Declaration of Principles indicates that, “Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as ‘desacato laws,’ restrict freedom of expression and the right to information.”

499. Likewise, the Office of the Special Rapporteur received information indicating that in August of 2009, Celeste Álvarez, niece of former Uruguayan military dictator Gregorio Álvarez, brought a civil suit against public television journalist Ana María Mizrahi based on an interview that the reporter did with a former *Tupamaro* guerilla who had allegedly admitted to being behind the murder of Colonel Artigas Álvarez (the plaintiff’s father) at the beginning of the 1970s.⁵⁰⁰ The Office of the Special Rapporteur reminds the State that Principle 10 of the Declaration of Principles holds that, “Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

500. In April of 2009, Eduardo Barreneche, a journalist with the daily newspaper *El País*, was threatened by an advisor with the Ministry of the Interior while on the job. The information adds that the official tried to throw the journalist out of the ministry’s main offices.⁵⁰¹ Principle 9 of the Declaration of Principles states that, “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

501. The Office of the Special Rapporteur expresses satisfaction at judgment 381-545/2009, handed down by the Court of Governmental Peace on September 11, 2009, regarding a journalist’s request for information from the Soriano Departmental Council to learn the amount spent on official advertising during different periods. Given that the information was produced and held by a public body, and “with a view to guaranteeing the principles of publicity and transparency,” the judge hearing the case ruled that the Soriano Departmental Council should turn over the requested information to the journalist in a period of 10 days, as counting from the notification of the

⁴⁹⁹ El País. May 7, 2009. *Procesan a Alfonso por libro del PCU*. Available at: <http://www.elpais.com.uy/090507/pnacio-415502/nacional/procesan-a-alfonso-por-libro-del-pcu>; Inter-American Press Association. May 21, 2009. *IAPA Condemns New Conviction of a Journalist in Uruguay*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4190&idioma=us.

⁵⁰⁰ Inter-American Press Association. *65th General Assembly, November 6-10, 2009, Buenos Aires. Uruguay*. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=24&inford=387&idioma=us. Asociación de la Prensa Uruguaya. July 31, 2009. *APU rechaza juicio civil contra la periodista Ana María Mizrahi*. Available at: <http://www.apu.org.uy/institucional/comunicados-apu/apu-rechaza-juicio-civil-contra-la-periodista-ana-maria-mizrahi>; El País. September 25, 2009. *Demanda de la sobrina del ex dictador Álvarez*. Available at: <http://www.elpais.com.uy/080925/pnacio-371867/nacional/demanda-de-la-sobrina-del-ex-dictador-alvarez>; *La República*. August 4, 2009. *Comienza hoy juicio a periodista*. Available at: <http://www.larepublica.com.uy/politica/375328-comienza-hoy-juicio-a-periodista>.

⁵⁰¹ Asociación de la Prensa Uruguaya. April 20, 2009. *APU rechaza amenaza a periodista Eduardo Barreneche*. Available at: <http://www.apu.org.uy/institucional/comunicados-apu/comunicado-090420-apu-rechaza-amenaza-a-periodista-eduardo-barreneche>; Inter-American Press Association. *65th General Assembly, November 6-10, 2009, Buenos Aires. Uruguay*. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=24&inford=387&idioma=us.

sentence.⁵⁰² Principle 4 of the Declaration of Principles states that “Access to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right [...].”

502. The Office of the Special Rapporteur also notes the decree, signed on October 7, 2009, by Uruguayan President Tabaré Vázquez Rosas, urging Executive-branch public entities to comply with Access to Public Information Law No. 18.831, passed toward the end of 2008.⁵⁰³

503. The Office of the Special Rapporteur was informed of a bill regulating official advertising, presented in September of 2009 before the Constitution, Codes, General Legislation, and Administration Commission of the Uruguayan Chamber of Deputies. The bill establishes the creation of a “decentralized entity of the Comptroller of the Republic (*Tribunal de Cuentas de la República*), the Advisory Unit for the Allocation of Official Advertising (*Unidad de Asesoramiento para la Asignación de Publicidad Oficial*, UAPO), an entity that will enjoy the broadest of technical autonomy [...].” Subsection B of Article 4 of the project holds that, “the discriminatory use of official advertising with the goal of pressuring and punishing or rewarding and privileging social communicators and media outlets based on their editorial slant is prohibited as a threat to freedom of expression.” Subsection C of the same article states that, “The use of official advertising as covert subsidies that benefit, directly or indirectly, media outlets is prohibited.”⁵⁰⁴ The Office of the Special Rapporteur reminds the State that Principle 13 of the Declaration of Principles holds that, “the arbitrary and discriminatory placement of official advertising and government loans; [...] among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

504. Finally, the Office of the Special Rapporteur notes the bill sent by the executive to the General Assembly of the Legislature on November 23, 2009. The bill seeks to guarantee “access to cultural diversity as an essential human right” and spread “the multiple and particular values of the Uruguayan people.”⁵⁰⁵ In this respect, the Office of the Special Rapporteur reiterates to the State its obligation to respect inter-American standards when regulating aspects related to radio and television. In particular, the Office of the Special Rapporteur wishes to remind the State that Principle 5 of the Declaration of Principles states that, “Restrictions to the free circulation of

⁵⁰² Access to Public Information Unit. Oriental Republic of Uruguay. Judgement N° 48 of the Second Turn Federal Court of Mercedes, September 11, 2009. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/jurisprudencia-nacional/sentencia-juzgado-letrado-de-2do-turno-de-mercedes.pdf>.

⁵⁰³ Presidency of the Oriental Republic of Uruguay. October 17, 2009. Urging public state and non-state entities to comply with the obligations of active transparency established in Article 5 of Law 18.381. DEC. N° 484/009. Available at: <http://www.presidencia.gub.uy/web/decretos/2009/10/847.pdf>.

⁵⁰⁴ Legislative Power of the Oriental Republic of Uruguay. September 2009. Bill on the Regulation of publicity purchased by public state and non-state entities. Available at: <http://www.parlamento.gub.uy/indexdb/Repartidos/ListarRepartido.asp?Id=5724>; Grupo Medios y Sociedad. *Freedom of Expression and Official Advertising*. October 2009. Available at: <http://legislaciones.amarc.org/GMS/Libro-Libertad de expresion y publicidad oficial.pdf>.

⁵⁰⁵ Presidency of the Oriental Republic of Uruguay. November 23, 2009. *Guaranteeing access to cultural diversity as an essential human right and promoting the multiple and particular values of the Uruguayan people*. Available at: <http://www.presidencia.gub.uy/web/proyectos/2009/11/EC1423.pdf>; Inter-American Press Association. *65th General Assembly, November 6-10, 2009, Buenos Aires, Uruguay*. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=24&inforid=387&idioma=us.

ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

29. Venezuela⁵⁰⁶

505. The present [section] describes some of the most recent issues related to the situation of the right to freedom of expression in Venezuela and formulates viable and feasible recommendations based on the American Convention, the American Declaration of the Rights and Duties of Man, and the Declaration of Principles on Freedom of Expression (hereinafter, “Declaration of Principles”).⁵⁰⁷

506. Freedom of expression is essential for the development and strengthening of democracy and for the full exercise of human rights. The recognition of freedom of expression is a fundamental guarantee to ensure the rule of law and democratic institutions. The Inter-American Court has repeatedly emphasized the importance of this right by affirming that:

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a *conditio sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.⁵⁰⁸

507. Freedom of expression includes the right of every person to seek, receive, and disseminate information and ideas of any kind. In this respect, this right has a two dimensions, individual as well as social. This dual nature:

requires, on the one hand, that no one be arbitrarily limited or impeded in expressing his own thoughts. In that sense, it is a right that belongs to each individual. Its second aspect, on the other hand, implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others.⁵⁰⁹

508. The Venezuelan State has recognized its obligation to protect, guarantee, and promote the right to freedom of expression in Article 57 of its Constitution and, in a paradigmatic example, has decided to honor its international obligations indicating in Article 23 of its constitutional text that: “Treaties, pacts and conventions relating to human rights, signed and ratified by Venezuela have constitutional rank and prevail over domestic legislation, insofar as they contain provisions for the enjoyment and exercise of such rights that are more favorable than those established by this Constitution and the laws of the Republic, and shall be immediately and directly applied by courts and the organs of public power.” Additionally, the protection of freedom of

⁵⁰⁶ The IACHR has prepared a special report on the human rights situation in Venezuela, titled “Democracy and Human Rights.” The Office of the Special Rapporteur was assigned the preparation of the chapter on freedom of expression in said report; the full text of which is included below.

⁵⁰⁷ The IACHR approved the Declaration of Principles on Freedom of Expression during its 108th Ordinary Period of Sessions in October of 2000. IACHR. Declaration of Principles on Freedom of Expression, available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=26&IID=1>.

⁵⁰⁸ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 70.

⁵⁰⁹ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 30.

information is recognized and protected in the Constitution at the highest level, by establishing it in its Article 337 as one of the untouchable rights that cannot be restricted even under exceptional circumstances. Additionally, as the State indicated in its observations on the present report, Article 58 of the Constitution establishes that, "Communication is free and plural, and carries with it the duties and responsibilities provided by law. Every person has the right to timely, truthful, and impartial information, without censorship, in accordance with the principles of this Constitution, as well as the right to reply and rectification when s/he is directly affected by inexact or offensive information. Children and adolescents have the right to receive information adequate for their comprehensive development."⁵¹⁰

509. In recent years, the IACHR and the Office of the Special Rapporteur for Freedom of Expression (hereinafter, "Special Rapporteurship") have followed the situation of freedom of expression in Venezuela closely.⁵¹¹ In the *Report on the Situation of Human Rights in Venezuela* (2003), prepared based on information received during the last on-site visit to that country, the IACHR issued the following recommendations to the State in relation to the right to freedom of expression:

1. Urgently take specific steps to put a halt to attacks on journalists, camera operators, and photographers, opposition politicians and human rights defenders, and all citizens who wish to exercise their right of free expression.
2. Conduct serious, impartial, and effective investigations into murders of, attacks on, threats against, and intimidation of journalists and other media workers.
3. Publicly condemn, from the highest levels of government, attacks on media workers, in order to prevent actions that might encourage such crimes.
4. Scrupulously respect the standards of the inter-American system for the protection of freedom of expression in both the enactment of new laws and in the administrative and judicial proceedings in which it issues judgments.
5. Work for the repeal of laws that contain *desacato* provisions, since such precepts curtail public debate, which is an essential element in a functioning democracy, and are also in breach of the American Convention on Human Rights.
6. Effectively guarantee the right of access to information held by the State in order to promote transparency in the public administration and consolidate democracy.

⁵¹⁰ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 55.

⁵¹¹ The Annual Reports of the IACHR corresponding to the period of 2002-2008 have addressed the situation of freedom of expression in Venezuela in detail. IACHR. *Annual Report 2002*. Chapter IV: Human Rights Developments in the Region. OEA/Ser.L/V/II.117. Doc. 1 rev. 1. March 7, 2003. Available at: <http://www.cidh.oas.org/annualrep/2002eng/toc.htm>; IACHR. *Annual Report 2003*. Chapter IV: Human Rights Developments in the Region. OEA/Ser.L/V/II.118. Doc. 5 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/annualrep/2003eng/toc.htm>; IACHR. *Annual Report 2004*. Chapter V: Follow-up of the Recommendations Formulated by the Inter-American Commission on Human Rights in its Reports on the Situation of Human Rights in Member States. OEA/Ser.L/V/II.122. Doc. 5 rev. 1. February 23, 2005. Available at: <http://www.cidh.oas.org/annualrep/2004eng/toc.htm>; IACHR. *Annual Report 2005*. Chapter IV: Human Rights Developments in the Region. OEA/Ser.L/V/II.124. Doc. 5. February 27, 2006. Available at: <http://www.cidh.oas.org/annualrep/2005eng/toc.htm>; IACHR. *Annual Report 2006*. Chapter IV: Human Rights Developments in the Region. OEA/Ser.L/V/II.127. Doc. 4 rev. 1. March 3, 2007. Available at: <http://www.cidh.oas.org/annualrep/2006eng/TOC.htm>; IACHR. *Annual Report 2007*. Chapter IV: Human Rights Developments in the Region. OEA/Ser.L/V/II.130. Doc. 22 rev. 1. December 29, 2007. Available at: <http://www.cidh.oas.org/annualrep/2007eng/TOC.htm>; IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm>.

7. Adapt its domestic laws to comply with the parameters established in the American Convention on Human Rights and fully comply with the terms of Article IV of the American Declaration of the Rights and Duties of Man and the IACHR's Declaration of Principles on Freedom of Expression, particularly as regards the demand for truthful, impartial and objective information contained in Article 58 of the Venezuelan Constitution.⁵¹²

510. In the chapter on Follow-up of the Recommendations Formulated by the IACHR in its Reports on the Situation of Human Rights in Member States in its 2004 Annual Report, the IACHR concluded "that the recommendations contained in its report on Venezuela [...] ha[d] not been fulfilled[" and it therefore ["]call[ed] upon the State to take the necessary actions to comply with them."⁵¹³

511. Recently, in its 2008 Annual Report, the IACHR affirmed that in Venezuela:

[a] climate of tolerance that is conducive to active participation and the free flow of ideas among the various sectors of [...] society [is not being fostered]. The numerous violent acts of intimidation by private groups against journalists and media outlets, in addition to the discrediting statements of high officials, and the systematic institution of administrative actions based on legal provisions the application of which is highly discretionary and that allow for drastic penalties, together with other facts, create a restrictive climate that dampens the exercise of freedom of expression that is one of the essential preconditions for a vigorous democracy built upon pluralism and public discourse.⁵¹⁴

512. Additionally, in its pronouncement on August 3, 2009, the IACHR stated that since 2000 it "has observed a gradual deterioration and restriction on the exercise of [the right to freedom of expression] in Venezuela, as well as a rising intolerance of critical expression."⁵¹⁵

513. In this chapter, the IACHR analyzes the following areas of special interest in relation to freedom of expression in Venezuela: the compatibility of the current legal framework on the subject of freedom of expression with the obligations of the State under the American Convention; the use of blanket presidential broadcasts (*cadena presidenciales*); the statements by high-ranking authorities of the State against communications media and journalists based on their editorial line; the disciplinary, administrative, and criminal proceedings against communications media and journalists; the regulation of the broadcasting spectrum and the application of the provisions on broadcasting; and the violations of the rights to life and personal integrity. Finally, it formulates

⁵¹² In the same report, the IACHR concluded that "much of the Venezuelan media is critical of the government. However, for journalists, the consequences of expressing such opinions include acts of intimidation, some serious. The uninterrupted continuation of those actions could restrict free speech by fostering a climate unfavorable to the pursuit of journalistic endeavors. The IACHR understands that since criticisms of the government are in fact made, it is difficult to speak of widespread self-censorship within the mass media; however, the emergence of potential self-censorship on the part of reporters can, in some cases, be seen, with journalists required to change the tasks they undertake. The protection of free speech cannot be measured solely by the absence of censorship, newspaper shutdowns, or arbitrary arrests of those who freely express their ideas; it also entails the existence of a climate of security and guarantees for communication workers as they discharge their function of informing the public." IACHR, *Report on the Situation of Human Rights in Venezuela*, para. 372. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

⁵¹³ IACHR. *Annual Report 2004*. Chapter V: Follow-up of the Recommendations Formulated by the Inter-American Commission on Human Rights in its Reports on the Situation of Human Rights in Member States. OEA/Ser.L/V/II.122. Doc. 5 rev. 1. February 23, 2005. Available at: <http://www.cidh.oas.org/annualrep/2004eng/toc.htm>.

⁵¹⁴ IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, para 388. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm>.

⁵¹⁵ IACHR. August 3, 2009. *Press Release No. 55/09*. Available at: <http://www.cidh.oas.org/Comunicados/English/2009/55-09eng.htm>.

recommendations to the State regarding freedom of expression. It should be noted that the issue of restrictions on the right to freedom of expression in the context of social protest in Venezuela was addressed by the IACHR in Chapter II of the present report. Chapter V of the present report will address the issue of access to information in Venezuela.

514. On this chapter, in its observations on the present report, the State indicated that “[t]he Commission with its Special Rapporteurship has an obsession against Venezuela and wants the Venezuelan State to refrain from taking any legal measures against the media owners and some journalists who do not respect their Code of Ethics. According to the Commission, the communications media cannot be contradicted, nor touched with a rose petal, because it is immediately considered a violation of the sacred right to freedom of expression [...]”⁵¹⁶ (Emphasis in original). It concluded by affirming that “[f]or the previously expressed reasons, and because it considers that these have been sufficiently addressed and debated during the last [seven] years by the Venezuelan State, the occurrences indicated by the Commission, we will not respond to the Commission’s allegations contained in paragraphs three hundred thirty-two through five hundred forty-two.”⁵¹⁷ (corresponding to the chapter on Freedom of Thought and Expression in the Draft Report)

- a. **The compatibility of the current legal framework in relation to freedom of expression with the obligations of the State under the American Convention**
- i. **The Law on Social Responsibility in Radio and Television**

515. In December 2004, the Law on Social Responsibility in Radio and Television (hereinafter, “Law on Social Responsibility”), also known as the “*Ley Resorte*,”⁵¹⁸ entered into force. In a communication of August 13, 2009, the State declared that the objective of this norm is:

to confer upon the national production, and especially the independent national production, a leadership role in [the] new communications order, [which] previously [...] was concentrated in the large communications media, limiting the development of a participative and proactive democracy. [...] The *Ley Resorte* democratizes the radio spectrum [...] [and] has permitted citizen participation in the production of the content of communications media, democratizing and breaking down the barriers to freedom of expression that are established by the communications media themselves by concentrating the production of the content they transmit and that in some circumstances are subject to obscure economic and power interests that do not correspond to the common interest. Currently, there is a plurality of content in radio and television that guarantees and promotes freedom of expression in Venezuela. Far from seeking to be an exclusionary law, it is a necessary legal instrument to guarantee social inclusion and promote the development of radio and television content by Venezuelans.⁵¹⁹

⁵¹⁶ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 56.

⁵¹⁷ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, pp. 56 and 57.

⁵¹⁸ Updated text of the Law on Social Responsibility in Radio and Television. Official Gazette No. 38.333 of December 12, 2005. Available in Spanish at: http://www.conatel.gob.ve/download/marco_legal/Ley%20Responsabilidad%20Reforma.pdf.

⁵¹⁹ Bolivarian Republic of Venezuela. August 13, 2009. Questionnaire on human rights presented at the request of the Inter-American Commission on Human Rights. Office of the State Agent for Human Rights before the Inter-American and International Systems, pp. 118-120.

516. The IACHR and its Special Rapporteurship have constantly promoted the principles of pluralism and diversity in the communicative process, especially with respect to the implementation of policies of inclusion of groups traditionally excluded from public debate. On this point, it is important to recall that whatever policy is adopted to promote inclusion and diversity, it must respect the international standards on freedom of expression. For this reason, since November 2002, when the presentation of the then-draft Law on Social Responsibility to the National Assembly was announced, the IACHR and the Special Rapporteurship expressed their serious concern about the vague and imprecise drafting of various provisions, especially those that establish the types of conduct that are prohibited and the corresponding sanctions. The IACHR and the Special Rapporteurship expressed their concern about the provisions referring to offenses of incitement, the severity of the penalties prescribed for these offenses, and that their application is the responsibility of the National Telecommunications Commission (hereinafter “Conatel”), an agency that directly depends on the Executive Branch.⁵²⁰

517. The above-mentioned provisions of the Law on Social Responsibility remain in force and the interpretation of them by Conatel has expanded the scope of these norms, instead of limiting them. This issue will be explained in detail in the following paragraphs.

a) Article 29 of the Law on Social Responsibility in Radio and Television

518. According to Article 29 of the Law on Social Responsibility, providers of television and radio services that “promote, advocate, or incite to war; promote, advocate, or incite alterations of the public order; promote, advocate, or incite crime; are discriminatory; promote religious intolerance; [or] are contrary to the security of the Nation” can be sanctioned with the suspension of their qualifications for 72 hours or their revocation for a period of up to five years in the case of recidivism.⁵²¹

519. In previous opportunities, the IACHR had already pronounced on the risks of “provisions like Article 29(1) [which] set very punitive sanctions for violating restrictions that are defined in vague or generic language.”⁵²² In particular, in its 2008 Annual Report, the Special Rapporteurship recalled that vague or imprecise penal norms which, by their ambiguity, result in granting broad discretionary powers to administrative authorities are incompatible with the American Convention. Such provisions, due to their extreme vagueness, could support arbitrary decisions that censor or impose disproportionate subsequent liability upon persons or media for the simple

⁵²⁰ IACHR. *Report on the Situation of Human Rights in Venezuela*, paras. 394-405. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>. Office of the Special Rapporteur for Freedom of Expression—IACHR. October 26, 2004. Press Release No. 111/04. Available in Spanish at: <http://www.cidh.org/relatoria/showarticle.asp?artID=287&IID=2>; IACHR. November 30, 2004. Press Release 25/04. Available at: <http://www.cidh.oas.org/Comunicados/English/2004/25.04.htm>.

⁵²¹ Article 29 of the Law on Social Responsibility in Radio and Television establishes: “Article 29. Television and radio service providers will be sanctioned with: (1) Suspension for up to 72 continuous hours when the messages broadcast: promote, advocate for, or incite to war; promote, advocate for, or incite to alterations of the public order; promote, advocate for, or incite to crime; are discriminatory; promote religious intolerance; are contrary to national security; are anonymous; or when the providers of radio, television, or subscription services have been sanctioned twice, within the three years following the date of the imposition of the first sanctions. (2) Revocation of the permit, for up to five years, and revocation of the concession, when there is a recurrence of the sanction in clause 1 of this article, within the five years following the occurrence of the first sanction. The sanction provided for in clause 2, when it deals with the revocation of permit or concession, will be applied by the governing organ in the area of telecommunications, in both cases the decision shall be issued within thirty business days of the reception of the file by the competent organ. In any case, it will correspond to the Legal Consultancy of the National Telecommunications Commission to substantiate the administrative file and to apply, supplementally, the procedural norms set forth in the Organic Law on Telecommunications.”

⁵²² IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, para. 381. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm>.

expression of critical or dissenting discourse that could be disturbing to the public functionaries that transitorily exercise the authority to apply them.

520. On the other hand, in the area of freedom of expression, vague, ambiguous, broad, or imprecise punitive norms, by their mere existence, discourage the dissemination of information and opinions that could be bothersome or disturbing. Therefore, the State should clarify which types of conduct can be the object of subsequent liability, to avoid affecting free expression especially when it could affect the authorities themselves.⁵²³

521. The IACHR considers that Article 29 of the Law on Social Responsibility contains vague and imprecise language that increases the possibility that the norm will be applied in an arbitrary manner by the competent authorities. With respect to this, it is important to note that the State affirmed before the IACHR that the “[Venezuelan] legal order does not define [these terms], being [...] indeterminate juridical concept[s].”⁵²⁴ On this point, the IACHR observes with concern that the ambiguity of the legal standards compromises the principle of legality, which obliges the states to define in express, precise, and clear terms each type of conduct that could be the object of sanctions.

522. The broadness of these dispositions is a special concern to the IACHR, given the constant declarations by high-ranking governmental authorities who characterize those who dissent, criticize, or offend the authorities or generate political opposition of “journalistic terrorism,” “coup mentality,” “incitement to violence,” or “instigation of crime.” On this point, on August 13, 2009, the State affirmed that in the country,

no information media is subject to prior censorship (either direct or indirect); but there are subject matters in which certain prohibitions are applied and it is precisely such propaganda, ideas, and concepts that can lead to the creation of destabilizing atmosphere[s] in the country. [...] In our country, the participation of the communications media in the events surrounding the Coup d’État of April of 2002 and the National Strike that occurred between December of 2002 and January of 2003 evidenced the free transmission of constant and permanent messages inciting the population to disobedience of authority and the government, tax evasion, as well as messages which incited authorities to alter the peace and public order; it must be noted that these messages advocated in their content the barring or blockage of streets and other passageways; in good measure, they incited disregard for authority and other public powers, messages of hate that many times stimulated violence or social unrest. [...] [T]he dissemination of messages that foment hate, racism, and discrimination is evident from the continuous and systematic attacks that are expressed against the public authorities, with epithets that go beyond or exceed that which can be criticism of the exercise of public functions, and contain suggestions aimed at affecting the image and personal life of persons who hold or exercise some public function, degrading their personal and family morale, honor, and reputation.⁵²⁵

523. In the same document, the State recalled the lamentable facts related to the 2002 *coup d’état* to justify some possible restrictions on communications media. In this respect, in its observations on the present report, the State indicated: “In light of this reality [referring to the

⁵²³ IACHR. *Annual Report 2008*. Volume II. Chapter III, paras. 65-66. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>.

⁵²⁴ The State referred specifically to the definition “hate speech” and “incitement to violence.” Bolivarian Republic of Venezuela. August 13, 2009. Questionnaire on human rights presented at the request of the Inter-American Commission on Human Rights. Office of the State Agent for Human Rights before the Inter-American and International Systems, p. 116.

⁵²⁵ Bolivarian Republic of Venezuela. August 13, 2009. Questionnaire on human rights presented at the request of the Inter-American Commission on Human Rights. Office of the State Agent for Human Rights before the Inter-American and International Systems, p. 117.

events of the coup d'état], the communications media opted to violate the Venezuelans' right to freedom of expression, by not reporting information relating to these events and limiting themselves to broadcasting films and cartoons. As stated in its report 'the Commission learned during this period of the actions of some private communications media that impeded access to information that was vital to Venezuelan society during these tragic events.' As the journalist Andrés Izarra stated, the order from the directors of RCTV was clear: 'Zero *chavismo* (support for Chávez) on the screen.'"⁵²⁶ With respect to these occurrences, it is important to remember that the IACHR condemned the rupture of the institutional order and the tendentious attitude of the communications media in the following terms:

In addition, the Commission notes the bias found in some Venezuelan media outlets, which reflects the extreme polarization that characterizes the country. As one example of this, at the end of its visit, the Commission stated that: "The IACHR has been concerned by the scant information, or at times total lack of information, available to Venezuelan society during the days of the institutional crisis of April. Although there may be any number of justifications to explain this lack of information, to the extent that the suppression of information resulted from politically-motivated editorial decisions, this should be the subject of an essential process of reflection by the Venezuelan media about their role at that moment." In this regard, the IACHR defends the right to follow any editorial line; this does not imply, however, that it shares the position chosen or that it does not regret the loss of objectivity.⁵²⁷

524. Currently, Venezuela enjoys a political regime that successfully overcame the lamentable acts related to the coup d'état of 2002. As a result, having overcome this condemnable episode, the Venezuelan state, as well as the rest of the states of the Americas, must respect the totality of the rights and freedoms consecrated in the inter-American juridical framework. In this regard, and taking into account the argumentation of the State transcribed above as the interpretation that the competent authorities have made of the norms of the Law on Social Responsibility, it is essential to recall that in no case may freedom of expression be limited by invoking mere conjectures about eventual effects on order, nor hypothetical circumstances derived from subjective interpretations by authorities of facts that do not clearly demonstrate an actual, certain, objective, and imminent threat of serious disturbances or anarchic violence.⁵²⁸

525. The IACHR indicates, following the reiterated international doctrine and jurisprudence in the subject area, that the imposition of sanctions for the abuse of freedom of expression under the charge of incitement to violence (understood as the incitation to the commission of crimes, the rupture of public order, or of national security) must have as a prerequisite actual, certain, objective, and convincing proof that the person was not simply expressing an opinion (however harsh, unjust, or disturbing it may be), but rather that he or she had the clear intention to commit a crime and the actual, real, and effective possibility of achieving that objective.⁵²⁹ If this were not the case, it

⁵²⁶ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, pp. 5 and 6.

⁵²⁷ IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 373. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

⁵²⁸ I/A Court H.R., *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008. Series C No. 177, para. 63; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, paras. 63-69.

⁵²⁹ In this respect, see the following cases of the European Court of Human Rights: *Karatas v. Turkey* [GC], no. 23168/94. ECHR 1999-IV; *Gerger v. Turkey* [GC], no. 24919/94, July 8, 1999; *Okçuoglu v. Turkey* [GC], no. 24246/94, July 8, 1999; *Arslan v. Turkey* [GC], no. 23462/94, July 8, 1999; *Erdogdu v. Turkey*, no. 25723/94, § 69, ECHR 2000 – VI. Additionally, I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*

would allow the possibility of sanctioning opinions and all the states would be able to suppress any thought or expression critical of the authorities that, like anarchism or radical opinions contrary to the established order, question even the very existence of current institutions. In a democracy, the legitimacy and strength of institutions take root and strengthen due to the vigor of public debate about their functioning and not by its suppression.

526. Additionally, the inter-American jurisprudence has clearly indicated that, in order to impose any sanction based on public order (understood as security, health, and public morals), it is necessary to show that the concept of “order” that is being defended is not an authoritarian or autocratic one, but rather a democratic order, understood as the existence of structural conditions that would allow all persons, without discrimination, to exercise their rights in freedom, with vigor and without fear of being sanctioned for this. In effect, for the Inter-American Court, in general terms, the “public order” cannot be invoked to suppress a right guaranteed by the American Convention, to adulterate it, or to deprive it of real content. If this concept is invoked as a basis for limitations on human rights, it must be interpreted in a manner that is strictly tailored to the just demands of a democratic society, which takes into account the equilibrium between the different interests in play, and the necessity of preserving the object and end of the American Convention.⁵³⁰

527. The forgoing considerations must be taken into account by the Venezuelan state when interpreting any norm that restricts the human right to think and express oneself freely, in particular, the above-cited provisions of the Law on Social Responsibility.

b) The authorities applying the Law on Social Responsibility: Conatel and the Social Responsibility Board

528. In relation to this point, the State indicated that,

The law provides for different organs to be responsible for [the] application [of the Law on Social Responsibility], one of these being the National Telecommunications Commission (Conatel), regulatory body for the telecommunications sector in Venezuela, with legal capacity, its own budget independent of the National Treasury, and technical, financial, organizational, regulatory, and administrative autonomy. [...] The Social Responsibility Board is the second organ charged with overseeing the correct application of the “*Ley Resorte*,” in its composition it reflects the democratic and participative character of the various sectors of society, as well as the political power, and has among its functions the establishment of sanctions in accordance with this Law, as well as the issuance of recommendations regarding the revocation of permits or the non-renewal of concessions.⁵³¹

529. Conatel, the governing body on telecommunications in Venezuela, is defined in Article 35 of the Organic Law on Telecommunications as “an autonomous institute, endowed with legal capacity and its own budget independent of the National Treasury, with technical, financial,

...continuation

(Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 77.

⁵³⁰ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 67.

⁵³¹ Bolivarian Republic of Venezuela. August 13, 2009. Questionnaire on human rights presented at the request of the Inter-American Commission on Human Rights. Office of the State Agent for Human Rights before the Inter-American and International Systems, pp. 120-121.

organizational, and administrative autonomy in conformity with this Law and other applicable provisions.”⁵³²

530. Currently, by virtue of Decree 6.707 of the Presidency of the Republic (Official Gazette No. 39.178 of May 14, 2009), Conatel is assigned to the Ministry of Popular Power for Public Works and Housing.⁵³³

531. According to Article 40 of the Organic Law on Telecommunications, the directorship of Conatel is made up of a director general and four members, all designated by the President of the Republic, who can also dismiss them at will.⁵³⁴

532. Conatel is an organ empowered to initiate administrative proceedings for violations of the provisions of the Law on Social Responsibility. It is also charged with applying the sanctions decided upon by the Social Responsibility Board. Article 19.11 of the Law on Social Responsibility provides therefore that Conatel may “[o]pen on its own motion or at the request of a party, administrative proceedings derived from this Law, as well as apply sanctions and prescribe other actions that are in conformity with that provided in this Law.”⁵³⁵

533. On the other hand, Article 20 of the Law on Social Responsibility created the Social Responsibility Board, which has the competence to “establish and impose sanctions that are in conformity with this Law.” Article 35 of the same law provides that the Social Responsibility Board will “carry out the actions that will bring to a conclusion the punitive administrative proceedings” initiated by Conatel. The Social Responsibility Board is headed by the director general of Conatel and includes six functionaries elected by the ministers and state institutions, two representatives of groups of users organized by Conatel, a representative of the university, and *one representative of the church*.⁵³⁶

⁵³² Conatel was created on September 5, 1991 through Decree 1.828 (Official Gazette No. 34.801 of September 18, 1991) and was originally assigned to the then-Ministry of Transportation and Communication. Available in Spanish at: <http://www.conatel.gob.ve/conatel.asp>; Organic Law on Telecommunications. Official Gazette No. 36.970 of June 12, 2000. Available in Spanish at: http://www.tsj.gov.ve/legislacion/LT_ley.htm.

⁵³³ Article 3.24 of Decree 6.707 establishes as a new competency of the Ministry of Popular Power for Public Works and Housing, “[t]o authorize, revoke, renew, and suspend the administrative permits and concessions in relation to radio and television broadcasting and not-for-profit public service community radio and television broadcasting, according to the regulations governing this issue.” Article 6 formally assigns Conatel to the Ministry of Popular Power for Public Works and Housing. National Assembly of the Bolivarian Republic of Venezuela. Decree 6.707 of the Presidency of the Republic (Official Gazette No. 39.178 of May 14, 2009). Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=cat_view&gid=121&dir=DESC&order=date&limit=190&limitstart=100.

⁵³⁴ Article 40 of the Organic Law on Telecommunications establishes the following: “The Board of Directors will be made up of the Director General of the National Telecommunications Commission who will preside and four Directors, who will be freely appointed and removed by the President of the Republic, each of these will have an alternate, designated in the same way, who will fill in during temporary absences. The temporary absences of the President shall be covered by the Principal Director s/he designates. The Director General or whoever is acting on his or her behalf and two Directors shall constitute a quorum. Decisions will be made by majority vote of the directors present. In case of a tie, the Director General will have the deciding vote. The Director General of the National Telecommunications Commission, as well as the members of the Board of Directors and their substitutes, may be removed at the will of the President of the Republic. The members of the Board of Directors, unlike the Director General, shall not have the status of officials of the National Telecommunications Commission.” Organic Law on Telecommunications. Official Gazette No. 36.970 of June 12, 2000. Available in Spanish at: http://www.tsj.gov.ve/legislacion/LT_ley.htm.

⁵³⁵ Updated text of the Law on Social Responsibility in Radio and Television. Official Gazette No. 38.333 of December 12, 2005. Available in Spanish at: http://www.conatel.gob.ve/download/marco_legal/Ley%20Responsabilidad%20Reforma.pdf.

⁵³⁶ Updated text of the Law on Social Responsibility in Radio and Television. Official Gazette No. 38.333 of December 12, 2005. Available in Spanish at: http://www.conatel.gob.ve/download/marco_legal/Ley%20Responsabilidad%20Reforma.pdf. Emphasis added.

534. In the 2005 Annual Report, the IACHR expressed its concern “over the establishment of the Social Responsibility Board [...] (Directorio [...] de Responsabilidad Social), which ha[s] broad powers to issue sanctions, without the limits that any organization of this type needs. It is worrisome, among other things, that the Board can meet with the presence of only those members who represent the State, and that they can adopt decisions by simple majority. [...] The Commission and the Office of the Special Rapporteur are of the view that the operation of [this agency], as provided for in the Law, facilitates the practice of prior and subsequent censorship by the State.”⁵³⁷

535. In the present report, the IACHR reiterates its concern over this matter. The IACHR recalls that the search for a significant degree of impartiality, autonomy, and independence for the organs charged with regulating telecommunications in a country arises from the duty of the states to guarantee the highest degree of pluralism and diversity of communications media in the public debate. The necessary safeguards for avoiding the cooptation of the communications media by the political and economic powers are nothing other than a functional and institutional guarantee to promote the formation of free public opinion, fluidity and depth in social communication processes, and the exchange and publication of information and ideas of all kinds.⁵³⁸ The guarantees of impartiality and independence of the enforcement entity ensure the right of all inhabitants that the communications media will not be, by indirect means, controlled by political or economic groups.

536. The IACHR observes that the members of the board of Conatel can be freely appointed and dismissed by the President of the Republic without the existence of any safeguards aimed at ensuring their independence and impartiality. Additionally, is important to note that seven of the eleven members of the Social Responsibility Board are selected by the Executive Power, and that the Law on Social Responsibility does not establish any criteria for the designation of the members of the Social Responsibility Board, nor does it define a fixed term for the exercise of their duties or establish precise reasons for their removal. Therefore, there are no institutional, organic, or functional guarantees of the independence of these organs.

537. In the context of the problems that have been outlined, the IACHR and its Special Rapporteurship take note of the various pronouncements by the highest authorities of the State making reference to the possible sanctions that could be adopted against those who have followed an editorial line that is opposed to or critical of the policies of the government. As will be seen subsequently, the initiations of various administrative proceedings described in this chapter were preceded by declarations by the highest public authorities which exhorted Conatel and the Social Responsibility Board to impose exemplary sanctions against communications media labeled as “*golpistas*” (favoring the overthrow of the government). For example, in the program *Aló Presidente* on May 10, 2009, in which the transfer of Conatel to the Ministry of Public Works and Housing was announced, President Hugo Chavez, in referring to a [media outlet], stated:

We all know who I am talking about. [...] In a dictatorship it would already have been shut down, but in Venezuela there is democracy because of which the corresponding organs will act on this case. [...] We will do what is necessary, and here we will wait for them. Impunity must end in Venezuela. [...] They are playing with fire, manipulating, inciting to hatred, every day [...]. I only say to them, and to the Venezuelan people, that this will not continue like this.

⁵³⁷ IACHR. *Annual Report 2005*. Chapter IV: Human Rights Developments in the Region, para. 356. Available at: <http://www.cidh.oas.org/annualrep/2005eng/toc.htm>.

⁵³⁸ IACHR. *Annual Report 2008*. Volume II: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III: Inter-American Legal Framework of the Right to Freedom of Expression, para. 200. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>.

[...] There is your responsibility, Diosdado, to carry on the battle with dignity [...], [we cannot] tolerate more journalistic terrorism from the private channels.⁵³⁹

538. Therefore, taking into account the standards described in this section, the IACHR exhorts the State to modify the text of Article 29 of the Law on Social Responsibility, to subject the interpretation of the provisions on sanctions to the mentioned regional standards, and to establish institutional, organic, and functional guarantees to ensure the independence of the authorities applying the laws on broadcasting with the aim of ensuring that the opening of administrative proceedings and the eventual imposition of sanctions in the framework of this instrument are the responsibility of impartial organs that are independent of the Executive Branch.

ii. The Organic Law on Education and the limitations on freedom of expression

539. On August 13, 2009, the National Assembly approved the Organic Law on Education (Official Gazette No. 5.929 of August 15, 2009). The IACHR calls the State's attention to the provisions contained in Articles 9, 10, and 11 of this law.⁵⁴⁰

540. The IACHR observes that the cited provisions establish that communications media (including private media) are "public services." Additionally, they consecrate a series of limitations that not only exceed the legitimate limitations derived from Article 13 of the American Convention, but also are described with enormous broadness, imprecision, and vagueness. Finally, the norms in question provide for the future establishment of regulations to implement the system of sanctions for the violation of the above-mentioned precepts.

541. In light of these dispositions, the IACHR is concerned that the classification or use of the category of "public services" for private communications media in Venezuela could be used to restrict the right to freedom of expression in a manner incompatible with Article 13 of the American Convention. The IACHR reminds the State that any restriction on freedom of expression must necessarily arise from causes clearly and expressly defined by the law and not from regulatory or administrative decisions; and that in all cases, the restrictions imposed on freedom of expression must be necessary to preserve the conditions that characterize a democratic society, consecrated in

⁵³⁹ Aló Presidente. May 10, 2009. "*Se acabará en Venezuela transmisión de mensajes de odio y conspiración*" (The transmission of messages of hate and conspiracy in Venezuela will end). Available in Spanish at: <http://alopresidente.gob.ve/noticia/se-acabara-en-venezuela-transmision-de-mensajes-de-odio-y-conspiracion.html>.

⁵⁴⁰ Article 9 provides the following: "Education and communications media. Social communications media, as public services, are essential instruments of the development of the educational process and, as such, they must carry out informative, educational, and recreational functions that contribute to the values and principles established in the Constitution of the Republic and the present Law, with knowledge, development of critical thought and attitudes to strengthen the collective life of the citizenry, territoriality, and nationality. [...] In the subsystems of the Educational System educational units have been created to contribute to the knowledge, understanding, use, and critical analysis of the content of social communications media. Additionally, the law and the regulations will regulate propaganda in defense of the mental and physical health of the population."

For its part, Article 10 states: "Prohibition of incitement to hatred. It is prohibited in all the educational institutions and centers in the country to publish and divulge programs, messages, publicity, propaganda, and promotions of any type, through print, audiovisual, or other media, that incite hatred, violence, insecurity, intolerance, deformation of the language; that attack values, peace, morals, ethics, customs, health, human coexistence, human rights, and respect for the rights of indigenous and afro-descendent peoples and communities; and that promote terror, discrimination of any type, the deterioration of the environment, and harm to democratic principles, national sovereignty, and national, regional, and local identity."

Finally, Article 11 establishes the following: "Prohibition of messages contrary to the national sovereignty. It is prohibited for educational institutions and centers to disseminate ideas and doctrines that are contrary to the national sovereignty and the principles and values consecrated in the Constitution of the Republic."

the American Convention. In this regard, it is essential to modify the above-mentioned provisions in those aspects that threaten the inter-American standards.

542. The IACHR takes into account that Article 13.5 of the American Convention expressly provides that: "Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law."

543. The norms cited from the Organic Law on Education establish grounds for the restriction of freedom of expression that are different from those established in Article 13 of the American Convention, such as that which prohibits, for example, revealing information that promotes the "deformation of the language" or that commits outrage against "values." Additionally, these dispositions contain ambiguous and imprecise descriptions that make it difficult to distinguish between prohibited conduct and conduct that is not prohibited. To summarize, these constitute norms that, on the one hand, go against the principle of strict legality applicable to restrictions on freedom of expression and, on the other hand, establish restrictions that hypothetically are not authorized by the American Convention.

544. Additionally, with respect to the norms that prohibit incitement to violence, as previously explained, these must have as a prerequisite strong, objective evidence that the person was not simply expressing an opinion, but also had the clear intention to commit an unlawful act and the real, present, and effective possibility of achieving his or her objectives. As a result, any regulation must not consider it sufficient to invoke as a reason to limit freedom of expression mere conjectures about eventual effects on the public order, or hypothetical circumstances derived from subjective interpretations by authorities of facts that do not clearly present a present, certain, objective, and imminent risk of violence.

545. For the forgoing reasons, the IACHR exhorts the State to adapt its legislation to the standards described herein.

iii. The classification of crimes against honor

a) The Penal Code

546. In March of 2005, the Penal Code was reformed to broaden the scope of the norms protecting the honor and reputation of state officials from the broadcasting of critical expressions that may be considered offensive.⁵⁴¹ Before the 2005 reform, the President of the Republic, the

⁵⁴¹ In the 2005 Annual Report, the IACHR stated: "The Commission and the Office of the Special Rapporteur also express their concern over the March 2005 amendment to the Criminal Code. The Office of the Special Rapporteur believes that this amendment strengthens and expands a legal framework that criminalizes forms of expression protected by the American Convention, by both journalists and private citizens. The Office of the Special Rapporteur observes that the amendment expands the reach of *desacato* laws in terms of the number of public officials protected, and in terms of content. It also observes that the new provisions increase the penalties for *desacato* and other forms of defamation, libel, instigation, outrage, and slander, among other criminal offenses. In [sic] also criminalizes new types of protest against the government, in both the public and private spheres, and increases the penalties for violating these laws." *IACHR. Annual Report 2005*. Chapter IV: Human Rights Developments in the Region, para. 353. Available at: <http://www.cidh.oas.org/annualrep/2005eng/toc.htm>. See also *IACHR. Annual Report 2005*. Volume III: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II, para. 227. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=662&IID=1>; Office of the Special Rapporteur—IACHR. March 28, 2005. *Press Release 118/05*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=402&IID=1>; *IACHR. Report on the Situation of Human Rights in Venezuela*, para. 451-467. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

Executive Vice President, the ministers of the government, the governors, the Mayor of the Metropolitan District of Caracas, the judges of the Supreme Court, the presidents of the Legislative Councils, and the superior judges could initiate penal proceedings for the crime of *desacato* (disrespect). The modification added to this list members of the National Assembly, functionaries of the National Electoral Council, the Attorney General, the Solicitor General, the Human Rights Ombudsman, the Comptroller General, and members of the High Military Command.

547. The text of Articles 147 and 148 of the Penal Code currently in force establishes the following:

Article 147. One who offends by word or in writing, or in any other manner disrespects the President of the Republic or whoever is taking his or her place, shall be punished with imprisonment of six to thirty months if the offense was grave, and with half of that if it was minor.

The penalty will be increased by one-third if the offense was committed publicly.

Article 148. When the acts specified in the previous article are carried out against the person of the Executive Vice President of the Nation, one of the Judges of the Supreme Court of Justice, a Cabinet Minister, a Governor of a state, a deputy of the National Assembly, the Metropolitan Mayor, a rector of the National Electoral Council, the Human Rights Ombudsman, the Solicitor General, the Attorney General, the Comptroller General of the Republic, or some members [sic] of the High Military Command, the penalty indicated in that article will be reduced to one half, and to one third when it relate[s] to mayors of municipalities.⁵⁴²

548. It should be noted that the reform of March of 2005 maintained the article related to the penal offense known as "*vilipendio*" (contempt), which consecrates a kind of *desacato* against the institutions of the State. The text of Article 149 of the Penal Code currently in force states:

Article 149. Whoever publicly denigrates the National Assembly, the Supreme Court of Justice, or the Cabinet, or the Council of Ministers, as well as one of the legislative councils of the states or one of the superior courts, shall be punished with imprisonment of fifteen days to ten months.

Half of this penalty will be applied against those who commit the acts referred to in this article with respect to municipal councils.

The penalty will be increased by half if the offense was committed while one of the enumerated bodies was exercising its official functions.⁵⁴³

549. In a communication of August 13, 2009, the State indicated that these norms, "seek to require personal responsibility on the part of those who incite illegal actions against the subjects of these norms, who affect the respect that they deserve as persons (human beings), which in turn agrees with respect for institutions, to avoid affecting public morale; because some institutions are headed by individuals against whom hate is encouraged, without factual basis to sustain it, which socially impedes the work of the institutions they direct or to which they belong. For example, Articles [147] and [148] of the Penal Code deal with a double protection, of the human being and of the position, with the aim of not weakening the State." It added that "publicly denigrating institutions (*vilipendio*) can seek to weaken them by discrediting them, to arrive at a

⁵⁴² Penal Code of Venezuela. Official Gazette No. 5768E of August 13, 2005. Available in Spanish at: <http://www.fiscalia.gov.ve/leyes/6-CODIGOPENAL.pdf>.

⁵⁴³ Penal Code of Venezuela. Official Gazette No. 5768E of August 13, 2005. Available in Spanish at: <http://www.fiscalia.gov.ve/leyes/6-CODIGOPENAL.pdf>.

collective contempt of that which they –according to the law–must carry out or accomplish.” Finally, it indicated that this type of speech, “as part of a plan or movement towards public disobedience, chaos, disturbing the public order or morale, cannot be tolerated by the State, since, with such tolerance it could be playing with its [survival].”⁵⁴⁴

550. In this respect, the justifications expressed by the State not only contribute to justify the existence and legitimacy of such provisions in a democratic order, but also, on the contrary, they provide reasons to impugn their compatibility with the American Convention. In effect, in contrast to what the State asserts, the organs of the inter-American system for the protection of human rights have been emphatic in maintaining that the vigor of a democracy is strengthened, among other things, due to the intensity of its debates over public issues and not due to the suppression of such debates. As a result, the States must commit themselves to a regulatory framework that promotes free, open, pluralistic, and uninhibited debate about all issues of public relevance, which requires designing institutions that permit discussion, rather than inhibiting it or making it difficult. As maintained by the Inter-American Court, this defense of freedom of expression includes the protection of affirmations that could be offensive, disturbing, or unpleasant for the State, since this is the requirement of a democratic order founded on diversity and pluralism. Additionally, the doctrine and jurisprudence have been coherent, consistent, and repetitive in indicating that critical expressions that question public authorities or institutions deserve a greater – not lesser–protection in the inter-American system. This has been affirmed by the Inter-American Court in each and every case resolved in the area of freedom of expression. The arguments presented by the State for applying the norms of the criminal law to criticism or dissidence clearly deviate from the considerations expressed here.

551. The application to the institutions themselves of the criminal law to limit or inhibit public discussions of great relevance is of particular concern. This is the case with the figures of *desacato* and *vilipendio* as they are consecrated in the above-cited norms of the Venezuelan Penal Code.

552. The IACHR and its Special Rapporteurship have repeatedly expressed their objections to the existence of criminal *desacato* laws like those that have just been discussed. In their estimation, *desacato* laws “conflict with the belief that freedom of expression and opinion is the ‘touchstone of all the freedoms to which the United Nations is consecrated’ and ‘one of the soundest guarantees of modern democracy.’”⁵⁴⁵ In this respect, *desacato* laws are an illegitimate restriction on freedom of expression, because: (a) they do not respond to a legitimate objective under the American Convention, and (b) they are not necessary in a democratic society. The IACHR has established that:

The use of *desacato* laws to protect the honor of public functionaries acting in their official capacities unjustifiably grants a right to protection to public officials that is not available to other members of society. This distinction inverts the fundamental principle in a democratic system that holds the Government subject to controls, such as public scrutiny, in order to preclude or control abuse of its coercive powers. If we consider that public functionaries acting in their official capacity are the Government for all intents and purposes, then it must be the individual and the

⁵⁴⁴ Bolivarian Republic of Venezuela. August 13, 2009. Questionnaire on human rights presented at the request of the Inter-American Commission on Human Rights. Office of the State Agent for Human Rights before the Inter-American and International Systems, pp. 114-115.

⁵⁴⁵ IACHR. *Annual Report 1994*. Chapter V: Report on the Compatibility of “*Desacato*” Laws with the American Convention on Human Rights. Title I: Introduction. OEA/Ser.L/V/II.88. Doc. 9 rev. 1. February, 17, 1995. Available at: <http://www.cidh.oas.org/annualrep/94eng/TOC.htm>.

public's right to criticize and scrutinize the officials' actions and attitudes in so far as they relate to the public office.⁵⁴⁶

553. For the IACHR, the application of the criminal standards on *desacato* against those who divulge expressions that are critical of public functionaries is *per se* contrary to the American Convention, given that it constitutes the application of subsequent penalties for the exercise of freedom of expression that are not necessary in a democratic society, and are disproportionate because of the serious effects on the broadcaster and on the free flow of information in society. *Desacato* laws are a means of silencing unpopular ideas and opinions, and they dissuade criticism by generating fear of judicial actions, criminal sanctions, and monetary sanctions. The legislation on *desacato* is disproportionate because of the sanctions it establishes for criticism of state institutions and their members, by which it suppresses the debate that is essential for the functioning of a democratic society, restricting freedom of expression unnecessarily.

554. On the other hand, the IACHR has explained its objections to the norms of defamation, insult, and slander particularly when these are used to prosecute those who have made critical statements about issues of public interest, about public persons, or about the functioning of institutions.

555. Additionally, the IACHR and its Special Rapporteurship have questioned the use of criminal law to protect the "honor" or "reputation" of ideas or institutions. In their opinion, public institutions do not have a right to honor; rather, they have the duty to maintain their legitimacy. This is achieved not through the suppression of public debate, but through the triumph of arguments in favor of institutions that respect the rule of law.

556. Contrary to what the State has asserted, critical expressions, information, and opinions about issues of public interest, about the functioning of the state and its institutions, or about public functionaries enjoy a greater level of protection under the American Convention, which means that the state must abstain more strictly from establishing limitations to these forms of expression.⁵⁴⁷ In effect, as has already been indicated, the legitimacy and strength of institutions is built as a result of public debate and not as a result of its suppression.

557. As the IACHR has repeatedly stated, the free circulation of ideas or expressions that are critical of public functionaries merits a special protection for the reasons that are summarized here: in the first place, because expressions or information that could offend public authorities are subject to a higher risk of censorship; in the second place, because deliberation about public issues or public functionaries is one of the essential conditions for society to be able to obtain information or hear points of view that are relevant to make collective decisions that are conscientious and well-informed; thirdly, because the functionaries that act in the name of the State, by virtue of the public nature of the functions they carry out and the resources they employ, must be subject to a greater degree of scrutiny and, for this reason, to a higher threshold of tolerance for criticism; and finally, because public functionaries have more and better possibilities to defend themselves in a public debate than persons who do not have official positions or functions.

⁵⁴⁶ IACHR. *Annual Report 1994*. Chapter V: Report on the Compatibility of "*Desacato*" Laws with the American Convention on Human Rights. Title IV: *Desacato* Laws are incompatible with Article 13 of the American Convention on Human Rights because they suppress the freedom of expression necessary for the proper functioning of a democratic society. Section B. OEA/Ser.L/V/II.88. Doc. 9 rev. 1. February 17, 1995. Available at: <http://www.cidh.oas.org/annualrep/94eng/TOC.htm>.

⁵⁴⁷ I/A Court H.R., *Case of Palamara-Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, paras. 83-84; I/A Court H.R., *Case of Herrera-Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, paras. 125 and 128.

558. On the other hand, the cited norms on *desacato* and *vilipendio* seriously compromise the principle of strict legality. In effect, the wording of these norms is so vague that it is simply impossible to distinguish between protected criticism and sanctionable conduct.

559. On this point, it is not superfluous to recall that there currently exists a valuable process in the entire region, through which the legislative powers and, in their case, the highest tribunals of justice, have been repealing or ordering the non-application of *desacato* laws, norms on *vilipendio*, and dispositions on insult and slander when they have been applied to sanction those who have referred to the behavior of public functionaries.⁵⁴⁸

560. In the *Report on the Situation of Human Rights in Venezuela* (2003), the IACHR has already stated that “a penalty that obstructs or restricts the dialogue necessary between a country’s inhabitants and those in public office cannot be legitimately imposed. Disproportionate penalties may silence criticism that is necessary to the public administration. By restricting freedom of expression to this degree, democracy is transformed into a system where authoritarianism will thrive, forcing its own will over society’s.”⁵⁴⁹

561. During recent years, the IACHR has received information that indicates that various journalists that worked for opposition communications media in Venezuela were subjected to criminal proceedings under the provisions on *desacato* and defamation. The IACHR recognizes that in Venezuela there is no systematic application of these provisions, however, it expresses its concern because in many of these cases, the proceedings remain open in the courts for many years, which produces an effect of intimidation and self-censorship among journalists and communications media.⁵⁵⁰ On the other hand, for reasons that have already been explained, the mere existence of these norms produces an intimidating effect that disproportionately affects the right to freedom of expression.

562. Therefore, as it did in the *Report on the Situation of Human Rights in Venezuela* (2003), the IACHR again concludes that the criminal legislation in Venezuela contains norms that are incompatible with Article 13 of the American Convention.⁵⁵¹ In consequence, the IACHR exhorts the Venezuelan State to act urgently to bring its criminal legislation into conformity with the standards described here with reference to the norms that regulate *desacato* and *vilipendio*.

⁵⁴⁸ Office of the Special Rapporteur—IACHR. June 22, 2009. *Press Release R38/09*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=750&IID=1>.

⁵⁴⁹ IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 462. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

⁵⁵⁰ IACHR. *Annual Report 2007*. Chapter IV: Human Rights Developments in the Region, para. 252. Available at: <http://www.cidh.oas.org/annualrep/2007eng/TOC.htm>; IACHR. *Annual Report 2006*. Volume II: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II, paras. 211-213. Available at: <http://www.cidh.oas.org/annualrep/2006eng/Rapporteurship%20for%20Freedom%20of%20Expression.pdf>; IACHR. *Annual Report 2005*. Chapter IV: Human Rights Developments in the Region, para. 363. Available at: <http://www.cidh.oas.org/annualrep/2005eng/toc.htm>; IACHR. *Annual Report 2005*. Volume III: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II, paras. 228-232. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=662&IID=1>.

⁵⁵¹ IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 452. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

b) The Organic Code of Military Justice

563. Article 505 of the Organic Code of Military Justice establishes that: “One who in some way injures, offends, or shows contempt for the National Armed Forces or one of its units will incur a sentence of three to eight years in prison.”⁵⁵²

564. As has already been explained, criminal sanctions against someone who expresses opinions that could “offend” or “show contempt for” institutions is contrary to the international standards on freedom of expression, given that it does not constitute a necessary restriction in a democratic society.

565. On the other hand, as in the cases of the criminal norms on *desacato*, *vilipendio*, defamation, insult, and slander, the wording of [article] 505 is so imprecise that it is impossible to foresee with certainty what conduct could give rise to criminal sanctions. In the opinion of the IACHR, the text of the norm blurs the line between the permissible exercise of freedom of expression with respect to the military institution and the realm of application of the legal prohibition. Given that there is no certainty about which behavior is considered illicit, any expression that could be interpreted by any person as a criticism of the Armed Forces could subsumed in the description of the offense in the article in question.

566. On this point, the Inter-American Court has stated clearly that any limitation consecrated in the criminal legal order must respond to the principle of strict legality or precision. In other words, any penal restriction must be expressly, precisely, and previously formulated, so that all persons know clearly what are the precise types of conduct that, if committed, would give rise to a penal sanction. Therefore,

crimes must be classified and described in precise and unambiguous language that narrowly defines the criminalized conduct, establishing its elements, and the factors that distinguish it from behaviors that are either not punishable or punishable but not with imprisonment. Ambiguity in describing crimes creates doubts and the opportunity for abuse of power, which is particularly undesirable when it comes to ascertaining the criminal liability of individuals and punishing their criminal behavior with penalties that exact their toll on fundamental rights such as life or liberty.⁵⁵³

567. The IACHR considers that this criminal law norm, as well as the referenced articles of the Penal Code, due to their vague and imprecise structure, go against the principle of strict legality (*nullum crimen sine lege*) that has been required by the Inter-American Court as a condition to accept a restriction on freedom of expression, and therefore, they are incompatible with Article 13 of the American Convention. As a result, the IACHR exhorts the State to bring its ordinary and military criminal legislation into conformity with the standards described here.

⁵⁵² It should be recalled that this is the norm under which Francisco Usón Ramírez was sentenced to six years and five months in prison. IACHR. *Application to the Inter-American Court of Human Rights in the case of Francisco Usón Ramírez (Case 12.554) versus the Bolivarian Republic of Venezuela*. Available at: http://www.cidh.org/demandas/12.554%20Francisco%20Uson%20Ramirez%20Venezuela%2025%20julio%202008%20EN_G.pdf.

⁵⁵³ I/A Court H.R., *Case of Lori Berenson-Mejía v. Peru*. Judgment of November 25, 2004. Series C No. 119, para. 125. Additionally, the Inter-American Court emphasized that the laws that provide for restrictions “must utilize precise criteria and not confer unlimited discretion upon the authorities responsible for their application.” See also: I/A Court H.R., *Case of Tristán-Donoso v. Panama*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, para. 116-117; I/A Court H.R., *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008. Series C No. 177, para. 63; I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, para. 124.

b. The use of blanket presidential broadcasts (cadenas presidenciales)

568. Article 192 of the Organic Law on Telecommunications provides the following:

Without prejudice to the legal provisions applicable to matters of security and defense, the President of the Republic may, either directly or through the National Telecommunications Commission, order operators of subscription television services, using their customer information channel, and the operators of open-to-air radio television broadcasters, to carry, free of charge, messages and official addresses made by the President or Vice-President of the Republic or cabinet ministers. Regulations shall be established to determine the mechanisms, limitations, and other features of these transmissions and broadcasts. Publicity by public entities is not subject to the obligation established in this article.⁵⁵⁴

569. For its part, Article 10 of the Law on Social Responsibility provides that the State:

[...] may broadcast its messages through radio and television services. To this end it may order providers of such services to provide free transmission of: [...] Messages contemplated in the Organic Law on Telecommunications. The order for free and obligatory transmission of official messages or addresses may be validly issued, among other ways, through the broadcasting of the message or address through the radio and television services administrated by the National Executive. [...] The providers of radio and television services and broadcasting by subscription may not interfere, in any manner, with the messages and addresses of the State that are broadcast within the terms of this article, and must conserve the same quality and aspect of the image and sound of the original format or broadcast.⁵⁵⁵

570. In virtue of the interpretation that the authorities have made of these dispositions, the President of the Republic is authorized to transmit all his speeches and presentations simultaneously, through all the communications media mentioned in the preceding norms, without any time limit. In this phenomenon, known as "blanket presidential broadcasts" (*cadenas presidenciales*), public and private broadcast media in Venezuela are obligated to connect to the frequency of the principal state channel, *Venezolana de Televisión* (VTV), and transmit the declarations of the President whenever he deems it necessary or expedient.

571. In its *Report on the Situation of Human Rights in Venezuela* (2003), the IACHR [verified]:

the large number of blanket government broadcasts in the media. Blanket broadcasts force media stations to cancel their regular programming and transmit information as ordered by the government. Many of them were of a duration and frequency that could be considered abusive in light of the information they conveyed, not always intended to serve the public interest.⁵⁵⁶

572. The IACHR received information from civil society organizations and the academic sector that indicates that between February 1999 and July 2009, the Venezuelan communications media transmitted a total of 1,923 blanket presidential broadcasts, equivalent to 1,252 hours and

⁵⁵⁴ Organic Law on Telecommunications. Official Gazette No. 36.970 of June 12, 2000. Available in Spanish at: http://www.tsj.gov.ve/legislacion/LT_ley.htm.

⁵⁵⁵ Updated text of the Law on Social Responsibility in Radio and Television. Official Gazette No. 38.333 of December 12, 2005. Available in Spanish at: http://www.conatel.gob.ve/download/marco_legal/Ley%20Responsabilidad%20Reforma.pdf.

⁵⁵⁶ IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 487. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

41 minutes, or in other words 52 days of uninterrupted broadcasting of presidential messages. Additionally, the information received indicates that in 2008, communications media had transmitted 186 blanket broadcasts (172 hours and 55 minutes), while in July of 2009, there were 75 messages broadcast (88 hours and 19 minutes). The information also shows that on January 13, 2009, the longest blanket broadcast of the period of 1999-2009 was aired, equivalent to 7 hours and 34 minutes. Such figures do not include the transmission of the program *Aló Presidente*, the ten minutes daily for governmental messages imposed by the Law on Social Responsibility in Radio and Television, or the official publicity that is typical in television or radio.⁵⁵⁷

573. Currently, international satellite and cable television are not linked to the obligation to transmit blanket broadcasts. However, on July 9, 2009, the Minister of Popular Power for Public Works, Diosdado Cabello, announced that a new administrative provision would be issued with the result that any cable broadcast that is more than 30 per cent “Venezuelan programming” (understood as any program that includes professional, financial, or technical participation of Venezuelan origin, including publicity) must have the same obligations that the laws impose on broadcast television. In this manner, some cable channels that are currently classified as foreign channels (given the narrowest interpretation possible of “Venezuelan programming”), must adapt to the new framework and comply not only with the obligation to transmit blanket broadcasts but also with the totality of the dispositions of the Law on Social Responsibility in Radio and Television.⁵⁵⁸

574. The IACHR recognizes the power of the President of the Republic and the high authorities of the State to use the communications media with the aim of informing the population about economic, social, or political issues of national relevance, that is to say, about those questions of preponderant public interest that they must be urgently informed of through independent communications media. In effect, as the Inter-American Court has stated, “making a statement on public-interest matters is not only legitimate but, at times, it is also a duty of the state authorities.”⁵⁵⁹

⁵⁵⁷ Communication of August 14, 2009 from the Center for Communications Studies of the Andrés Bello Catholic University to the Special Rapporteurship on Freedom of Expression. It also indicated, in relation to the referendum that took place in February of 2009, that: “The ‘blanket presidential broadcasts,’ sometimes dedicated to commemorations, with greater frequency to propaganda, and almost always to invective against the enemies of the Bolivarian Revolution were produced, on the average, every two days at the end of 2008. During this period the campaign was started by the Head of State for popular ratification of unlimited reelection. And it was also in this quarter that Hugo Chávez responded to the criticisms of the ‘blanket broadcasts.’ ‘Whoever wants to make ‘blanket broadcasts,’ let him become president! Why am I to blame for the fact that the presidents of the Fourth Republic did not make ‘blanket broadcasts?’ he said in a speech at the Teatro Teresa Carreño in Caracas. Between February 2, 1999, the date of his inauguration, and December 19, 2008, the Venezuelan Head of State spoke on the air 1,816 times with a total duration of 1,179 hours; that is to say, the equivalent of 49 days without interruption. Evidently, the extremely personal nature of the challenge posed by the referendum explains the great disequilibrium of the treatment he has given to communications media, public or private. As shown by the results of the study, presented on February 6, 2009 in the National Journalists’ Association (CNP, by its Spanish acronym) of Caracas, by the Media Monitoring Group (GMM, by its Spanish acronym), which includes investigators from the Andrés Bello Catholic University (UCAB, by its Spanish acronym) and the University of Gothenburg (Sweden). The analysis by GMM was based on 803 pieces of information from seven television channels and 477 from four radio stations in the period between January 22 and February 4, 2009. The part of the study referring to television is particularly enlightening.” Reporters without Borders. February 13, 2009. *Constitutional vote held in climate of polarised media and surfeit of presidential speeches*. Available at: <http://www.rsf.org/Constitutional-vote-held-in.html>.

⁵⁵⁸ National Assembly of the Bolivarian Republic of Venezuela. July 9, 2009. *Punto de información del ciudadano Ministro del Poder Popular para las Obras Públicas y Vivienda Diosdado Cabello para referirse a la situación actual de los servicios de radiodifusión sonora, televisión abierta y difusión por suscripción* (Point of information from citizen Minister of Popular Power for Public Works and Housing Diosdado Cabello to refer to the current situation of radio, broadcast television, and subscription services), pp. 12-15. Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=cat_view&gid=41&Itemid=124; Conatel. Draft Administrative Provision. Technical Norm on National Audiovisual Production Services. Available in Spanish at: <http://www.conatel.gob.ve/download/consulta/Proyecto%20PNA%20Cp.pdf>.

⁵⁵⁹ I/A Court H.R., *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 131; IACHR. *Annual Report* Continued...

575. The exercise of this power, however, is not absolute. The fact that the President of the Republic can, by virtue of the powers conferred by Venezuelan laws, interrupt the regular programming of the public and private communications media in the country does not authorize him to exercise this power without limits: the information that the president transmits to the public through blanket broadcasts should be that which is strictly necessary to serve urgent informational needs on subjects of clear and genuine public interest and during the time that is strictly necessary to transmit such information. In effect, as previously mentioned, freedom of expression protects not only the right of the media to disseminate information and their own and others' opinions freely, but also the right to be free from having content imposed upon them. Principle 5 of the Declaration of Principles on Freedom of Expression explicitly establishes that: "[r]estrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

576. In this sense, both the IACHR and its Special Rapporteurship,⁵⁶⁰ and some national organs of States party to the American Convention, applying international standards, have indicated that "it is not just any information that legitimizes the President of the Republic to interrupt regular programming; rather, it is that which deals with a collective interest in the knowledge of facts of importance to the public that are truly necessary for the real participation of citizens in the collective life. [...] [A]n intervention, even by the President of the Republic, without any type of limitation, restricts the right of citizens to inform themselves about other issues that interest them."⁵⁶¹

577. On the other hand, the IACHR considers that the lack of precision with respect to the establishment of limits for the use of blanket broadcasts in the Law on Social Responsibility and the Organic Law on Telecommunications could affect the informational equilibrium that the high-ranking state authorities are obligated to preserve, precisely by their position as guarantors of the fundamental rights of those under their jurisdiction.

578. The lack of control in the exercise of this power could degrade the legitimate purpose of this mechanism, converting it into a tool for propaganda. Already in the Joint Declaration of 2003 of the Special Rapporteurs for Freedom of Expression, it was clearly established that "[m]edia outlets should not be required by law to carry messages from specified political figures, such as the president."⁵⁶²

579. In summary, any intervention by the president using this mechanism must be strictly necessary to satisfy urgent requirements in matters of evident public interest. Permitting governments the unlimited use of independent communications media, under the justification of informing citizens about every issue related to the functioning of the state or about different issues

...continuation

2008. Volume II: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III: Inter-American Legal Framework of the Right to Freedom of Expression, para. 202. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>.

⁵⁶⁰ IACHR. *Report on the Situation of Human Rights in Venezuela*. OEA/Ser.L/V/II.118. Doc. 4 rev. 2., para. 487. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

⁵⁶¹ Constitutional Court of Colombia. November 8, 2001. Judgment C-1172/01. Presiding Judge: Alfredo Beltrán Sierra. See also Constitutional Court of Colombia. November 11, 2005. Judgment C-1153/05. Presiding Judge: Marco Gerardo Monroy Cabra.

⁵⁶² Joint Declaration of 2003 by the Special Rapporteur on Freedom of Opinion and Expression of the UN, the Representative on the Freedom of the Press of the OSCE, and the Special Rapporteur for Freedom of Expression of the OAS. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=88&IID=1>.

that are not urgent or necessary and that the citizenry can obtain information about from other sources, leads to, in practice, the acceptance of the right of governments to impose upon the communications media the content that they must broadcast. Any obligation to broadcast content not chosen by the media itself must conform strictly to the requirements imposed by Article 13 of the American Convention to be considered as an acceptable limitation on the right to freedom of expression.

580. As has been indicated by the Inter-American Court, “in a democratic society [it is necessary to] guarantee [...] the widest possible circulation of news, ideas and opinions as well as the widest access to information by society as a whole. Freedom of expression constitutes the primary and basic element of the public order of a democratic society, which is not conceivable without free debate and the possibility that dissenting voices be fully heard.”⁵⁶³ The Venezuelan State itself, in a communication of August 13, 2009, emphasized that it “has an interest in the development of pluralistic, diverse, and independent communications media.”⁵⁶⁴

581. Due to the foregoing considerations, the IACHR exhorts the State to bring its legislation regarding blanket presidential broadcasts into agreement with the standards described.

c. Statements by high-ranking state authorities against communications media and journalists based on their editorial line

582. In its *Report on the Situation of Human Rights in Venezuela* (2003), the IACHR warned that “President Hugo Chávez Frías made certain speeches against the media, which could have been interpreted by his followers as calling for aggression against the press. The IACHR, [...] was able to note that on occasions, President Chávez’s speeches were followed by acts of physical violence. President Chávez, like all the inhabitants of Venezuela, has the right to express himself freely and to offer his opinions about those he believes to be his opponents. Nevertheless, his speeches should take care to avoid being interpreted as incitements to violence.”⁵⁶⁵

583. In a particular manner, during 2008 and 2009 high-ranking authorities of the State discredited the work of journalists and the role of some independent communications media, accusing them of practicing “journalistic terrorism” and of fomenting a “discourse of hate” that affects the “mental health” of the Venezuelan population.⁵⁶⁶ As will be analyzed below, in some cases, these declarations have been followed by the opening of punitive administrative proceedings by Conatel, an entity that is dependent on the Executive Branch.

584. This type of statements led the Rapporteur of the United Nations for Freedom of Opinion and Expression and the Special Rapporteur for Freedom of Expression of the IACHR to issue a joint press release on May 22, 2009, in which they stated that the declarations of high-ranking state authorities against *Globovisión* and other private communications media in Venezuela contributed to generating “an atmosphere of intimidation” that seriously limited the right to freedom

⁵⁶³ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 69.

⁵⁶⁴ Bolivarian Republic of Venezuela. August 13, 2009. Questionnaire on human rights presented at the request of the Inter-American Commission on Human Rights. Office of the State Agent for Human Rights before the Inter-American and International Systems, p. 107.

⁵⁶⁵ IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 392. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

⁵⁶⁶ As will be seen later, after some of these declarations, there were increases in acts of violence against several of these communications media by groups of private individuals aligned with the government.

of expression in Venezuela. The special rapporteurs emphasized that “in a democracy, criticism, opposition, and contradiction must be tolerated as a condition of the principle of pluralism protected by the right to freedom of expression” and that, as a result, “[t]he job of authorities is to create a climate in which anyone can express his or her ideas without fear of being persecuted, punished, or stigmatized.”⁵⁶⁷ Below, there will be a summary of some of these pronouncements, with a brief reference to the facts that gave rise to them.

585. On October 13, 2008, the journalist Rafael Poleo, editor of the newspaper *El Nuevo País*, was invited to the program *Aló Ciudadano*, directed by Leopoldo Castillo and transmitted live on *Globovisión*. During the program Rafael Poleo stated the following: “One follows the trajectory of Benito Mussolini and the trajectory of Chávez and they are the same, and therefore I say with concern that Hugo is going to end up like Mussolini, hanging with his head down.” Immediately, Leopoldo Castillo warned the interviewee that “this cannot be said,” since his words could be interpreted as “advocacy of crime” or as “instigation,” and urged him to be prudent.⁵⁶⁸

586. On October 15, 2008, Andres Izarra, then-Minister of Popular Power for Communication and Information, declared that Rafael Poleo had carried out “a call to assassination,” “advocacy of crime” that aimed to continue “driving the matrix of fear” in the Venezuelan population. Minister Izarra also stated the following: “We call on the Social Responsibility Board on Radio and Television: please, do something, take a hand in this affair. This is a body of professional colleagues; there are various agents that must be able to pronounce against this type of attacks on freedom of expression.”⁵⁶⁹

587. On October 16, 2008, Conatel ordered on its own motion the opening of punitive administrative proceedings against [the] channel for the supposed violation of Article 29.1 of the Law on Social Responsibility for “broadcasting messages in its programming that [...] could promote, advocate for, or incite the commission of crimes, promote, advocate for, or incite alterations of the public order, [...] contrary to the security of the nation.”⁵⁷⁰

⁵⁶⁷ Office of the Special Rapporteur—IACHR. May 22, 2009. *Press Release R33/09*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=747&IID=1>; Ministry of Popular Power for Communication and Information of the Bolivarian Republic of Venezuela. May 22, 2009. *Venezuela considera inadmisibles los usos de instancias de la ONU y OEA para atacar a Estados miembros* (Venezuela considers it inadmissible to use the OAS and UN entities to attack Member States). Available in Spanish at: http://www.minci.gob.ve/noticias/1189268/venezuela_considera_inadmisibles.html; Venezolana de Televisión. May 22, 2009. *Venezuela considera inadmisibles los usos de instancias de la ONU y OEA para atacar a Estados miembros* (Venezuela considers it inadmissible to use the OAS and UN entities to attack Member States). Available in Spanish at: <http://www.vtv.gob.ve/noticias-internacionales/18411>; Globovisión. May 22, 2009. *Jorge Valero: Es inadmisibles los usos de instancias de la ONU y OEA para atacar a Venezuela* (Jorge Valero: It is inadmissible to use the OAS and UN entities to attack Member States). Available in Spanish at: <http://globovision.com/news.php?nid=117513>; Venezolana de Televisión. May 23, 2009. *Comunicado de OEA y ONU responde a los intereses de los medios privados* (Press Release by the OAS and UN responds to the interests of private media). Available in Spanish at: <http://www.vtv.gob.ve/noticias-nacionales/18430>.

⁵⁶⁸ Communication of December 18, [2008] from the State of Venezuela to the Office of the Special Rapporteur for Freedom of Expression.

⁵⁶⁹ El Universal. October 15, 2009. *Solicitan a CONATEL y Fiscalía actuar en caso de Rafael Poleo* (Conatel and the Attorney General’s Office requested to act in the case of Rafael Poleo). Available in Spanish at: http://www.eluniversal.com/2008/10/15/pol_art_solicitan-a-conatel_1093233.shtml.

⁵⁷⁰ As will be explained in detail later, on the morning of this same day, unidentified individuals threw a teargas bomb at the building where Leopoldo Castillo, host of *Aló Ciudadano*, resides. Communication of December 18, 2008 by the State of Venezuela to the Office of the Special Rapporteur for Freedom of Expression, p.4. Additionally, in its 2008 Annual Report, the IACHR stated that “the present environment of hostility and polarization has been prompted by the institution of administrative actions seeking to attach responsibility to media outlets independent of the government for views expressed on live programs by persons not belonging to the channel.” IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, para. 376. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm>.

588. On October 20, 2008, Minister Andrés Izarra declared during an interview that in Venezuela there was an “excess of freedom of expression.” Minister Izarra stated that opposition communications media were “active factors in [a] conspiracy [against the government that] belong[ed] to a political class that dominate[d] and continue[d] dominating [the] country.” He added that they were “tools for destabilization” and that therefore “he did not have sympathy for them.”⁵⁷¹

589. Another of the events that motivated declarations by high-ranking public authorities against private independent channels took place after the broadcasting, on May, 4, 2009, of news about an earthquake that had affected some Venezuelan localities. That morning, the producers of the television channel *Globovisión* tried without success to communicate with Francisco Garcés, president of the Venezuelan Foundation for Seismic Investigations (Funvisis), so he could explain the range of the seismic activity. Around 5:20 am, the general director of *Globovisión*, Alberto Federico Ravell, went on the air to inform about what had happened and stated that according to the United States Geological Survey, the earthquake had registered 5.4 on the Richter scale. He also indicated that the population should remain calm since no serious damages had been reported. Around 5:45 am, the Minister of Popular Power for Internal Relations and Justice, Tarek El Aissami, called Ravell’s presentation “inadequate” and “irresponsible” and stated that information of this type should only be broadcast following “a pronouncement by official authorities.”⁵⁷²

590. On May 5, 2009, [congresswoman] Cilia Flores, President of the National Assembly, asserted that Alberto Federico Ravell sought to “create anxiety to accuse the government.” At the conclusion of her presentation, the National Assembly voted to solicit [that] Conatel “[apply] the Law on Social Responsibility in Radio and Television to the channel *Globovisión* for the irresponsible declarations made by its owner [...], for having usurped functions inherent to national bodies.”⁵⁷³

⁵⁷¹ Hoy. October 20, 2008. *En Venezuela hay “exceso de libertad de expresión” según gobierno* (In Venezuela there is “an excess of freedom of expression” according to the government). Available in Spanish at: <http://www.hoy.com.ec/noticias-ecuador/en-venezuela-hay-exceso-de-libertad-de-expresion-segun-gobierno-313168.html>; Espacio Público. *Situación del derecho a la libertad de expresión e información en Venezuela 2008* (Situation of the right to freedom of expression and information in Venezuela), pp. 165-166. Available in Spanish at: <http://www.espaciopublico.info/images/documentos/informe%202008.pdf>.

⁵⁷² Communication of May 12, 2009, sent by *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression, pp. 6-11; YVKE Mundial. *Fuerte temblor sacudió región central del país esta madrugada sin causar daños* (Strong earthquake shook the central region of the country early this morning without causing damages). Available in Spanish at: <http://www.radiomundial.com.ve/yvke/noticia.php?23910>; Agencia Bolivariana de Noticias. May 4, 2009. *Venezolanos retoman sus actividades con normalidad* (Venezuelans return to their normal activities). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=180371&lee=10>; Tal cual. May 4, 2009. *El sismo de Globovisión* (The earthquake of *Globovisión*). Available in Spanish at: <http://www.talcualdigital.com/Avances/Viewer.aspx?id=20106&secid=29>; Agencia Bolivariana de Noticias. May 7, 2009. *Conatel abre procedimiento administrativo contra Globovisión* (Conatel opens administrative proceedings against *Globovisión*). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=180950&lee=1>; *Globovisión*. May 7, 2009. *Conatel abre procedimiento sancionatorio contra Globovisión por divulgación del sismo* (Conatel opens punitive proceeding against *Globovisión* for reporting on the earthquake). Available in Spanish at: <http://www.globovision.com/news.php?nid=116427>; CONATEL. May 7, 2009. *La Comisión Nacional de Telecomunicaciones inicia procedimiento administrativo sancionatorio al prestador de servicio de televisión abierta Corpomedios GV Inversiones, C.A., “GLOBOVISIÓN”* (The National Telecommunications Commission initiates punitive administrative against broadcast television provider Corpomedios GV Inversiones, C.A., “GLOBOVISIÓN”). Available in Spanish at: http://www.conatel.gov.ve/noticia_comp.asp?numn=2625.

⁵⁷³ El Universal. May 6, 2009. *AN solicita castigar a Globovisión por palabras de Ravell* (AN [National Assembly] requests sanctions against *Globovisión* for Ravell’s words). Available in Spanish at: http://www.eluniversal.com/2009/05/06/pol_art_an-solicita-castigar_1375632.shtml; Venezolana Televisión. May 6, 2009. *AN exhorta a Conatel para que sancione a Globovisión* (AN [National Assembly] exhorts Conatel to sanction *Globovisión*). Available in Spanish at: <http://www.vtv.gov.ve/noticias-nacionales/17707>; National Assembly of the Bolivarian Republic of Venezuela. May 5, 2009. *Exhortan a Conatel a aplicar la Ley Resorte a Globovisión* (Conatel urged to apply the *Ley Resorte* to *Globovisión*). Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_content&task=view&id=21859&Itemid=63.

591. On May 7, 2009, Conatel notified *Globovisión* of the opening, on its own motion, of punitive administrative proceedings “for the transmission, since the early morning [...] in a continuous and repetitious manner, [...], of messages alluding to the earthquake registered in Venezuela [...], given that those messages could have generated a sensation of anxiety and fear in the population, in an unjustifiable manner, unleashing a possible incitation to alterations of the public order.”⁵⁷⁴

592. Later, during the transmission of *Aló Presidente* on May 10, 2009, President Hugo Chavez announced that “the transmission of messages of hate and conspiracy by private communications media in Venezuela” would come to an end. In the program the Venezuelan President addressed “the enemies of the Fatherland” and warned them of the following:

Bourgeois and *pitiyanquis*, make yourselves believe the road stories, believe that I wouldn't dare: You could soon get a surprise, you are playing with fire, you are manipulating, inciting to hatred [...], and much more, every day; do not be mistaken, I am only telling you that things will not continue in this way. [...] First, I have confidence in the organs of the State responsible for initiating all the steps. I have confidence that the other corresponding powers will carry out all measures that they can. [...] I only want to remind you that those who are transmitting messages of hate, inciting the military to speak out, stating that the President must die—in a direct or subliminal manner--, that criticism is one thing and that conspiracy is another. [...] This country requires responsibility and transparency, these airwaves that the private companies use are public property, they are social property, do not believe you are the owners of the broadcasting spectrum, nobody is. [...] Not long ago there was a strong earthquake. I immediately called the Vice President, he was awake; I called Funvisis, they informed me and I gave instructions; I called the mayor of Los Teques, the governor of Aragua; and then comes one of those crazies with a gun, he is a crazy with a gun, this is going to stop, [...] or I will no longer call myself Hugo Rafael Chávez Frías. If a strike comes, we will be waiting for it, but this is a country that must respect itself, here we all have to respect each other.⁵⁷⁵

593. On May 11, 2009, the Minister of Popular Power for Foreign Affairs, Nicolás Maduro, accused *Globovisión* of “terrorism,” and its director Alberto Ravell of practicing “journalistic terrorism” and generating “anxiety and terror” in the Venezuelan population through the transmission of information about the earthquake. Minister Maduro maintained that the “broadcasting spectrum must not be used to generate terrorism,” and that one “thing [was] to inform about the seismic activity or about the rains and another thing [was] to use a natural occurrence to try to generate anxiety or terror in the population in order to try to gain political advantage for purposes inconsistent with the Constitution and public peace.”⁵⁷⁶

⁵⁷⁴ Communication of May 20, 2009 by the State of Venezuela to the Office of the Special Rapporteur for Freedom of Expression, pp. 2-3.

⁵⁷⁵ Aló Presidente. May 10, 2009. “*Se acabará en Venezuela transmisión de mensajes de odio y conspiración*” (“The transmission of messages of hate and conspiracy will end in Venezuela”). Available in Spanish at: <http://alopresidente.gob.ve/noticia/se-acabara-en-venezuela-transmision-de-mensajes-de-odio-y-conspiracion.html>; Noticiero Digital. May 10, 2009. *Ese loco con un cañón se va a acabar o me dejo de llamar Hugo Chávez* (This crazy with a gun will stop or I will stop calling myself Hugo Chávez). Available in Spanish at: <http://www.noticierodigital.com/?p=30397>. Venezolana de Televisión. May 10, 2009. *Presidente advierte a televisoras y emisoras radiales que violan las leyes y retan al Estado* (President warns television and radio stations that violate the laws and challenge the State). Available in Spanish at: <http://www.vtv.gov.ve/noticias-nacionales/17883>.

⁵⁷⁶ La Verdad. May 11, 2009. *PSUV acusa a Globovisión y Ravell de “terrorismo mediático”* (PSUV accuses Globovisión and Ravell of “media terrorism”). Available in Spanish at: <http://www.laverdad.com/detnotic.php?CodNotic=12412>; ADN. May 11, 2009. *Nicolás Maduro acusa de “terrorismo” al canal privado Globovisión* (Nicolás [Maduro] accuses the private channel Globovisión of “terrorism”). Available in Spanish at: <http://www.adn.es/sociedad/20090511/NWS-3054-Globovision-Nicolas-Maduro-terrorismo-privado.html>.

594. In the blanket presidential broadcast of May 14, 2009, the President Hugo Chávez affirmed:

We are in the presence of a terrorist attack from within: we must tell them, the white-collar terrorists, bourgeois terrorists wearing ties that do not wear hoods nor are they in the mountains. They have radio stations, television stations, and newspapers. [...] We cannot allow four bourgeois going crazy with hate to continue to fire the shrapnel that they fire every day against the public morale. This cannot be permitted. [...] Daily terrorism, daily violation of the Constitution, daily violation of the laws, aggression against persons, the national collective, in many cases with name and surname. [...] We all know who I am talking about. [...] In a dictatorship they would already have been shut down, but there is democracy in Venezuela so the corresponding organs will act on this case. [...] We will do what we have to do, and here we will wait for them. Impunity must end in Venezuela. [...] They are playing with fire, manipulating, inciting to hatred, every day [...]. I only tell them, and the Venezuelan people, that this will not continue.⁵⁷⁷

595. In the same broadcast, President Hugo Chávez announced the transfer of Conatel to the Ministry of Popular Power for Public Works and Housing and, as previously stated, ordered the head of this department, Diosdado Cabello, to be in charge of investigations in the case of the complaints against *Globovisión*. "Here is your responsibility Diosdado, to continue the battle with dignity," to tolerate no more "journalistic terrorism by private channels," added the Venezuelan president.⁵⁷⁸

596. On May 15, 2009, while making a protocolary visit to Argentina, President Hugo Chávez stated in a press conference that no one should be surprised when the State makes "decisions about some communications media" that "practice terrorism." The leader added that in Venezuela, "some communications media, [...] continue[d] to practice terrorism, not criticism, [but] terrorism."⁵⁷⁹

597. On May 17, 2009, the Minister of Popular Power for Public Works and Housing, Diosdado Cabello, assured that he would not allow himself to be "blackmailed" by the communications media, and that "at the moment of making decisions they would make them conscientiously" and it would not "affect their pulse." Additionally, the Minister emphasized that in

⁵⁷⁷ Venezolana de Televisión. May 15, 2009. *En Venezuela no hay dictadura, y no se tolerará la impunidad* (In Venezuela there is no dictatorship and impunity is not tolerated). Available in Spanish at: <http://www.vtv.gov.ve/noticias-nacionales/18097>; Communication of May 15, 2009 from *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression, pp. 6-11; Telesur. May 14, 2009. *Chávez: Globovisión está jugando con fuego* (Chávez: Globovisión is playing with fire). Available in Spanish at: <http://www.telesurtv.net/noticias/secciones/nota/49925-NN/chavez-globovision-esta-jugando-con-fuego/>; Globovisión. May 14, 2009. *Presidente Chávez: "No me sigan retando"* (President Chávez: Do not continue to challenge me). Available in Spanish at: <http://www.globovision.com/news.php?nid=116922>.

⁵⁷⁸ Venezolana de Televisión. May 15, 2009. *En Venezuela no hay dictadura, y no se tolerará la impunidad* (In Venezuela there is no dictatorship and impunity is not tolerated). Available in Spanish at: <http://www.vtv.gov.ve/noticias-nacionales/18097>; Noticias 24. May 15, 2009. *Diosdado Cabello será el encargado de investigar a Globovisión* (Diosdado Cabello will be in charge of investigating Globovisión). Available in Spanish at: <http://www.noticias24.com/actualidad/noticia/46944/diosdado-cabello-sera-el-encargado-de-investigar-a-globovision/comment-page-6/>; National Assembly of the Bolivarian Republic of Venezuela. Decree 6.707 of the Presidency of the Republic (Official Gazette No. 39.178 de 14 de mayo de 2009). Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&Itemid=190.

⁵⁷⁹ Globovisión. May 15, 2009. *Presidente Chávez: "No se extraña nadie" cuando se tomen decisiones sobre algunos medios de comunicación* (President Chávez: "No one is surprised" when decisions are made about some communications media). Available in Spanish at: <http://www.globovision.com/news.php?nid=116931>.

Venezuela there “existe[d] social communications media that represent a public health problem,” and that “they were going to work to put an end to the broadcasting oligopoly.”⁵⁸⁰

598. On May 19, 2009, the Agent of the State for cases before the IACHR, Germán Saltrón, stated that if *Globovisión's* concession were revoked “they themselves [would be] to blame for the situation.” Germán Saltrón emphasized that:

Media owners [had to] understand that freedom of expression [had] [...] limitations and [that] if *Globovisión* continue[d] with this attitude that threaten[ed] human rights it would simply be necessary to revoke its concession for violating the law. [...] We will wait to see what will be the sanction. Wait until Conatel indicates what is the sanction and based on that they can go to the Court and we will defend ourselves and demonstrate that they are the ones who have violated freedom of expression. [...] *Globovisión* alone has this attitude and it is necessary to apply the Law to it.⁵⁸¹

599. In the June 25, 2009 edition of *Aló Presidente*, the Venezuelan Head of State indicated the following:

[T]he conspiracy continues, and above all, they are playing at something that has to do with a communications media and the possibility that exists, because it exists, it is in the laws and it is part of the daily evaluation, the possibility that exists that the concession they have will end, this is a possibility and I will say that it could be ended early, because this [concession] has an end, it has a term. But it is possible that it could be earlier, that it could be before the stipulated time period ends, this is possible for violation of laws, challenging the government, spreading rumors, inciting to assassination, civil war, hatred, etc. Therefore, they are preparing themselves for this, they believe that if this occurs the government will fall and they are going to try to do it. Fine, we will prepare ourselves because it is probable that this will happen, and if this happens and the opposition takes to the streets [and] calls for a coup

⁵⁸⁰ Globovisión. May 18, 2009. *Diosdado Cabello: Nosotros no vamos a caer en chantajes* (Diosdado Cabello: We will not be blackmailed). Available in Spanish at: <http://www.globovision.com/news.php?nid=117074>; Diario La Verdad. May 17, 2009. *Cabello asegura que “no le temblará el pulso” para actuar contra los medios* (Cabello assures that “his pulse will not waver” in acting against the media). Available in Spanish at: <http://laverdad.com/detnotic.php?CodNotic=12673>; Globovisión. May 17, 2009. *Diosdado Cabello: “Nosotros no vamos a caer en chantaje”* (Diosdado Cabello: “We will not be blackmailed”). Available in Spanish at: <http://www.globovision.com/news.php?nid=117074>. El Universal. May 18, 2009. *Cabello actuará contra medios sin “chantaje” por las denuncias* (Cabello will act against the media without “blackmail” for the denunciations). Available in Spanish at: http://politica.eluniversal.com/2009/05/18/pol_art_cabello-actuara-cont_1392627.shtml. On the same day, the deputy Cilia Flores assured that the closure of *Globovisión* “was due to public clamoring because they were continuing their policy of journalistic terrorism, they do not reflect and here there are laws and institutions that have to carry out procedures and, in accordance with the law, apply sanctions.” The parliamentarian added the following: “The fish dies by its mouth. They continue acting with this terrorism, with these calls to destabilization, to overthrow of the government, to violence. This is why we have denounced *Globovisión*, which maintains this conduct of disrespect, of violation of the Constitution, of abuse of the people and this is good that the people see it, what they are and that they do not reflect and do not rectify their conduct.” El Universal. May 17, 2009. *Cilia Flores aseguró que cierre de Globovisión es un clamor del Pueblo* (Cilia Flores assures that the closure of *Globovisión* is a cry from the People). Available in Spanish at: http://www.eluniversal.com/2009/05/17/pol_ava_cilia-flores-aseguro_17A2333325.shtml; Globovisión. May 17, 2009. *Cilia Flores: “Instancias internacionales” de oposición no tienen credibilidad* (Cilia Flores: “International instances” of opposition do not have credibility). Available in Spanish at: <http://www.globovision.com/news.php?nid=117081>; El Universal. May 18, 2009. *Cabello actuará contra medios sin “chantaje” por las denuncias* (Cabello will act against the media without “blackmail” for the denunciations). Available in Spanish at: http://politica.eluniversal.com/2009/05/18/pol_art_cabello-actuara-cont_1392627.shtml.

⁵⁸¹ Globovisión. May 19, 2009. *German Saltrón: “Los dueños de medios deben comprender que la libertad de expresión tiene sus limitaciones”* (German Saltrón: “Media owners must understand that freedom of expression has its limitations”). Available in Spanish at: <http://globovision.com/news.php?nid=117241>. Agencia Bolivariana de Noticias. May 19, 2009. *La CIDH está parcializada en contra del Gobierno venezolano* (The IACHR is biased against the Venezuelan Government). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=182539&lee=16>; Agencia Bolivariana de Noticias. May 19, 2009. *En Venezuela existe un monopolio del espectro radioléctrico* (In Venezuela there is a monopoly of the radio broadcasting spectrum). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=182550&lee=16>.

[d'état], [...], fine, we will also go into the streets and we will sweep them away. We will be disciplined in this, we will do what they want, what they order, if they go into the streets, we will be in the streets waiting, the street belongs to the people, not to the bourgeoisie, therefore it is necessary to be always in the streets, mobilized, if they take their guns we will [fight] with our guns too, they will see.⁵⁸²

600. On July 9, 2009, Minister Diosdado Cabello stated, in a presentation to the National Assembly, the following:

And we sought and received the Commander's instruction: Democratize the use of the broadcasting spectrum, and we are going to do that, to end the broadcasting oligopoly, media oligopoly, and we are going to do that. We are not going to succumb to blackmail, they are not going to provoke us, we are not going to give in on anything because we owe absolutely nothing to the oligarchy in this country. [...] And as the father Camilo Torres said: If the dominant class, the oligarchy, does not give up its privileges willingly, the people will obligate them by force. And in this case in Venezuela, the people are the Government and we are going to do it. [...] What we cannot permit to occur in Venezuela is that which is occurring in Honduras, in spite of and 7 years after what happened here in 2002, to follow the same format as in Honduras and have success. How sad that is, how sad! Are we going to wait for this to happen? We must not, colleagues, I believe we must make a reflection, we will truly give the power to the people so they will be able to communicate, to broadcast what they are doing, and one who is not guilty does not have to fear it. The truth will set us free. The truth that is in the streets, not *Globovisión's* truth, not the insurrectionist media's truth.⁵⁸³

601. The IACHR considers that pronouncements like those made by the Venezuelan president and other high-ranking state officials could have the effect of polarizing society and influencing through arbitrary pressures the content that journalists and communications media transmit, which according to Article 13.2 of the American Convention, can only be the object, when necessary, of subsequent penalties imposed following a due legal process.

602. In this context, the IACHR reminds the State that, in the framework of the American Convention, the right to freedom of expression must be guaranteed not only with respect to the ideas and information received favorably or considered inoffensive or indifferent, but also with respect to those that offend, shock, worry, or are unwelcome to public functionaries or some sector of the population. These are precisely the exigencies of the pluralism, tolerance, and spirit of openness without which there is no truly democratic society.⁵⁸⁴ As the Special Rapporteurship stated in its pronouncement of May 22, 2009, "public officials, especially those in the highest positions of the State, have a duty to respect the circulation of information and opinions, even when these are contrary to its interests and positions."⁵⁸⁵

⁵⁸² The speech is part of the series called *Aló Presidente Teórico*. Communication of July 3, 2009 from *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression.

⁵⁸³ National Assembly of the Bolivarian Republic of Venezuela. July 9, 2009. *Punto de información del ciudadano Ministro del Poder Popular para las Obras Públicas y Vivienda Diosdado Cabello para referirse a la situación actual de los servicios de radiodifusión sonora, televisión abierta y difusión por suscripción* (Point of information from citizen Minister of Popular Power for Public Works and Housing Diosdado Cabello to refer to the current situation of the radio, broadcast television, and subscription services), pp. 9 and 17. Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=cat_view&gid=41&Itemid=124.

⁵⁸⁴ I/A Court H.R., *Case of Herrera-Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, para. 113; I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile*. Judgment of February 5, 2001. Series C No. 73, para. 69.

⁵⁸⁵ Office of the Special Rapporteur—IACHR. May 22, 2009. *Press Release R33/09*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=747&IID=1>.

603. Additionally, as the Inter-American Court stated, the Venezuelan authorities must take into account that “the people who work for a specific social communication firm can see the situations of risk they would normally face exacerbated if that firm is the object of an official discourse that may cause, suggest actions, or be interpreted by public officials or sectors of the society as instructions, instigations, or any form of authorization or support for the commission of acts that may put at risk or violate the life, personal safety, or other rights of people who exercise journalistic tasks or whoever exercises that freedom of expression.”⁵⁸⁶

604. It is fundamental to remind the State that public functionaries who exercise their right to freedom of expression are also “submitted to certain limitations since they must verify in a reasonable, but not necessarily exhaustive, manner the facts on which they base their opinions, and they should do so with a diligence even greater to the one employed by individuals due to their high investiture, the ample scope and possible effects their expressions may have on certain sectors of the population, and in order to avoid that citizens and other interested people receive a manipulated version of specific facts.”⁵⁸⁷

605. The IACHR recognizes that the Venezuelan authorities have the duty to enforce the law and the right to respond to criticism they consider unjust or misleading. However, it is essential to take into account, as the Inter-American Court has indicated, with respect to public functionaries, that “they are in a position of guarantors of the fundamental rights of the individual and, therefore, their statements cannot be such that they disregard said rights.”⁵⁸⁸ Additionally, the Inter-American Court has indicated that “public officials, particularly the top Government authorities, need to be especially careful so that their public statements do not [...] induce or invite other authorities to engage in activities that may abridge the independence or affect the judge’s freedom of action.”⁵⁸⁹

606. In light of the declarations cited above, the IACHR urges the authorities of the State to provide the most simple and effective of protections: the public and categorical recognition of the legitimacy of criticism and dissidence in a constitutional democracy like the Venezuelan democracy. As a result, it exhorts the authorities to abstain from formulating stigmatizing declarations that could lead to acts of violence or arbitrary decisions by public officials.

⁵⁸⁶ I/A Court H.R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 194, para. 143. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_194_ing.pdf; I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195, para. 155. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_195_ing.pdf.

⁵⁸⁷ I/A Court H.R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 194, para. 139. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_194_ing.pdf; I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195, para. 151. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_195_ing.pdf.

⁵⁸⁸ I/A Court H.R., *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 131; IACHR. *Annual Report 2008*. Volume II: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III: Inter-American Legal Framework of the Right to Freedom of Expression, paras. 202-205. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>.

⁵⁸⁹ I/A Court H.R., *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 131; IACHR. *Annual Report 2008*. Volume II: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III: Inter-American Legal Framework of the Right to Freedom of Expression, paras. 202-205. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>.

d. Disciplinary, administrative and criminal proceedings against communications media and journalists

607. The IACHR observes that in recent months, there has been an increase in punitive administrative proceedings against communications media critical of the government. In particular, it concerns the IACHR that in a number of these cases, investigations and administrative proceedings were initiated after the highest-ranking state authorities called upon public entities, especially Conatel, "to act" against *Globovisión* and other independent media that are critical of the government.

608. Previously, in its 2008 Annual Report, the IACHR warned that "the present environment of hostility and polarization has been prompted by the institution of administrative actions seeking to attach responsibility to media outlets independent of the government for views expressed on live programs by persons not belonging to the channel."⁵⁹⁰

i. The case of *Globovisión*

609. In the past twelve months, the IACHR has become aware of the opening by Conatel, on its own motion, of at least six administrative proceedings against *Globovisión* for the presumed violation of Article 29.1 of the Law on Social Responsibility in Radio and Television, and Articles 171.6 and 172 of the Organic Law on Telecommunications.⁵⁹¹

610. As has already been mentioned, the first administrative proceeding was opened on October 16, 2008. On October 13, 2008, Rafael Poleo, a guest on a television program that the channel transmits live, stated the following: "One follows the trajectory of Benito Mussolini and the trajectory of Chávez and they are the same, and for this reason I say with concern that Hugo is going to end up like Mussolini, hanging with his head down." The journalist who was interviewing him immediately called on him to be prudent.

611. According to the State, Conatel ordered the opening of an administrative file against the channel "considering that this television company disseminated in its programming messages that, presumably, could promote, advocate for, or incite the commission of crimes, promote, advocate for, or incite alterations of the public order, and could be contrary to national security."⁵⁹² According to the State, "[i]n the analysis of the facts that gave rise to the initiation of these

⁵⁹⁰ IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, para. 376. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm>.

⁵⁹¹ Article 171.6 of the Organic Law on Telecommunications provides: "Article 171. Without prejudice to the fines that are to be applied in accordance with the provisions in this Law, [one] will be sanctioned with revocation of the administrative permit or the concession, according to the case: [...] (6) One who utilizes or allows the use of telecommunications services for those who are qualified, as a means of assisting in the commission of crimes."

Article 172 of the Organic Law on Telecommunications states: "Article 172. The revocation of the administrative permit or concession of natural or legal persons will cause them to be unable to obtain another one, either directly or indirectly, for a period of five years. This period will be counted starting at the moment the administrative decision becomes final. In the case of legal persons, the disqualification will extend to administrators or other organs responsible for the management and direction of the sanctioned operator that were carrying out these functions during the time of the infraction, if they had knowledge of the situation that led to the revocation and did not notify the National Telecommunications Commission in writing before the opening of the punitive proceedings. The violation of the disqualifications and incompatibilities established in this Law will cause natural persons responsible for such a transgression to receive a special disqualification from participating in the financing, or being administrators or managers, of telecommunications companies, either directly or indirectly, for a period of five years."

⁵⁹² Communication of December 18, 2008 by the State of Venezuela to the Office of the Special Rapporteur for Freedom of Expression, pp. 2-5.

punitive administrative proceedings, it impossible not to recall that Benito Mussolini was an Italian dictator, who, after he was overthrown, was executed by partisan militants and later his body was exhibited, in humiliating conditions, hanging by the feet in an Italian gas station.”⁵⁹³

612. In relation to this occurrence, the representatives of *Globovisión* have also stated that the Attorney General’s Office has initiated two criminal investigations “identified by the codes ‘01-F20-0678-08’ and ‘01-F20-0362-09.’” The representatives of the communications media emphasized that they were “now getting into criminal territory with this issue in which there is already an open administrative investigation, aiming with this at criminalizing journalistic work and making press workers responsible for the political opinions of a guest who, in addition, expressed himself live and was interrupted by the moderator of the program.”⁵⁹⁴

613. The second administrative proceeding was initiated on November 27, 2008. On November 24, 2008, after the close of an electoral event, the channel transmitted live the declarations of the then-candidate for the governorship of the state of Carabobo, Henrique Salas Feo, in which he stated that “From here in Carabobo we want to demand immediate results from the National Electoral Council, but as they continue delaying the process, I want to ask all the people of Carabobo to accompany me, we will go to the Electoral Council to reclaim the triumph of Carabobo.”

614. Conatel considered that the transmission of the transcribed declarations could “promote, make apology for, or incite alterations of the public order.” In this respect, the State indicated: “the referenced citizen issued a call in front of a concentration of persons—transmitted by *Globovisión*—to accompany him to the Regional Electoral Council, with the aim of ‘reclaiming the triumph of Carabobo.’ It should be emphasized that the declarations referred to were disseminated while the state of Carabobo was experiencing a moment of great political and social tension, because the small difference in the number of votes for the two principal candidates for the governorship of the state prevented the National Electoral Council from issuing official results about the development of the electoral process in this region. In this context, the declarations made by the citizen Henrique Salas Feo could unleash highly conflictive acts in this entity.”⁵⁹⁵

615. It is important to remember that in its 2008 Annual Report, the IACHR stated that it viewed with concern that the application of Article 29 of the Law on Social Responsibility “could result in the attachment of responsibility to a media outlet for an activity of a third party, not employed by the channel, in a program broadcast live, or for the broadcast of the speech of a politician.”⁵⁹⁶

616. The third administrative proceeding was initiated on May 7, 2009. As was already stated, in the early morning of May 4, 2009, the channel reported on the occurrence of an earthquake in the state of Miranda. At 5:20 am, the channel broadcast live a telephone call from its general director Alberto Federico Ravell, which informed about the earthquake and called for calm and tranquility. As of that moment, the state media had not reported on the tellurian movement.

⁵⁹³ Communication of December 18, 2008 by the State of Venezuela to the Office of the Special Rapporteur for Freedom of Expression, pp. 2-5.

⁵⁹⁴ Communication of July 3, 2009 by *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression.

⁵⁹⁵ Communication of December 18, 2008 by the State of Venezuela to the Office of the Special Rapporteur for Freedom of Expression, pp. 6-7.

⁵⁹⁶ IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, para. 381. Available at: <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm>.

Messages about the earthquake were transmitted all that day. Conatel considered that the news coverage of the earthquake could “generate a sensation of anxiety and fear in the population, in an unjustified manner, unleashing a possible incitation to alterations of the public order.”⁵⁹⁷

617. On December 2, 2008 and May 15, 2009, the Special Rapporteurship sent communications to the State requesting information about the three punitive administrative proceedings mentioned. The State responded to the requests for information in communications dated December 18, 2008 and May 20, 2009. In the letters, the State explained the reasons for which the proceedings had been opened and indicated that the first two administrative proceedings were almost complete and that the files were “in the hands of the Social Responsibility Board, which is the professional body in charge, in accordance with the Law on Social Responsibility in Radio and Television, of pronouncing the judgment that would put an end to the punitive administrative proceedings.” With respect to the third proceeding, the State specified that this was “in the Phase of Substantiation by the Juridical Consultancy of the National Telecommunications Commission, and [that] once the Phase of Substantiation is complete, it would be remitted to the Social Responsibility Board so that they can decide what is appropriate.” It is important to note that as of the date of this report, the IACHR has not received additional information indicating that these proceedings have been concluded.

618. On June 16, 2009, Conatel initiated a fourth punitive administrative proceeding against *Globovisión*, this time for the presumed violation of Article 171.6 of the Organic Law on Telecommunications. Conatel considered that *Globovisión* had “transmitted messages that could have been linked to acts which could be classified in the Venezuelan Penal Code as crimes, among them those transmitted on these dates: (i) October 13, 2008, on the program *Aló Ciudadano*; (ii) March 22, 2009, on *Globovisión* programs and segments such as: *Noticias Globovisión* and *Aló Ciudadano*, among others; (iii) April 3 to April 6, 2009, in programs and segments such as: *Usted Lo Vio*, *Tres para las Nueve*, *Entretelones del Jucio*, *Noticias Globovisión*, among others; (iv) May 19, 2009, during the program *Buenas Noches*; and (v) May 10, 2009, on the program *Aló Venezuela*.” According to Conatel, “*Globovisión*, as a provider of broadcast television services, could have contributed to the commission of crimes, making or permitting use of its service for this [...], [which] [could] lead to the determination of criminal responsibility for *Globovisión*.”⁵⁹⁸

619. The Special Rapporteurship received information that indicates that the fourth administrative proceeding has been suspended until the Attorney General’s Office can determine the criminal responsibility *Globovisión* could have incurred. According to Conatel: “for the sake of guaranteeing the constitutional rights that may correspond to [...] *Globovisión*, [it is] necessary to suspend the present proceeding until the corresponding criminal responsibilities can be determined within the framework of the investigations being carried out by the Attorney General’s Office. In this manner, once the existence or non-existence of criminal responsibilities has been determined, and in consequence, the commission or non-commission of crimes, the present proceeding will be restarted, initiating its substantiation in order to determine the propriety of the cause of action for revocation invoked, for which the corresponding notification will be made to the presumed transgressor.”⁵⁹⁹

⁵⁹⁷ Communication of May 20, 2009 by the State of Venezuela to the Office of the Special Rapporteur for Freedom of Expression, pp. 2-3.

⁵⁹⁸ Communication of July 3, 2009 by *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression. In the opinion of the representatives of the communications media, the actions of the Attorney General’s Office “show the coordination of actions by the Venezuelan state through the penal system with the object of now supporting the ‘revocation’ of the license that *Globovisión* uses to transmit information to the public every day, creating an additional risk of penalties including the deprivation of liberty for the managers, journalists, and other workers of *Globovisión*.”

⁵⁹⁹ Communication of October 5, 2009 by *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression.

620. On July 3, 2009, Conatel initiated, upon its own motion, a fifth punitive administrative proceeding against *Globovisión*. The proceeding, which also involves three other television channels and two radio stations, was started because of a publicity campaign prepared by two civil society organizations that criticized the "Proposed law on social property." Through a precautionary measure, Conatel also ordered the immediate cancellation of the publicity notices arguing that they contained "messages that presumably cause[d] distress, fear, and anxiety in the population that could foment collective conduct having a tendency to alter the public order and that could be contrary to national security," and also prohibited the dissemination of similar messages. (See below).

621. It should be noted that on July 3, 2009, the Attorney General's Office also placed a precautionary measure before a criminal court against one of the organizations that prepared the campaign and against the newspaper *Últimas Noticias*, after it published two graphic notices showing nude women, covering their breasts, with the message: "The law on social property will take away what it is yours; no to the Cuban law." The public prosecutors requested the suspension of the publication of these notices, arguing that it dealt with a case of violence against women. According to the information received, the request by the Attorney General's Office was granted and the publicity notices were removed, by judicial order, from the pages of the newspaper.

622. Lastly, on September 7, [2009], Conatel initiated a sixth punitive administrative proceeding against *Globovisión* and an independent producer, with the aim of determining "if the conduct carried out by the same incurred in the actions described in Articles [sic] 28 number 4 literal 'x' and in number 1 of Article 29 of the Law on Social Responsibility."⁶⁰⁰

623. According to Conatel, without stating precisely the content of the messages, "on September 3, 2009, in the program called *Buenas Noches* produced by KIKO COMUNICACIONES AL REVES, C.A. [...], which is transmitted by *Globovisión* [...], in its character as a provider of broadcast television services, disseminated messages that appeared through a character generator as messages supposedly sent by users via text message. [...] [By] disseminating messages like those referred to [...], one can observe that they could violate that which is provided under the Law on Social Responsibility [...], given that the mentioned messages could be inciting to disregard for institutions, to the realization of a coup d'état, and to the generation of alterations of the public order, presumably attacking the national security. It should be emphasized that the messages were transmitted in a context in which they promoted public demonstrations, with which a climate of tension and anxiety could be generated in the population, through implicit and explicit messages that presumably allude to acts of violence and the realization of a *coup d'état* in the country."⁶⁰¹

624. On the same day, Minister Diosdado Cabello affirmed that he had also requested the Office of the Attorney General of the Republic to open a criminal investigation against *Globovisión* for the transmission of this content. According to the state official, the messages incited to "coup

⁶⁰⁰ Article 28 of the Law on Social Responsibility provides: "Article 28. Sanctions. Without prejudice to the civil and criminal penalties, it is possible to impose sanctions of cession of airtime for the dissemination of cultural and educational messages, fines, suspension of the administrative permit, and revocation of the administrative permit or of the concession. [...] 4. A provider of radio, television, or subscription services will be sanctioned, in cases in which it is applicable, with a fine of one per cent to two percent of the gross income earned in the fiscal year immediately prior to the one in which the infraction was committed, as well as the cession of airtime for the dissemination of cultural and educational messages when: [...] x) S/he disseminates messages that incite to noncompliance with the current legal norms."

⁶⁰¹ Communication of October 5, 2009 from *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression.

d'état and assassination."⁶⁰² However, the content of each of these messages was not concretely clarified or specified.

625. In relation to the opening of these investigations, the IACHR reaffirms, as does the Special Rapporteurship in its pronouncement of June 26, 2009, that the states have the authority to regulate the broadcasting spectrum and carry out punitive administrative proceedings to ensure compliance with the legal dispositions.⁶⁰³ Nevertheless, the IACHR reminds the Venezuelan state that in the exercise of that power, it must promote pluralism and diversity, as well as guarantee access to the broadcasting spectrum under conditions of equality and non-discrimination.⁶⁰⁴

626. The forgoing implies that any administrative investigation that could lead to the application of sanctions against communications media must comply with, at a minimum, the following requirements: (1) it must be completely subject to the most favorable law in force; (2) the applicable law must not contain vague and imprecise terms that could lead to the arbitrary application of sanctions that limit freedom of expression; (3) any legal restriction on freedom of expression must pursue ends that are compatible with the American Convention; (4) any sanction must be proportionate and strictly necessary for the satisfaction of the legitimate goals that the law establishes; (5) in any case due process of the law must be fully guaranteed; and (6) the organ of application of the law must offer guarantees of autonomy, independence, and impartiality.

627. In summary, the decision to sanction a communications media, and especially to revoke its license or permit, must be strictly legal, reasonable, and proportionate to the offense committed and be governed by the universal principal of good faith. Therefore, it will not be acceptable and it will corrupt the entire proceeding if the functionaries responsible for applying the law had in consideration discriminatory reasons, such as the editorial line of a communications media, to adopt the mentioned decisions.

628. The affirmations of the highest-ranking authorities against the investigated media, the facts which gave rise to the opening of the administrative proceedings, the broadness with which the Law on Social Responsibility seems to be interpreted by the competent authorities in the cited cases, the lack of autonomy that Conatel appears to have with respect to the interests of the Executive Branch, among other factors, suggests that the editorial line of the investigated media was the motivation to initiate the punitive proceedings that have just been described.

629. For the reasons that have been expressed, the IACHR expresses its profound concern about these acts and urges the State, as it did in the *Report on the Situation of Human*

⁶⁰² Conatel. September 7, 2009. *Diosdado Cabello: Procedimiento administrativo sancionatorio contra Globovisión no intenta regular la libertad de expresión sino hacer cumplir la ley* (Diosdado Cabello: Punitive administrative proceedings against Globovisión do not seek to regulate freedom of expression but rather to enforce the law). Available in Spanish at: http://www.conatel.gob.ve/noticia_comp.asp?numn=2678; Globovisión. September 9, 2009. *Fiscalía investiga denuncia de Diosdado Cabello contra Globovisión* (Attorney General's Office investigates denunciation by Diosdado Cabello against Globovisión). Available in Spanish at: <http://www.globovision.com/news.php?nid=126903>; Globovisión. September 7, 2009. *Conatel notifica nuevo procedimiento sancionatorio a Globovisión* (Conatel announces new punitive proceedings against Globovisión). Available in Spanish at: <http://www.globovision.com/news.php?nid=126696>; Globovisión. September 5, 2009. *Ministro Cabello anuncia apertura de procedimiento sancionatorio contra Globovisión* (Minister Cabello announces the opening of punitive proceedings against Globovisión). Available in Spanish at: <http://www.globovision.com/news.php?nid=126535>.

⁶⁰³ Office of the Special Rapporteur—IACHR. June 26, 2009. *Press Release R41/09*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=751&IID=1>.

⁶⁰⁴ IACHR. *Annual Report 2002*. Volume III, Chapter IV: Freedom of Expression and Poverty. Available at: <http://www.cidh.oas.org/relatoria/docListCat.asp?catID=32&IID=1>.

Rights in Venezuela (2003), to respect scrupulously the standards of the inter-American system for the protection of human rights in the administrative or judicial proceedings that they decide.

ii. **Prohibition of broadcasting publicity contrary to a proposed law of interest to the government: The case of Cedice and Asoesfuerzo**

630. As was stated in the previous section, on July 3, 2009 Conatel initiated a punitive administrative proceeding against *Venevisión, Meridiano TV, Televen, Globovisión, Onda 107.9 FM, and Fiesta 106.5 FM*, for the transmission of notices of a publicity campaign of the Centro de Divulgación del Conocimiento Económico para la Libertad (hereinafter, "Cedice") and the Asociación Civil para el Fomento y Promoción del Esfuerzo (hereinafter, "Asoesfuerzo") called "In Defense of the Right to Property." In the same resolution, Conatel issued a precautionary measure against *Venevisión, Meridiano TV, Televen, Globovisión, Onda 107.9 FM, and Fiesta 106.5 FM*, so that they would abstain "immediately from disseminating any propaganda that is part of the campaign 'In Defense of Property' offered by the advertisers CEDICE and ASOESFUERZO, in their various versions, both on radio and on television."⁶⁰⁵

631. The pieces that that were prohibited from dissemination were advertisements contracted by Cedice and Asoesfuerzo as part of a campaign against the so-called "Proposed law on social property" under consideration by the National Assembly. In these pieces, various characters (such as one representing the granddaughter of a baker, the son of a driver, a farmer, a housewife, among others) affirmed that they and their parents "had worked very hard for what they had" and closed saying: "If they try to take it from me, I will defend it." At the end of the ads the off-camera announcer indicated: "Property is your pride, defend private property. [...]. For a country of property owners."⁶⁰⁶

632. According to Conatel, "these advertisements contained messages that presumably cause anguish, fear, and anxiety in the population that could foment conduct by the collective that tends to alter the public order and could be contrary to the national security [...]. [G]iven that the

⁶⁰⁵ It should be noted that the opening of the administrative proceedings also affects Cedice and Asoesfuerzo. Conatel. July 3, 2009. Administrative Provision No. PADSR-1.427 of July 2, 2009.

⁶⁰⁶ Specifically, Conatel indicated that the publicity spots suspended that were part of the mentioned campaign are the following: Asoesfuerzo: (1) What does private property mean to you?; (2) Why is it important to defend private property?; (3) Do you feel that your private property is threatened in today's Venezuela? Available in Spanish at: <http://www.asoesfuerzo.com>; Cedice: (4) Don't mess with my parents. Shop version; (5) Don't mess with my parents. Bakery version; and (6) Don't mess with my parents. Driver version. Available in Spanish at: <http://www.cedice.org.ve>. Conatel also affirmed the creation of "versions of 'the propaganda' to be transmitted by radio, including the version 'No to the Cuban law' [...] announced by CEDICE." Conatel. July 3, 2009. Administrative Provision No. PADSR-1.427 of July 2, 2009. See also: Conatel. July 3, 2009. *Por presuntas infracciones a la Ley RSRTV Conatel inicia procedimiento administrativo sancionatorio a medios radioeléctricos que difundieron propagandas de CEDICE y ASOESFUERZO que presuntamente podrían alterar el orden público* (For presumed infractions of the Law RSRTV [Law on Social Responsibility in Radio and Television] Conatel initiates punitive administrative proceedings against broadcast media that distributed advertisements of CEDICE and ASOESFUERZO that could presumably alter public order). Available in Spanish at: http://www.conatel.gob.ve/noticia_comp.asp?numn=2653; Globovisión. July 6, 2009. *Gobierno venezolano dicta medida de censura previa, prohibiendo la difusión en radio y TV de una campaña a favor de la propiedad privada y abre un nuevo procedimiento contra Globovisión* (Venezuelan government issues a measure of prior censorship, prohibiting the transmission by radio and television of a campaign in favor of private property and opens a new proceeding against Globovisión). Communication of July 5, 2009 from *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression. Available in Spanish at: <http://www.globovision.com/news.php?nid=121136&clave=a%3A1%3A%7Bi%3A0%3Bs%3A7%3A%22cedice+%22%3B%7D>; Globovisión. July 3, 2009. *Conatel abrió quinto procedimiento contra Globovisión en seis meses* (Conatel opens fifth proceeding against Globovisión in six months). Available in Spanish at: <http://www.globovision.com/news.php?nid=120854&clave=a%3A1%3A%7Bi%3A0%3Bs%3A7%3A%22cedice+%22%3B%7D>; CEDICE. August 6, 2009. *Video censurado por procedimiento administrativo de Conatel* (Video censored by administrative proceedings of Conatel). Available in Spanish at: <http://www.cedice.org.ve/detalle.asp?id=2993>.

advertisements urge the defense of private property, the intended receivers of the message could adopt various types of conduct, including aggressive ones, with the aim of defending themselves from a supposed threat, which could lead to alterations of the public order, especially taking into consideration that it does not appear in 'the advertisements' that they express the idea of resorting to legal means to exercise that defense."⁶⁰⁷

633. On the other hand, on the same date, the Attorney General's Office presented a request for precautionary measures before the Second Tribunal on Violence against Women in the Metropolitan Area of Caracas to ask that the newspaper *Últimas Noticias* suspend the publication of two notices by Cedice that showed the image of a nude pregnant woman, and a nude woman in a defenseless state, covering their breasts, with the message: "The law on social property will take away what is yours; no to the Cuban law."

634. The Attorney General's Office requested the suspension of the publications because it considered that they could go against Articles 15.15 and 53 of the Organic Law on the Right of Women to a Life Free of Violence. According to Article 15.15 of that law, "media violence" is "the exposition, through any communications media, of a woman, girl, or adolescent that, directly or indirectly exploits, discriminates, dishonors, humiliates, or attacks her dignity for economic, social, or power reasons. It is also understood as media violence the use and abuse by communications media of women's, girls', or adolescents' bodies." For its part, Article 53 of this instrument defines "public offense for reason of gender" with the following text: "The communications professional, or a non-professional who carries out work related to this discipline, and in the exercise of this occupation offends, injures, or denigrates a woman for reasons of gender through a media of communication, must indemnify the woman who is the victim of violence with the payment of a sum not less than two hundred (200 U.T.) nor greater than five hundred tributary units (500 U.T.) and make a public apology by the same media used to commit the offense and with same extension of time and space." On July 6, 2009, the Second Tribunal on Violence against Women of the Metropolitan Area of Caracas rejected the request from the Attorney General's Office.⁶⁰⁸

635. On July 10, 2009, the Attorney General's Office appealed the measure and on August 14, 2009, the Court of Appeals on Violence Against Women of the Metropolitan Area of Caracas resolved to order the newspaper *Últimas Noticias* and Cedice to suspend publication of the publicity notices, with the aim of preventing "new acts of violence, allowing for the safeguarding of the physical and psychological integrity and the environment of women expeditiously and

⁶⁰⁷ Conatel. July 3, 2009. *Por presuntas infracciones a la Ley RSRTV Conatel inicia procedimiento administrativo sancionatorio a medios radioeléctricos que difundieron propagandas de CEDICE y ASOESFUERZO que presuntamente podrían alterar el orden público* (For presumed infractions of the Law RSRTV [Law on Social Responsibility in Radio and Television] Conatel initiates punitive administrative proceedings against broadcast media that distributed advertisements of CEDICE and ASOESFUERZO that could presumably alter public order). Available in Spanish at: http://www.conatel.gob.ve/noticia_comp.asp?numn=2653.

⁶⁰⁸ Second Tribunal on Violence against Women in function of Control, Hearing, and Measures of the Criminal Judicial Circuit of the Judicial District of the Metropolitan Area of Caracas. Judicial resolution of July 6, 2009. Issue AP01-S-2009-013642; Globovisión. July 6, 2009. *Ministerio Público solicitó a Tribunal suspender dos avisos publicitarios de Cedice* (Attorney General's Office requests Tribunal to suspend two publicity notices by Cedice). Available in Spanish at: <http://www.globovision.com/news.php?nid=121142&clave=a%3A1%3A%7Bi%3A0%3Bs%3A7%3A%22cedice+%22%3B%7D>; Globovisión. July 12, 2009. *Ministerio Público apeló decisión de tribunal que negó suspensión de avisos publicitarios de Cedice* (Attorney General's Office appealed decision of tribunal that denied suspension of Cedice publicity notices). Available in Spanish at: <http://www.globovision.com/news.php?nid=121641&clave=a%3A1%3A%7Bi%3A0%3Bs%3A7%3A%22cedice+%22%3B%7D>.

effectively.” The decision of the Court of Appeals also established the prohibition of the mentioned advertisement “in all the social communications media in the country.”⁶⁰⁹

636. It should be stated that on July 9, 2009, the Minister Diosdado Cabello made a presentation before the National Assembly in which he suggested that these decisions had been adopted to protect the “mental health” of the Venezuelan population, and that investigations would be launched into the source of the funding for these campaigns.⁶¹⁰

637. Subsequently, the IACHR received information indicating that on October 6, 2009, the National Office for Intelligence and Prevention Services (DISIP, by its Spanish acronym) of the Ministry of Popular Power for Interior Relations and Justice cited directors and personnel of Cedice as witnesses in the framework of the penal investigation FN20NN-038-2009, which is being carried out by the 20th Public Prosecutor of the Attorney General’s Office of the Metropolitan Area of Caracas.

638. The IACHR also learned that on September 17, 2009, the DISIP, through the Superintendency of Banks and Other Financial Institutions, requested all the banks and financial institutions in the country to inform it, in the context of case No. F66-NN-0027-09 assigned to the Sixty-Sixth Public Prosecutor of the Attorney General’s Office of the Metropolitan Area of Caracas, if Cedice had accounts in those entities. Additionally, on September 29, 2009, the Office for Investigations against Terrorism of the Corps on Scientific Penal and Criminal Investigations, through the Superintendency of Banks and Other Financial Institutions, requested information, in the framework of case No. G-137.026, from all the banks and financial institutions in the country about the accounts and other financial instruments in the name of Cedice and Asoesfuerzo. Finally, on September 30, 2009, the Division of Investigations and Protection in the Matter of Children, Adolescents, Women, and Families of the Corps on Scientific Penal and Criminal Investigations of the Ministry of Popular Power for Interior Relations and Justice, through the Superintendency of Banks and Other Financial Institutions, requested information, in the framework of case No. G-

⁶⁰⁹ Court of Appeals of the Criminal Judicial Circuit of the Judicial District of the Metropolitan Area of Caracas on Violence against Women. Judicial Resolution No. 135-09 of August 14, 2009. Issue No. CA-803-09-VCM; Office of the Attorney General of the Bolivarian Republic of Venezuela. August 15, 2009. *Prohíben difusión en medios de comunicación de publicidad de Cedice que denigra a la mujer* (Dissemination by communications media of Cedice publicity denigrating women prohibited). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa1508.htm>; El Universal. August 15, 2009. *Tribunal vuelve a prohibir la difusión de los avisos de Cedice* (Tribunal prohibits dissemination of Cedice notices). Available in Spanish at: http://deportes.eluniversal.com/2009/08/16/pol_art_tribunal-vuelve-a-pr_1526642.shtml; El Nacional. August 15, 2009. *Prohíben difusión de publicidad de Cedice* (Dissemination of Cedice publicity prohibited). Available in Spanish at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/94573/Honduras/Proh%C3%ADben-difusi%C3%B3n-de-publicidad-de-Cedice; Globovisión. August 15, 2009. *Prohíben difusión de publicidad de Cedice por considerar que “denigra” a la mujer* (Dissemination of Cedice publicity considered to “denigrate” women prohibited). Available in Spanish at: <http://www.globovision.com/news.php?nid=124518>.

⁶¹⁰ In the speech, Minister Diosdado Cabello stated: “Last week we made the decision to suspend the publicity notices of Asoesfuerzo and Cedice, on television and radio. And I want to say it here, in the National Assembly. I said something there that is the root of the issue, where do the resources to finance this campaign come from? They made themselves crazy; they spoke about freedom of expression. No, I am speaking about the legitimization of capital, I am speaking of money laundering, and we have asked the Attorney General’s Office to investigate the facts to determine how an association that was created in May by a gentleman who had never paid one bolívar in taxes to the country could contract with a television station for 3 million strong bolívares in the month of June. Where did these riches come from? I am talking about a television station. No, no. I am taking the case of a television station and I have the contract. Of a television station! This is occurring all over the country. And they went for the side of freedom of expression. No, it is not freedom of expression, it deals with the mental health of the Venezuelans.” National Assembly of the Republic of Venezuela. July 9, 2009. *Punto de información del ciudadano Ministro del Poder Popular para las Obras Públicas y Vivienda Diosdado Cabello para referirse a la situación actual de los servicios de radiodifusión sonora, televisión abierta y difusión por suscripción* (Point of information from citizen Minister of Popular Power for Public Works and Housing Diosdado Cabello to refer to the current situation of the radio, broadcast television, and subscription services), p. 17. Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=cat_view&gid=41&&Itemid=124.

137.036, from all the banks and financial institutions about the accounts, movements, and operations carried out by Cedice in the last six months.

639. On July 13, 2009, the Special Rapporteurship requested information from the State in relation to these facts. This request was reiterated in a communication of October 8, 2009. As of the date of this report, however, no response to these requests for information has been received.

640. The IACHR expresses its deep concern to the State about these measures and reminds it that Article 13.2 of the American Convention provides explicitly that the exercise of freedom of expression cannot be subject to prior censorship. The Constitution of the Bolivarian Republic of Venezuela itself establishes the same principle in its Article 57, which states that “every person has the right to express his or her thoughts, ideas, or opinions freely [...] and to make use of any medium of communication for this purpose [...] without the establishment of prior censorship.”⁶¹¹ In the same sense, Article 2 of the Law on Social Responsibility indicates that “the interpretation and application of [this norm] shall be subject, without prejudice to all of the other constitutional provisions” to the principle of “prohibition of prior censorship.”⁶¹²

641. The IACHR has repeatedly stated that prior censorship is the prototypical extreme and radical violation of freedom of expression, precisely because “through the public power, means are established to impede the free circulation of information, ideas, opinions, or news prior [to their dissemination] by any type of proceeding that subjects the expression or dissemination of information to the control of State.”⁶¹³

642. On the other hand, it should be reiterated that which has already been expressed to the State, in that freedom of expression must be guaranteed not only with respect to the dissemination of ideas and information that are received favorably or are considered inoffensive or indifferent, but also with respect to those that offend, shock, worry, or are unwelcome to public functionaries or to a sector of the population.⁶¹⁴

643. Additionally, the IACHR considers it important to remind the State that the application of extreme measures that limit the exercise of freedom of expression based on that which is provided in Article 13.4 of the American Convention, especially in the context of elections or the consideration of legislative reforms, as in the present case, cannot be imposed based on mere conjectures about eventual, hypothetical effects on the public order. In each case, it is necessary to show that there is a certain, real, and objective risk of a severe effect on public order that can only be addressed through proportionate and reasonable restrictions on the exercise of freedom of expression in the terms established by Article 13 of the American Convention.

⁶¹¹ Constitution of the Bolivarian Republic of Venezuela. Official Gazette No. 36.860 of December 30, 1999. Available in Spanish at: <http://www.constitucion.ve/constitucion.pdf>.

⁶¹² Updated text of the Law on Social Responsibility in Radio and Television. Official Gazette No. 38.333 of December 12, 2005. Available in Spanish at: http://www.conatel.gob.ve/download/marco_legal/Ley%20Responsabilidad%20Reforma.pdf.

⁶¹³ IACHR. *Annual Report 2008*. Volume II: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III: Inter-American Legal Framework of the Right to Freedom of Expression, para. 123. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>.

⁶¹⁴ I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, para. 113; I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile*. Judgment of February 5, 2001. Series C No. 73, para. 69.

644. The IACHR considers that the measures of control that the State has been adopting could constitute acts of censorship incompatible with the parameters provided in the American Convention. In this sense, it urges the State to ensure that the competent authorities take into account the standards described here and adopt the measures necessary to guarantee the exercise the right to freedom of expression in relation to the facts summarized in this section.

645. Finally, the IACHR exhorts the State to take into account that, in accordance with Principle 5 of the Declaration of Principles: “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information, violate the right to freedom of expression.”

iii. The case of theatrical associations

646. The IACHR received information that indicates that in Venezuela there is no legal framework ensuring that the assignation of subsidies for the arts and culture is carried out in an objective manner, respecting the State’s obligation of neutrality. In this context, it was informed that the *Asociación Cultural Skena*, the *Asociación Civil Teatro del Duende*, which received subsidies from the Ministry of Popular Power for Culture, were excluded from the Agreements on Cultural Cooperation through which they were assigned resources for carrying out their activities in the state of Miranda. According to information provided to the IACHR, the Ministry of Popular Power for Culture had justified its decision based on the criteria applicable in so-called “exceptional cases,” according to which they “do not finance groups and individuals whose pernicious public conduct affects the collective psychological and emotional stability of the population, making use of offensive language, discrediting, lying, and manipulating through media campaigns with these aims.”⁶¹⁵

647. The *Asociación Teatral Grupo Actoral 80* found itself in a similar situation. According to the information received by the IACHR, in August of 2009 the entity that studies the assignation of subsidies (*Mesa Técnica de Teatro y Circo de los Convenios de Cooperación Cultural para la Plataforma del Instituto de las Artes Escénicas y Musicales*, PIAEM) proposed to exclude the *Asociación Teatral Grupo Actoral 80* from the list of groups that received economic assistance from the State in the Capital District. According to the information reported, the cancellation of the subsidy was a consequence of the critical opinions of the director of the *Asociación Teatral Grupo Actoral 80* with respect to some decisions of the government about cultural policies. For the cancellation of the subsidy, the clause of the Agreements on Cultural Cooperation was applied that prohibits financing of “groups and individuals whose pernicious public conduct affects the collective psychological and emotional stability of the population, making use of offensive language, discrediting, lying, and manipulating through media campaigns with these aims.” It should be noted that due to the lack of agreement among the members of the *Mesa Técnica* to determine the exclusion of the *Asociación Teatral Grupo Actoral 80*, it was requested that the case be “elevated to higher instances of the Ministry of Popular Power for Culture for its resolution.”⁶¹⁶

⁶¹⁵ Ministry of Popular Power for Culture. State Office of Miranda. Document No. 24-08. In the document, “Criteria for the execution of the Agreements on Cultural Cooperation in Performing Arts and Musicals 2009” are also detailed. Information provided on November 2, 2009 by Sinergia to the Office of the Special Rapporteur for Freedom of Expression in the framework of the 137th Ordinary Period of Sessions of the IACHR.

⁶¹⁶ Minutes of the Results of the Technical Committees of the Agreements on Cultural Cooperation 2009. Program for Performing Arts and Musicals. Technical Committee for Theater and Circus. Agreement 7. September 1, 2009. Information provided by Sinergia to the Office of the Special Rapporteur for Freedom of Expression on November 2, 2009, in the context of the 137th Ordinary Period of Sessions of the IACHR. See also: Sinergia. *Amenazas a los derechos humanos y a la democracia en Venezuela. Informe comprehensivo de seguimiento. Octubre 2009* (Threats to human rights and

648. Additionally, on January 21, 2009, the *Fundación El Ateneo de Caracas* was notified with an eviction order by the Ministry of Popular Power for Economics and Finance. According to the information received, the measure was justified based on the upcoming expiration of the contract for a loan on the building, owned by the State, and on the necessity of using these installations for the University of the Arts. The day before, a group of armed individuals, led by Lina Ron, had entered the building to attack leaders of the Bandera Roja political party who were meeting there. During this incident, Lina Ron stated that “the installations of Ateneo [were] being taken by the extreme right” and that “by her instructions, they would be taken for the revolution.” After learning of the decision by the Ministry of Popular Power for Economics and Finance, the general director of *Ateneo de Caracas*, Carmen Ramia, indicated that the eviction order was based on the organization’s pluralism. In her opinion, this was a consequence of the fact that *El Ateneo de Caracas* accepted “what comes from the opposition as well as that which comes from the government” and emphasized that this was “an institution that [had] its doors open to everyone.”⁶¹⁷ The IACHR expressed its concern about this occurrence, since other theater groups have indicated that the eviction of *Ateneo de Caracas* is one more manifestation of the intentions of governmental officials to stifle “free cultural creation” in Venezuela.⁶¹⁸

iv. Restrictions of the right to personal liberty: The case of Gustavo Azócar

649. On December 28, 2000, journalist Gustavo Azócar, known for having made important denunciations of corruption in the state of Táchira, was denounced before the Attorney General’s Office under the argument that the station that he worked for had neglected to broadcast some publicity notices about the state lottery. The oral phase of these penal proceedings began on May 11, 2009.

650. According to the information received, the trial was postponed for more than nine years, during which the journalist was prohibited from leaving the country, giving statements, or

...continuation

democracy in Venezuela. Comprehensive follow-up report. October 2009), p. 18; El Universal. March 2, 2009. *No debe permitirse la censura. Entrevista a Héctor Manrique* (Censorship must not be permitted. Interview with Héctor Manrique). Available in Spanish at: http://www.eluniversal.com/2009/03/02/til_art_no-debe-permitirse_1286893.shtml; El Nacional. October 6, 2009. *Las conciencias de los teatreros no están en venta* (The consciences of theater workers are not for sale). Available in Spanish at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/102601/Entretimiento/Las-conciencias-de-los-teatreros-no-est%C3%A1n-en-venta.

⁶¹⁷ El Nacional. January 21, 2009. *Ordenan desalojo del Ateneo de Caracas* (Eviction of *Ateneo de Caracas* ordered). Available in Spanish at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/64766/Pol%C3%ADtica/Ordenan-desalojo-del-Ateneo-de-Caracas; Noticias 24. January 21, 2009. *Ordenan desalojar El Ateneo de Caracas el 6 de mayo* (Eviction of *Ateneo de Caracas* ordered on May 6). Available in Spanish at: <http://www.noticias24.com/actualidad/noticia/23174/presidente-%C2%BFque-le-pasa-con-el-ateneo-de-caracas/comment-page-1/>; El Nacional. May 20, 2009. *Chavistas arremeten contra instalaciones del Ateneo* (Chávez supporters attack installations of *Ateneo*). Available in Spanish at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/64506/Pol%C3%ADtica/Chavistas-arremeten-contra-instalaciones-del-Ateneo; El Universal. January 20, 2009. *Cuarenta personas estuvieron a resguardo de la PM por hechos violentos en El Ateneo* (Forty people protected by PM [Metropolitan Police] from violent acts in *El Ateneo*). Available in Spanish at: http://politica.eluniversal.com/2009/01/20/pol_ava_cuarenta-personas-es_20A2199399.shtml; El Universal. May 6, 2009. *Ministro Soto: Desalojo del Ateneo responde a culminación del comodato* (Minister Soto: Eviction of *Ateneo* is result of expiration of loan contract). Available in Spanish at: http://www.eluniversal.com/2009/05/06/cul_ava_ministro-soto:-desal_06A2318385.shtml; Sinergia. *Amenazas a los derechos humanos y a la democracia en Venezuela. Informe comprensivo de seguimiento. Octubre 2009* (Threats to human rights and democracy in Venezuela. Comprehensive follow-up report. October 2009), pp. 19-20. Information provided by Sinergia to the Office of the Special Rapporteur for Freedom of Expression on November 2, 2009 in the context of the 137th Ordinary Period of Sessions of the IACHR.

⁶¹⁸ Frente Cultural José Ignacio Cabrujas. July 1, 2009. *Manifiesto contra el cierre del Ateneo de Caracas* (Declaration against the closing of *Ateneo de Caracas*). Available in Spanish at: <http://www.youtube.com/watch?v=JLeibNHGkg>.

referring to the proceedings in any way. This has prevented him, in practice, from carrying out his profession freely. Various journalistic guilds and organizations have requested that that this trial be resolved soon given that, in their understanding, it has fundamentally political motives since it constitutes retaliation for the denunciations of corruption made by the journalist. These organizations indicate that there is sufficient evidence to disprove the accusation and for that reason, they request a prompt decision. Nevertheless, the process has been postponed indefinitely with the aggravating factor that the journalist has recently been deprived of his liberty for having divulged on his Web public information related to the penal proceedings that was already in the public domain.

651. [In effect], on July 29, 2009, Azócar was taken by members of the National Guard to the Penitentiary of Western Santa Ana in the state of Táchira, because the communicator “obstructed justice” by publishing information about the penal proceedings against him. According to the information received, the information published by the journalist was the faithful reproduction of two reports published in two newspapers of broad circulation several days before.⁶¹⁹

652. Recently, the Special Rapporteurship was informed that on September 1, 2009, the judge in charge of the penal proceedings was dismissed, “a week before the trial was to end,” and that on October 5, 2009, the new judge in charge resolved to “nullify the entire previous trial,” except the decision to imprison the journalist in a public prison for the faithful reproduction of information published in two newspapers.⁶²⁰

- e. **Regulation of the broadcasting spectrum and the application of dispositions on broadcasting**
- i. **The announcement of the revocation or cancellation of 240 broadcasting concessions and the decision to order the suspension of the transmission of 32 radio stations**

653. On July 3, 2009, the Minister of Popular Power for Public Works and Housing, Diosdado Cabello, after indicating that they were in a process of democratization of the broadcasting spectrum, announced that Conatel would open a process to establish the possible revocation of the concessions granted to 240 radio stations. This surprising announcement was followed by the decision to order the suspension of the transmission of 32 radio stations. In the present section, some of the most important antecedents of this process and some of the effects of these decisions on the right to freedom of expression are explained.

654. Article 73 of the Organic Law on Telecommunications provides that: “The rights of use and exploitation of the broadcasting spectrum derived from a concession cannot be transferred or given away, nevertheless, the concession holder may request [Conatel] his or her substitution as

⁶¹⁹ Information provided on November 2, 2009 by Espacio Público to the Office of the Special Rapporteur for Freedom of Expression in the framework of the 137th Ordinary Period of Sessions of the IACHR; El Universal. July 29, 2009. *Periodista Gustavo Azocar es enviado al Centro Penitenciario de Santa Ana* (Journalist Gustavo Azocar sent to Santa Ana Penitentiary). Available in Spanish at: http://internacional.eluniversal.com/2009/07/29/pol_ava_periodista-gustavo-a_29A2560563.shtml; El Nacional. July 29, 2009. *Privado de libertad en audiencia periodista Gustavo Azocar* (Journalist Gustavo Azocar deprived of liberty at hearing). Available in Spanish at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/92138/Regiones/Privado-de-libertad-en-audiencia-periodista-Gustavo-Az%C3%B3car.

⁶²⁰ Information provided on November 2, 2009 by Espacio Público to the Office of the Special Rapporteur for Freedom of Expression in the framework of the 137th Ordinary Period of Sessions of the IACHR; Reporters without Borders. October 8, 2009. *Journalist still held in custody despite quashing of suspect case against him*. Available at: <http://www.rsf.org/Journalist-still-held-in-custody.html>.

owner with the person s/he indicates for this purpose, as long as s/he complies with the conditions and principles established in this Law.”⁶²¹

655. On the other hand, Article 210 of the Organic Law on Telecommunications confers upon Conatel the obligation to establish “through resolution, special transformation schedules for [...] concessions and permits granted in conformity with the foregoing legislation.”⁶²² The process of transformation of the legal titles granted under the previous regulatory framework must be carried out in the two years following the publication of the Organic Law on Telecommunications in the Official Gazette, that is to say, it expired on June 12, 2002.

656. Article 210 of the Organic Law on Telecommunications adds that the transformation of titles must be solicited by the interested party within the time period established by Conatel, which cannot be less than 60 business days. When this time period is expired, Conatel is to publish a list of those who have not responded to the request for transformation, authorizing them an additional period of five business days to address the situation. If this is not done, “the omission [would be] understood as a renunciation of the concessions or permits [...] obtained prior to the publication of the [Organic] Law [on Telecommunications] in the Official Gazette.”

657. Under this framework, on December 4, 2001, Conatel issued Resolution No. 93 (Official Gazette No. 37.342 of December 10, 2001), which established a schedule so that “the persons who unlawfully retain[ed] titles” authorized prior to the Organic Law on Telecommunications could present their requests for transformation. Resolution No. 93 established a period of 60 business days for the presentation of the requests, starting from March 11, 2002.

658. On January 26, 2004, Conatel issued Resolution 357 (Official Gazette No. 37.894 of March 9, 2004), that granted an extension of five working days “starting with and including March 22, 2004,” for the presentation of requests for transformation. Previously, on March 19, 2004, Conatel had published in a newspaper of national circulation the list of natural and legal persons that had not presented their requests for transformation within the time period established in Resolution No. 93.

659. Five years later, on May 29, 2009, Conatel issued Administrative Provision No. 1.419 (Official Gazette No. 39.189 of May 29, 2009), which resolved, “to require natural or legal persons who provide radio or television broadcasting services, as well as not-for-profit community public service radio and television broadcasting, in the entire national territory, to submit to [that body] the information contained in the schedule called ‘Update of Information’ that is available on the official Internet portal of Conatel.” Administrative Provision No. 1.419 granted “a maximum period of fifteen (15) business days to fill out the Update of Information schedule [...] and to submit it with its respective annexes, to [that body], counting from the publication in the press [of that provision], under penalty of the application of the sanctions established in the Organic Law on Telecommunications.”⁶²³ The information must be personally submitted to Conatel by the title holder of the license.

660. As previously mentioned, on July 3, 2009, the Minister of Popular Power for Public Works and Housing, Diosdado Cabello, announced that Conatel would open a process for

⁶²¹ Organic Law on Telecommunications. Official Gazette No. 36.970 of June 12, 2000. Available in Spanish at: http://www.tsj.gov.ve/legislacion/LT_ley.htm.

⁶²² Article 210 makes reference to the Law on Telecommunications of July 29, 1940 (Published in Official Gazette No. 20.248 of August 1, 1940), now repealed.

⁶²³ Conatel. May 25, 2009. Administrative Provision No. 1.419. Available in Spanish at: <http://www.conatel.gob.ve/download/providencias/PROVIDENCIA%20ACTUALIZACI%D3N%20DATOS2.pdf>.

establishing the possible closure of 240 concessions granted to radio broadcasters that had not updated their information before that organ in conformity with that provided by Administrative Provision No. 1.419. In his speech, Minister Diosdado Cabello declared the following: "Of the private concessionaries of AM radio, [...] 86 have not responded, while in the FM signals, 154 stations have not complied with the stipulated procedure. [...] for those who have not passed through Conatel, administrative proceedings will immediately be opened against them for the restitution of all of their concessions to the State. They were not, are not interested, they want to keep themselves at the margin of the Law. We are acting in this case in strict accordance with the Law. Whoever is not updated and has not passed through Conatel must now assume responsibility." The official added that the Venezuelan government was "pledged to democratizing the broadcasting spectrum" and to eliminating the "media oligopoly."⁶²⁴

661. On July 9, 2009, the Minister Diosdado Cabello ratified the adoption of these measures before the National Assembly. According to the Minister, the process of updating information showed that in various cases: (a) the original concessionaries had died and the concessions were being utilized by their relatives, or (b) the original concessionaries had given their concessions to third parties who were utilizing them without authorization. In his presentation to the National Assembly, Minister Diosdado Cabello emphasized the following:

The broadcasting space has been one of the few areas in which the [Bolivarian] Revolution has not been felt. [...] Here in Venezuela 27 families have more than 32% of the radioelectric spectrum for themselves, and still the brazen ones of the Venezuelan Chamber of the Broadcasting Industry claim that this is not oligopoly [...]. They attack us and they will attack us, alleging that this is an abuse against freedom of expression. Here there is no abuse against freedom of expression [...]. And as the Father Camilo Torres said: If the dominant class, the oligarchy does not willingly cede its privileges, the people must oblige them to do so by force. And in this case in Venezuela the people means the Government and we are going to do it. We are going to do it because, on the contrary, here they are preparing for us a coup similar to that of Honduras and they are going to start transmitting cartoon television stations and extinguish the radio stations. [...] If the issue of the business of radio and television stations is so painful, fine, do not exploit it, do not make use of it, return it to the State; if it causes you losses, return it to the State, the State will receive it with no problem. We are not going to sit down to negotiate to see what they are going to do to earn more or how they are going to have more stations. We are not going to do it, we have reasons of principle and, moreover, ethical reasons not to do it: they are the same from the year 2002, they are the same who would have been happy if many of us had committed treason against the President, we [would] almost surely have a program on *Globovisión*, almost surely we [would] have a program on one of those stations that play at the destabilization of Venezuela.⁶²⁵

⁶²⁴ The State has indicated that, currently, the radio broadcasting spectrum is occupied by 794 FM radio stations, 210 AM radio stations, and 108 television stations. Embassy of the Bolivarian Republic of Venezuela in the United States. August 4, 2009. *The facts about recent media events in Venezuela*. Available at <http://www.embavenez-us.org/factsheet/Recent-Media-Events-FS-US.pdf>. Conatel. July 3, 2009. *Ministro Diosdado Cabello anuncia apertura de procedimiento administrativo de CONATEL a 86 emisoras AM y 154 FM, luego que no hicieran la actualización de datos ante el organismo* (Minister Diosdado Cabello announces opening of administrative proceedings by Conatel against 86 AM and 154 FM radio stations, after they failed to update information before the institution). Available in Spanish at: http://www.conatel.gob.ve/noticia_comp.asp?numn=2654; Reporters without Borders. July 21, 2009. *Government steps up hounding of private media through new laws and regulations*. Available at: <http://www.rsf.org/Government-steps-up-hounding-of-33926.html>; El Mundo. July 3, 2009. *Conatel prohíbe propagandas opositoras y revoca 284 permisos de transmisión* (Conatel prohibits opposition propaganda and revokes 284 transmission permits). Available in Spanish at: <http://www.elmundo.es/elmundo/2009/07/03/comunicacion/1246645749.html>; El Tiempo. July 4, 2009. *Cabello anunció revocatoria de concesión a 240 radioemisoras* (Cabello announced the revocation of the concessions of 240 radio stations). Available in Spanish at: <http://www.eltiempo.com.ve/noticias/imprimir.asp?id=195283>.

⁶²⁵ National Assembly of the Bolivarian Republic of Venezuela. July 9, 2009. *Punto de información del ciudadano Ministro del Poder Popular para las Obras Públicas y Vivienda Diosdado Cabello para referirse a la situación actual de los servicios de radiodifusión sonora, televisión abierta y difusión por suscripción* (Point of information from citizen Minister of

662. The IACHR expresses its concern about the declarations of Minister Cabello, which could lead to the conclusion that, in spite of the technical reasons set forth to justify the massive closures, the measures could have been motivated by the editorial lines of the affected stations and by the aim of creating a state communications monopoly.

663. On July 14, 2009, the National Assembly agreed to back the government's measures for the regulation of radio and television concessions. The president of the Permanent Commission on Science, Technology, and Social Communication of the National Assembly, [Congressman] Manuel Villalba, stated that the measures announced by Minister Cabello had received criticism and questions "only from those broadcasting sectors that are at the margin of the law and that did not respond to the National Telecommunications Commission when it convoked them." The deputy added the following: "Minister Cabello, what he is doing is complying with the law. Article 73 of the Organic Law on Telecommunications supports every one of his announcements."⁶²⁶

664. On July 31, 2009, Minister Diosdado Cabello announced the names of 34 communications media, including 32 of the 240 radio stations previously referred to, that Conatel had ordered to cease their transmissions immediately. The Minister stated that in some of these cases, the closure was due to the fact that family members or associates of the deceased original concessionaries were the ones who contacted Conatel for the transformation of the titles authorized under the prior legislation, and that, in accordance with Article 73 of the Organic Law on Telecommunications and Resolution No. 93, only the title holder of the concession is legitimately authorized to make such a request. According to the Minister, in circumstances like those outlined, it is appropriate that the concession be returned to the State and not that the relatives and associates of the deceased title holder continue operating "illegally."⁶²⁷

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Popular Power for Public Works and Housing Diosdado Cabello to refer to the current situation of radio, broadcast television, and subscription services), pp. 2, 8-11. Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=cat_view&gid=41&Itemid=124.

⁶²⁶ National Assembly of Venezuela. July 14, 2009. *Medidas para acabar con el latifundio mediático están contempladas en las leyes venezolanas* (Measures to end the media oligopoly are contemplated in the Venezuelan laws). Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_content&task=view&id=22562&Itemid=27.

⁶²⁷ However, the State clarified that the closure affected only the transmissions through the radio broadcasting spectrum, meaning that the affected communications media could continue transmitting over the Internet. Embassy of the Bolivarian Republic of Venezuela in the United States. August 4, 2009. *The facts about recent media events in Venezuela*. Available at <http://www.embavenez-us.org/factsheet/Recent-Media-Events-FS-US.pdf>. See also: Agencia Bolivariana de Noticias. July 31, 2009. *Conatel anula concesiones a 34 estaciones radioeléctricas del país* (Conatel nullifies concessions of 34 broadcasting stations in the country). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=193093&lee=4>; Reporters without Borders. August 2, 2009. *34 broadcast media shut down at government's behest*. Available at: <http://www.rsf.org/34-broadcast-media-shut-down-at.html>; Agencia Bolivariana de Noticias. August 7, 2009. *Operadores que salieron del aire sabían de su situación ilegal desde 2002* (Operators that went off the air knew about their illegal situation since 2002). Available in Spanish at: http://www.abn.info.ve/go_news5.php?articulo=193895&lee=15; Conatel. August 3, 2009. *Apoyo popular a las decisiones del Gobierno Nacional para democratizar el espectro radioeléctrico* (Popular support for the decisions of the National Government to democratize the radio broadcasting spectrum). Available in Spanish at: http://www.conatel.gob.ve/noticia_comp.asp?numn=2661; Globovisión. August 1, 2009. *Líderes políticos y sociedad civil protestaron por cierre de emisoras* (Political leaders and civil society protest closure of broadcasting stations). Available in Spanish at: <http://www.globovision.com/news.php?nid=123404>; Globovisión. August 1, 2009. *Presidente Chávez pidió un aplauso para Diosdado Cabello por el cierre de las emisoras* (President Chávez requested applause for Diosdado Cabello for the closure of broadcasting stations). Available in Spanish at: <http://www.globovision.com/news.php?nid=123427>; Conatel. August 1, 2009. *Notificadas estaciones de radiodifusión* (Broadcasting stations notified). Available in Spanish at: http://www.conatel.gob.ve/noticia_comp.asp?numn=2660; Globovisión. August 1, 2009. *Salieron del aire 34 emisoras de radio por orden del Gobierno Nacional* (34 radio stations went off the air by order of the National Government). Available in Spanish at: <http://www.globovision.com/news.php?nid=123401>; Globovisión. July 31, 2009. *Cabello anuncia salida del aire*

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665. On the other hand, on September 5, 2009, the Minister Diosdado Cabello announced the closure of another 29 radio stations. The measures, however, have not been carried out. It is worth mentioning that as of the date of this report, the State has not made public the names of the 208 remaining radio stations that, according to Minister Diosdado Cabello,⁶²⁸ could find themselves affected with closure resolutions.⁶²⁹ The IACHR expresses its concern about the intimidating effect that these general declarations about the closure of stations may produce, given the way in which such proceedings have been moving forward.

666. In relation to this point, the IACHR recognizes, as the Special Rapporteurship indicated in its pronouncement of June 26, 2009, that the states have the power to regulate the radio waves and to establish procedures to ensure compliance with the legal dispositions. In any case, this state power must be exercised with strict adherence to the laws and to due process, good faith, and respect for the inter-American standards that guarantee every person's right to freedom of expression.⁶³⁰ In an issue of such sensitivity for freedom of expression as regulation, assignment, or oversight of the use of broadcasting frequencies, the State must ensure that none of its actions is motivated or aimed at rewarding media that agree with the government's policies or at punishing those who are critical or independent.

667. According to information received, some of the radio stations affected by the decision to revoke the licenses had opportunely informed the State about relevant developments (such as the death of one of the title holders of the concession), had opportunely requested the transformation of the titles, had operated publicly, and had maintained relations with the State through the payment of taxes, the certification of technical requirements or adequations, etc. In some cases, the death of one of the partners of one the concessionary stations had given rise to the corresponding transformation of the title; however, in other cases, the State had not opportunely replied to the corresponding request for transformation. According to the data, the way in which the State had been relating to these stations generated in their administrators the confidence that their requests would be resolved following the legal norms in force according to established practice and

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de 34 emisoras (Cabello announces that 34 broadcasting stations are going off the air). Available in Spanish at: <http://www.globovision.com/news.php?nid=123396>; Agencia Bolivariana de Noticias. August 15, 2009. *Democratización del espectro radioeléctrico permitirá diversificar contenidos* (Democratization of the radio broadcasting spectrum permits the diversification of content). Available in Spanish at: http://www.abn.info.ve/go_news5.php?articulo=195071&lee=4. In the same sense, on September 15, 2009, the deputy Manuel Villalba affirmed that it was "necessary to clarify that [these] broadcasting stations were outside the law as it is expressed in the Organic Law on Telecommunications," and that what they "[were] currently trying to set up [was] a matrix of national and international opinion to make believe that the stations were closed by the Government." The parliamentarian added that "[these] media do not say that the concessions were revoked because the stations were operating outside the current legal framework." Agencia Bolivariana de Noticias. September 15, 2009. *Emisoras a las que se les revocó la concesión estaban fuera de la legalidad* (Broadcasting stations with revoked concessions were outside the law). Available in Spanish at: http://www.abn.info.ve/go_news5.php?articulo=198854&lee=1.

⁶²⁸ Conatel. July 3, 2009. *Ministro Diosdado Cabello anuncia apertura de procedimiento administrativo de CONATEL a 86 emisoras AM y 154 FM, luego que no hicieran la actualización de datos ante el organismo* (Minister Diosdado Cabello announces opening of administrative proceedings by CONATEL against 86 AM and 154 FM stations, after they did not update their information with that body). Available in Spanish at: http://www.conatel.gob.ve/noticia_comp.asp?numn=2654.

⁶²⁹ El Universal. September 7, 2009. *Gobierno está dando la espalda al país al silenciar más medios*. (Government is turning its back on the country by silencing more media). Available in Spanish at: http://politica.eluniversal.com/2009/09/07/pol_art_gobierno-esta-dando-1559313.shtml; Miami Herald. September 7, 2009. *Gobierno prepara el cierre de otras 29 emisoras de radio* (Government prepares the closure of another 29 radio stations). Available in Spanish at: <http://www.miamiherald.com/news/americas/venezuela/story/1222213.html>.

⁶³⁰ Office of the Special Rapporteur—IACHR. June 26, 2009. *Press Release R41/09*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=751&IID=1>.

without relevance being attached to the media's editorial line. Article 210 of the Organic Law on Telecommunications provides that any transformation of titles must be carried out based on principles of "transparency, good faith, equality, and promptness."⁶³¹ Nevertheless, as has been explained, the decisions were adopted without considering any of these conditions, without permitting prior challenges to the decision, and alleging reasons that have a close relationship with the independence and the editorial line of the private communications media.

668. On this point, the IACHR reminds the State that decisions that are so sensitive for freedom of expression such as those dealing with the closure, revocation, or extinction of broadcasting concessions and permits, must be the result of a specific, open administrative proceeding, in which due process and legitimate defense are fully guaranteed as prior conditions for the adoption of a decision, and in which it is demonstrated that whoever is utilizing the spectrum neither has nor has the possibility of having the right to such use or has incurred in one of the legal causes that give rise to the decision. Additionally, the assignment of new frequencies must be subject to transparent, pre-established, and non-discriminatory rules that allow for a fair competition under conditions of equality.

669. In no case is it acceptable in light of the American Convention, and it would corrupt any proceeding, for the public functionaries in charge of applying the legal norms in this subject area to take into consideration discriminatory criteria, such as the editorial line, to adopt their decisions.⁶³²

670. The Inter-American Court has established that "[i]t is the mass media that make the exercise of freedom of expression a reality. This means that the conditions of its use must conform to the requirements of this freedom, with the result that there must be, *inter alia*, a plurality of means of communication, the barring of all monopolies thereof, in whatever form, and guarantees for the protection of the freedom and independence of journalists."⁶³³

671. In the present case, it concerns the IACHR that, after several years of complete inaction, the authorities announced, in a context of tension between private media and the government, mass media closures, in a speech in which made constant reference to the editorial content of the private media that could be affected. In effect, as has already been indicated, the affirmations of the Minister of Popular Power for Public Works and Housing suggest that the editorial line of these media would be one of the motivations for the adoption of the revocation or closure measures, independently of the technical reasons that are being used in the corresponding administrative actions.

⁶³¹ Organic Law on Telecommunications. Official Gazette No. 36.970 of June 12, 2000. Available in Spanish at: http://www.tsj.gov.ve/legislacion/LT_ley.htm.

⁶³² In the same sense, in Press Release No. 55/09, the IACHR stated that: "By a July 31, 2009 decision of the National Council of Telecommunications (CONATEL), 34 radio stations operating in AM and FM were forced to cease broadcasting immediately. The decisions that revoked the permits or licenses were allegedly based on technical reasons related to the massive lack of compliance with some of the regulations of the telecommunications law. According to the information received, the competent authorities announced that one of their reasons to proceed with these closures of radio and television stations was that these stations "play at destabilizing Venezuela." The IACHR is concerned by the existence of elements that suggest that the editorial stance of these media outlets have been one of the reasons for their closure. The Commission recognizes the Government's competency to regulate radio frequencies, but emphasizes that this competency has to be used with strict observance of due process and with respect to the Inter-American standards that guarantee freedom of expression of all persons. In particular, the limitations imposed to freedom of expression must not incite intolerance, nor be discriminatory or have discriminatory effects or be based on the editorial line of the media." IACHR. August 3, 2009. *Press Release No. 55/09*. Available at: <http://www.cidh.oas.org/Comunicados/English/2009/55-09eng.htm>.

⁶³³ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 34.

672. The IACHR expresses its deep concern over these declarations and exhorts the State to respect the standards described above when adopting decisions of this nature.⁶³⁴ The forgoing becomes more important if it is taken into account that on August 3, 2009, the IACHR stated clearly that since 2000 “the IACHR has observed a gradual deterioration [...] [of] the exercise of [the right to freedom of expression] in Venezuela, as well as a rising intolerance of critical expression.”⁶³⁵

673. Article 13.3 of the American Convention establishes that: “The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.” In the same sense, Principle 13 of the Declaration of Principles establishes that “the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

674. Finally, the IACHR reiterates that the power to assign concessions, licenses, or permits for the use of the broadcasting spectrum must not be turned into a mechanism for indirect censorship or discrimination based on the editorial line, nor a disproportionate obstacle to the exercise of freedom of expression protected by Article 13 of the American Convention. Additionally, all assignments or restrictions must be made according to rules that are clear, pre-established, and non-discriminatory, that ensure the existence of broadcasting that is independent of the government, free of illegitimate pressures, plural, and diverse. The IACHR emphasizes that the creation of public or private monopolies or oligopolies, open or veiled, compromises the right to freedom of expression. As previously stated, “the states, in administering the frequencies of the radio spectrum, must assign them in accordance with democratic guidelines that guarantee equal opportunity of access to all individuals.”⁶³⁶ This is the sense of Principle 12 of the Declaration of Principles, which provides that “[t]he concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”

⁶³⁴ On the relevance of the context for the study of this type of cases, the Inter-American Court has stated that: “When evaluating an alleged restriction or limitation to freedom of expression, the Court should not restrict itself to examining the act in question, but should also examine this act in the light of the facts of the case as a whole, including the circumstances and context in which they occurred. Taking this into consideration, the Court will examine whether, in the context of the instant case, there was a violation of Mr. Ivcher Bronstein’s right to freedom of expression.” I/A Court H.R., *Case of Ivcher-Bronstein v. Peru*. Judgment of February 6, 2001. Series C No. 74, para.154.

⁶³⁵ IACHR. August 3, 2009. *Press Release No. 55/09*. Available at: <http://www.cidh.oas.org/Comunicados/English/2009/55-09eng.htm>.

⁶³⁶ IACHR. *Annual Report 2002*. Volume III: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter IV: Freedom of Expression and Poverty, para. 45. Available at: <http://www.cidh.oas.org/relatoria/docListCat.asp?catID=32&IID=1>.

ii. The possible intervention in broadcasting content through the regulation of the legal concept of “Independent National Producers”

675. Article 14 of the Law on Social Responsibility in Radio and Television establishes the obligation of the communications media to broadcast daily a total of five hours and 30 minutes of audiovisual material from Independent National Producers. In this regard, the cited norm indicates that: “[t]he providers of radio and television services must broadcast daily, during the hours of general viewership, a minimum of seven hours of programs of national production, of which a minimum of four hours must be of independent national production. Also, they must disseminate daily, during the hours of supervised viewership, a minimum of three hours of programs of national production, of which a minimum of an hour and a half must be of independent national production. [...] In the hours reserved for the broadcasting of programs of independent national production, the providers of radio services will give priority to cultural, educational, and informative programs.”

676. Article 13 of the Law on Social Responsibility in Radio and Television considers that a national audiovisual or audio production is independent “when [it is] made by independent national producers that are included in the registry maintained by the regulating entity in the area of communication and information of the National Executive.”⁶³⁷ The so-called “Register of Independent National Producers” is under the authority of the Ministry of Popular Power for Communication and Information, which also issues and revokes the certifications that accredit this condition.⁶³⁸

677. On the other hand, Article 15 of the Law on Social Responsibility in Radio and Television creates the National Commission on Television Programming and the Commission on Radio Programming, which have as their function “to establish the mechanisms and conditions of the assignation of airtime to independent national producers.” Both commissions are made up of “one representative of the regulating body in the area of communication and information of the National Executive, who will preside over it, a representative of providers of radio services, a representative of the independent national producers, and a representative of the organizations of

⁶³⁷ Ministry of Popular Power for Communication and Information. Independent National Production. Available in Spanish at: http://www.leyresorte.gob.ve/pni/99/191474/produccion_nacional_independiente.html.

On the other hand, Article 13 of the Law on Social Responsibility in Radio and Television adds the following:

A natural or legal person who meets the following requirements shall be considered an independent national producer:

1. A natural person: (a) Resides and is domiciled in the territory of the Bolivarian Republic of Venezuela, in conformity with the law; (b) Is not a shareholder, either personally or through a third party, of any provider of radio or television services; [(c) Is not a shareholder of a legal persons that are themselves shareholders, partners or associates of any radio or television service provider;] (d) Does not occupy a management position or position of confidence, in accordance with the Organic Law on Employment, in any provider of radio or television services; (d) Declares whether s/he maintains a subordinate position with any provider of radio or television services; (f) Is not a functionary of one of the organs and public entities that regulate the activities that are the object of the present Law, in accordance with the respective Regulations.

2. A legal person: (a) Is not a State company, autonomous institute, or other national, state, or municipal public entity; (b) Is domiciled in the Bolivarian Republic of Venezuela, in conformity with the law; (c) Is under the control and management of natural persons of Venezuelan nationality or residency who comply with the requisites set forth in the previous numbered section; (d) Does not have shareholder participation in any provider of radio or television services; and (e) Declares whether it has contractual links separate from the independent national production or a subordinate relationship with any provider of radio or television services.

In any case, whether dealing with a natural person or a legal person, it is required that they possess the experience to or demonstrate capability of making quality national productions.”

⁶³⁸ Ministry of Popular Power for Communication and Information. Resolution No. 037 of August 18, 2009 (Official Gazette No. 39.259 of September 8, 2009). Available in Spanish at: http://www.leyresorte.gob.ve/pni/99/191474/produccion_nacional_independiente.html.

users. The decisions of this commission are binding and must be made by majority vote, in the case of a tie, the President of the commission will have a double vote.”

678. According to the information received, in support of the legal framework described in the previous paragraphs, each communications media negotiated separately with the Independent National Producers, without state intervention, in order to decide which programs to transmit during the schedule established in the Law on Social Responsibility in Radio and Television for this purpose.⁶³⁹

679. Nevertheless, the IACHR learned that on September 16, 2009, the Commission on Radio Programming of the Ministry of Popular Power for Communication and Information approved Resolution No. 047, Norms Regarding the Mechanisms and Conditions of Assignment of Airtime to Independent National Producers in Providers of Radio Services (Official Gazette No. 36.269 of September 22, 2009).⁶⁴⁰

680. The IACHR observes that Resolution No. 047 proposes the creation of a “Catalogue of Independent National Production” which contains the “ordered list of pilot programs of Independent National Production that comply with the dispositions of the Law on Social Responsibility in Radio and Television and other norms that regulate the subject matter of this law, developed by the Ministry of Popular Power for Communication and Information, which constitute the offerings of programs that will be the objects of assignation.”

681. In the same sense, the IACHR observes with concern that Articles 8 and 9 of that resolution confer upon the Ministry of Popular Power for Communication and Information a mechanism for direct assignation for the transmission of programs that form part of the Catalogue of Independent National Production. By virtue of this power, the Ministry for Communication and Information can impose “upon the providers of radio services,” for three and a half hours a day, the programs that it considers necessary to “guarantee the democratization of the radio broadcasting spectrum, plurality, and creative freedom.” Therefore, in practice, this resolution confers upon the Executive Branch the power to impose content directly for three and a half hours of programming daily on all the broadcasters in the country.

682. In relation to the two remaining hours of obligatory transmission of programs of Independent National Producers, Article 10 of Resolution No. 47 provides that “once the Mechanism for Assignation of Airtime by Direct Assignation is established, the Ministry of Popular Power for Communication and Information, with the aim of covering the two remaining hours of Independent National Production during general viewership hours, will hold the Table of Agreements where independent national producers will offer their priority programs from the Catalogue that have not been assigned through the Direct Assignation to the different providers of radio services, setting conditions for negotiation in the framework established in the Law on Social Responsibility in Radio and Television, and the present Norms.”

⁶³⁹ Reporters without Borders. Information received in the e-mailbox of the Office of the Special Rapporteur for Freedom of Expression on September 24, 2009.

⁶⁴⁰ Ministry of Popular Power for Communication and Information. September 24, 2009. *Normas sobre los Mecanismos y las Condiciones de Asignación de los Espacios a los Productores Nacionales Independientes en los Prestadores de Servicios de Radio* (Norms on the Mechanisms and the Conditions of Assignment of Airtime to National Independent Producers in Providers of Radio Services). Available in Spanish at: http://www.leyresorte.gob.ve/notas_de_prensa/104/192253/normas_sobre_los.html.
http://www.minci.gob.ve/doc/normasmecanismos_y_condicionesradio.pdf.

683. It should also be stated that Article 22 of Resolution No. 047 establishes that failure to comply with these dispositions on the part of providers of radio services “will give rise to the sanctions established in [Article 28 of] the Law on Social Responsibility in Radio and Television.” Under this scheme, the communications media can be sanctioned with “a fine of from one percent to two percent of the gross income earned in the fiscal year immediately preceding that in which the offense was committed, as well as the [ceding] of airtime for the broadcasting of cultural and educational messages.”

684. All of these measures must be applied by the Ministry of Popular Power for Communication and Information “in a period of no more than four months, counting from their publication in the Official Gazette,” that is to say, by January 22, 2010.

685. The mentioned norms have a double effect on the right to freedom of expression. In the first place, the right to certify what type of material can be included within the category of independent national production taking into account the content of such material is clearly a mechanism that can lead to prior censorship of national production. In effect, it will be the State that previously defines which independent national producers can broadcast their productions in the schedules established for this and which will not have this privilege. This mechanism compromises the State’s duty of neutrality with respect to content, affects the right of all independent national producers not to be censored for the content of their works and the right of the public to obtain plural and diverse information, distinct from that which state functionaries consider must be disseminated.

686. Secondly, these dispositions authorize the State to impose on communications media the specific content of the programming that must be broadcast. In relation to this point, the IACHR reminds the State that any obligation to transmit content that is not decided upon by a communications media must meet the strict conditions described in Article 13 of the American Convention to constitute an acceptable limitation on the right to freedom of expression. Additionally, the exercise of this power must be strictly necessary to satisfy urgent requirements in matters of evident public interest.

687. Article 13.2 of the American Convention expressly provides that the exercise of freedom of expression “shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: (a) respect for the rights or reputations of others; or (b) the protection of national security, public order, or public health or morals.” This prohibition of censorship has its only exception in that provided under Article 13.4 of the American Convention, according to which, “[n]otwithstanding the provisions of paragraph 2 [...], public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.”

688. Interpreting the norms of the Convention, the Declaration of Principles provides in Principle 5 that “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression;” and in Principle 7 that “[p]rior conditioning of expressions, such as truthfulness, timeliness or impartiality, is incompatible with the right to freedom of expression recognized in international instruments.”

689. Bearing in mind these considerations, the IACHR exhorts the State to bring its legislation relating to independent national production into conformity with the described standards.

f. Grave violations of the rights to life and personal integrity based on the victims' exercise of freedom of expression

690. During 2008 and 2009, there were two reported homicides of journalists carried out by unidentified individuals as well as serious acts of physical aggression and threats against journalists and media owners of all different editorial lines in Venezuela. The foregoing is particularly troubling given that, in some of these cases, as will be subsequently explained in detail, the parties affected by the acts of violence were the beneficiaries of active provisional measures granted by the Inter-American Court.

691. The IACHR considers it important to note that the majority of the acts referred to in this section involved action by third parties who were not public functionaries. In some cases, the attacks were carried out by supposed supporters of President Hugo Chávez; in others, the episodes of violence involved journalists and communications media linked to the government who were attacked by supposed members of the opposition. What these facts show, nevertheless, is the serious atmosphere of polarization and intimidation in which media and journalists must carry out their work.

i. Murders presumably linked with the exercise of journalistic activity

692. During 2008, the vice president of the newspaper *Reporte Diario de la Economía*, Pierre Fould Gerges, was murdered. According to the information obtained by the IACHR and its Special Rapporteurship, on June 2, 2008, two unidentified persons riding on a motorcycle fired at least ten shots at the executive, who was at a gas station. Prior to the crime, various editors of the newspaper had been threatened in relation to the editorial line of the newspaper, which denounced acts of corruption. After the crime, the attorney who represents the *Reporte Diario de la Economía* also reported receiving threats from private criminal groups. As it did in its 2008 Annual Report, the IACHR again exhorts the State to investigate this crime so that those responsible will be duly identified, judged, and sanctioned.⁶⁴¹

693. The IACHR and its Special Rapporteurship also reiterate their condemnation of the murder of Orel Sambrano, editor of the weekly *ABC Semana* and of *Radio América*, which occurred on January 16, 2009 in the city of Valencia in the state of Carabobo. The information received indicated that that two unidentified persons traveling on a motorcycle shot him in the nape of the neck. Sambrano was known for denouncing acts related to drug trafficking and local corruption, for which reason some local journalists have stated that he was murdered in retaliation for his work. The IACHR was informed that on February 17 and July 23, 2009, two of the presumed perpetrators and masterminds of the crime were detained.⁶⁴² The IACHR values positively this advance in the

⁶⁴¹ Office of the Special Rapporteur—IACHR. *Press Release No. R24/08*. June 5, 2008. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=731&IID=1>; Committee to Protect Journalists. June 3, 2008. *Newspaper executive slain in Caracas*. Available at: <http://cpj.org/2008/06/newspaper-executive-slain-in-caracas.php>; Reporters without Borders. June 4, 2008. *Asesinado a disparos en Caracas el vicepresidente de un diario económico, su hermano está amenazado de muerte* (Vice president of an economic newspaper shot and killed in Caracas, his brother is receiving death threats). Available in Spanish at: http://www.rsf.org/article.php3?id_article=27306.

⁶⁴² Office of the Special Rapporteur—IACHR. *Press Release No. R01/09*. January 22, 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=737&IID=1>; Espacio Público. *Situación del derecho a la libertad de expresión e información en Venezuela 2008. Narcotráfico: censura a sangre y balas. El asesinato de Orel Sambrano* (Situation of the right to freedom of expression and information in Venezuela 2008. Drug trafficking: censorship with blood and bullets. The murder of Orel Sambrano), pp. 47-58. Available in Spanish at: <http://www.espaciopublico.info/images/documentos/informe%202008.pdf>; Committee to Protect Journalists. January 20, 2009. *Reporter who covered drugs, corruption is slain*. Available at: <http://cpj.org/2009/01/reporter-who-covered-drug-trade-corruption-is-slain.php>; Inter-American Press Association. January 9, 2009. *Condena la SIP asesinato de periodista venezolano* (IAPA condemns murder of Venezuelan journalist). Available in Spanish at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4120&idioma=sp; Reporters without

clarification of the facts and urges the State to adopt all the measures at its disposal to guarantee the life and personal integrity of social communicators in Venezuela. On the other hand, it exhorts the State to continue investigating this act, and to try and punish all those responsible for this crime.

ii. Acts of physical aggression and threats presumably linked with the exercise of journalistic activity

694. With respect to acts of aggression by state authorities, on July 23, 2008, the journalist Dayana Fernández of the newspaper *La Verdad* and the photographer Luis Torres were attacked by municipal agents in the state of [Zulia] while they were working on a piece about environmental contamination in the area.⁶⁴³

695. On February 4, 2009, members of the Municipal Police of Valencia and the National Army snatched the camera of Wilmer Escalona, a photographer for the newspaper *NotiTarde*, while he was covering a story at a hospital. According to the information received, the officials erased the photographs and obliged the photojournalist to leave the hospital.⁶⁴⁴

696. On July 22, 2009, members of Detachment 88 of the National Guard seized audiovisual material from journalistic teams from *RCTV [Internacional]* and *Globovisión* in Puerto Ordaz in the state of Bolívar. The communicators were covering the assembly of workers of the company Siderúrgica del Orinoco (Sidor). According to the information received, the measure was taken because the journalists were in the company headquarters without authorization, although they had been invited by the workers. The seized material was handed over to the Office of the Military Prosecutor, which was in charge of evaluating whether the recorded images compromised the security of the State.

697. The IACHR received information indicating that on the same July 22, 2009, members of the National Guard in San Cristóbal in the state of Táchira, had detained, for a period of one hour, Zulma López, a correspondent for *RCTV Internacional* and the newspaper *El Universal*, and Thaís Jaimes, a journalist with the newspaper *El Panorama*, while they were taking photographs of a construction zone guarded by military personnel. During the incident, members of the National Guard destroyed the viewfinder of the camera belonging to photojournalist Jesús Molina. On July 28, 2009, the Special Rapporteurship sent a communication to the State requesting specific

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Borders. February 20, 2009. *Former policeman arrested on suspicion of participating in journalist's murder*. Available at: <http://www.rsf.org/Former-policeman-arrested-on.html>; Instituto Prensa y Sociedad. February 25, 2009. *Detienen a ex policía por crimen de periodista, buscan a otros dos sospechosos* (Former policeman detained for crime against journalist, two other suspects sought). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1775>; Committee to Protect Journalists. February 13, 2009. *Former police officer arrested in Venezuelan murder*. Available at: <http://cpj.org/2009/03/former-police-officer-arrested-in-venezuelan-journ.php>; Office of the Attorney General of the Bolivarian Republic of Venezuela. July 23, 2009. *Privado de libertad presunto implicado en muerte del periodista Orel Sambrano* (Suspect in murder of journalist Orel Sambrano jailed). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa2307V.htm>.

⁶⁴³ Instituto Prensa y Sociedad. July 30, 2008. *Funcionarios municipales agreden a periodistas en [Zulia]* (Municipal functionaries attack journalists in Zulia). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1549>; Reporters without Borders. July 29, 2008. *Authorities order judicial investigation into newspaper reporter's detention*. Available at: <http://www.rsf.org/Authorities-order-judicial.html>.

⁶⁴⁴ Instituto Prensa y Sociedad. February 10, 2009. *Policías y militares arrebatan cámara a reportero y borran fotos* (Police and military seize reporter's camera and erase photos). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1733>; Inter-American Press Association. *Report on Venezuela. Midyear Meeting of March 13-16, 2006. Asunción, Paraguay*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&infoid=362&idioma=us.

information about these occurrences. As of the date of this report, no response to this request has been received.⁶⁴⁵

698. On August 5, 2009, *Globovisión* cameraman Robmar Narváez, and his assistant Jesús Hernández, were detained by members of the 13th Infantry Brigade of the Army of the city of Barquisimeto in the state of Lara, while they were filming a mural in which the images were painted over with red spots and gag symbols. The information received indicates that the military personnel impeded the filming and approached Narváez to ask for his press credentials. The cameraman, however, showed only an identification card. Narváez and his assistant were then taken to a military base where they were detained for about three hours.⁶⁴⁶

699. With regard to acts of violence committed by private persons, on August 22, 2008 Guillermo Torín, audio operator for the *Fundación Televisora de la Asamblea Nacional* (ANTV), was hit by a group of supporters of the mayor of Chacao when he was going to register his candidacy at the headquarters of the National Electoral Council in Caracas. Torín, who suffered several broken ribs, the perforation of a lung, and the fracture of his right elbow, wore a vest that identified him as part of the journalistic team of a state media.⁶⁴⁷

700. On October 16, 2008, unidentified individuals threw a teargas bomb into the building where Leopoldo Castillo, host of the program *Aló Ciudadano*, a program that is broadcast by the television channel *Globovisión*, lives.⁶⁴⁸

⁶⁴⁵ El Universal. July 23, 2009. *Denuncian ante OEA y ONU agresiones contra periodistas* (Acts of aggression against journalists denounced before the UN and the OAS). Available in Spanish at: http://www.eluniversal.com/2009/07/23/pol_art_denuncian-ante-oea-y-1483547.shtml; Globovisión. July 22, 2009. *CNP denunció agresiones de la GN a periodistas en Táchira y Bolívar* (CNP [National Journalists' Association] denounced acts of aggression against journalists by the GN [National Guard] in Táchira and Bolívar). Available in Spanish at: <http://www.globovision.com/news.php?nid=122524>; El Universal. July 22, 2009. *GN retuvo por una hora a tres periodistas en Táchira* (GN [National Guard] detained three journalists for one hour in Táchira). Available in Spanish at: http://www.eluniversal.com/2009/07/22/pol_art_gn-retuvo-por-una-ho-1482807.shtml; Colegio Nacional de Periodistas de Venezuela. July 22, 2009. *CNP condena agresiones de la GN contra periodistas en Bolívar y Táchira* (CNP [National Journalists' Association] condemns acts of aggression by GN [National Guard] against journalists in Bolívar and Táchira). Available at: <http://www.cnpven.org/data.php?link=2&expediente=236>.

⁶⁴⁶ Instituto Prensa y Sociedad. August 6, 2009. *Camarógrafo y asistente de Globovisión retenidos por más de tres horas en base militar* (Globovisión cameraman and assistant detained for more than three hours on military base). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1941>; Globovisión. August 5, 2009. *Efectivos militares retuvieron a camarógrafo de Globovisión en Lara* (Military personnel detained Globovisión cameraman in Lara). Available in Spanish at: <http://www.globovision.com/news.php?nid=123663>.

⁶⁴⁷ Office of the Attorney General of the Bolivarian Republic of Venezuela. August 22, 2008. *Ministerio Público investiga agresiones contra trabajador de ANTV por presuntos seguidores del alcalde de Chacao* (Office of the Attorney General investigates acts of aggression against ANTV worker by presumed supporters of the mayor of Chacao). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2008/prensa2208V.htm>; Instituto Prensa y Sociedad. August 20, 2008. *Agreden a empleado de canal ANTV* (Employee of ANTV channel attacked). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1578>; National Assembly of the Bolivarian Republic of Venezuela. August 22, 2008. *Trabajadores de ANTV solicitaron ante la Fiscalía investigar agresión contra técnico de sonido* (ANTV workers request the Attorney General's Office to investigate aggression against sound technician). Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_content&task=view&id=19955&Itemid=27; El Universal. August 20, 2008. *Condenan agresión a trabajador de ANTV* (Aggression against ANTV worker condemned). Available in Spanish at: http://buscador.eluniversal.com/2008/08/20/pol_art_condenan-agresion-a-1000986.shtml.

⁶⁴⁸ It is worth noting that on October 16, 2008, Conatel notified Globovisión of the opening of a punitive administrative proceeding because of the declarations made live by Poleo. National Assembly of the Bolivarian Republic of Venezuela. October 15, 2008. *Fiscalía abrirá averiguación a Poleo y a Globovisión* (Attorney General's Office will open investigation of Poleo and Globovisión). Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_content&task=view&id=20314&Itemid=27; Globovisión. October 16, 2008. *AN investigará a Leopoldo Castillo y a Globovisión por comentario de Rafael Poleo en Aló Ciudadano* (AN [National Assembly] will investigate Leopoldo Castillo and Globovisión for commentary of Rafael Poleo on Aló Ciudadano). Available in Spanish at: <http://www.globovision.com/news.php?nid=101688>; Globovisión. October 16, 2008. *Periodista Rafael Poleo rechazó implicaciones en presunto magnicidio* (Journalist Rafael Poleo rejected implications of presumed

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701. On August 13, 2009, unidentified persons shot and wounded journalist Rafael Finol, of the newspaper *El Regional* of Acarigua, in the head. According to the information received, the newspaper's editorial line is pro-government.⁶⁴⁹

702. On January 20, 2009, Cecilia Rodríguez, a photojournalist with the newspaper *El Nuevo País* denounced that she had been hit by a group of demonstrators of the Unión Popular Venezolana (UPV) political party, aligned with the government. According to the information received, a police officer approached the photographer and escorted her to prevent her from being attacked further.⁶⁵⁰

703. On August 3, 2009, the headquarters of *Globovisión* were attacked by a group of individuals identifying themselves as members of the UPV, led by Lina Ron, a person allied with the current government. The armed attackers entered the channel's headquarters, threw tear gas bombs inside, and intimidated the workers. A member of the Metropolitan Police and a worker with the security company guarding the location were injured.⁶⁵¹ The attack was immediately condemned by the President of the Republic Hugo Chávez and the Minister of Popular Power for the Interior and Justice, Tarek El Aissami, who also announced a prompt investigation. On August 4, 2009,

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assassination). Available in Spanish at: <http://www.globovision.com/news.php?nid=101737&clave=a%3A1%3A%7Bi%3A0%3Bs%3A17%3A%22leopoldo+castillo%22%3B%7D>; Instituto Prensa y Sociedad. October 24, 2008. *Lanzan bomba lacrimógena a edificio donde vive periodista de Globovisión* (Teargas bomb thrown at building where Globovisión journalist lives). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1631>; Globovisión. October 16, 2008. *Lanzan bomba lacrimógena contra la casa del periodista Leopoldo Castillo* (Teargas bomb thrown at house of journalist Leopoldo Castillo). Available in Spanish at: <http://www.globovision.com/news.php?nid=101699>; Inter-American Press Association. *Report on Venezuela. Midyear Meeting of March 13-16, 2006. Asunción, Paraguay*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inford=362&idioma=us.

⁶⁴⁹ Committee to Protect Journalists. January 16, 2009. *Journalist shot and injured*. Available at: <http://cpj.org/americas/venezuela/2009/?page=2>; Inter-American Press Association. January 15, 2009. *Condena la SIP atentado contra periodista en Venezuela* (IAPA condemns attack against journalist in Venezuela). Available in Spanish at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&idioma=sp&id=4119; Reporters without Borders. January 15, 2009. *Murder attempt against pro-Chávez journalist in Portuguese state*. Available at: <http://www.rsf.org/Murder-attempt-against-pro-Chavez.html>.

⁶⁵⁰ The information also indicates that among the aggressors were members of the group known as La Piedrita. Instituto Prensa y Sociedad. January 21, 2009. *Simpatizantes oficialistas agreden a reportera* (Official sympathizers attack reporter). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1709>; Inter-American Press Association. *Report on Venezuela. Midyear Meeting of March 13-16, 2006. Asunción, Paraguay*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inford=362&idioma=us.

⁶⁵¹ Globovisión. August 3, 2009. *Motorizados armados y comandados por Lina Ron asaltaron sede de Globovisión* (Armed motorists commanded by Lina Ron attack Globovisión headquarters). Available in Spanish at: <http://www.globovision.com/news.php?nid=123531>; Globovisión. August 3, 2009. *Dos heridos y varios afectados por el ataque a Globovisión de grupos armados* (Two injured and several affected by attack on Globovisión by armed groups). Available in Spanish at: <http://www.globovision.com/news.php?nid=123540>; El Universal. August 4, 2009. *Grupo oficialista irrumpió en la sede de Globovisión* (Group of official supporters interrupt in Globovisión headquarters). Available in Spanish at: http://www.eluniversal.com/2009/08/04/pol_art_grupo-oficialista-ir_1504338.shtml; Instituto Prensa y Sociedad. August 3, 2009. *Simpatizantes del gobierno nacional atacan sede de canal privado* (National government sympathizers attack headquarters of private channel). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1936>; Colegio Nacional de Periodistas. August 3, 2009. *CNP exhorta al gobierno a acabar con la impunidad y deplora ataques contra Globovisión* (CNP [National Journalists' Association] exhorts the government to end impunity and deplores attacks against Globovisión). Available in Spanish at: <http://www.cnpven.org/data.php?link=2&expediente=268>; Globovisión. July 3, 2009. *Ministerio Público designó fiscales para investigar el hecho ocurrido en los alrededores de Globovisión* (Attorney General designated prosecutors to investigate the incident that occurred near Globovisión). Available in Spanish at: <http://www.globovision.com/news.php?nid=123539>; IACHR. *Press Release No. 55/09*. August 3, 2009. Available at: <http://www.cidh.org/Comunicados/English/2009/55-09eng.htm>; Communication of August 12, 2009 by *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression.

information was received indicating that the Attorney General's Office had ordered the detention of Lina Ron, and that on that same day, she turned herself over to authorities.⁶⁵² Subsequently, information was received indicating that on October 14, 2009, the 18th Tribunal of Control of the Metropolitan Area of Caracas ordered the release of Lina Ron and that on October 16, 2009, criminal proceedings were initiated against her with respect to these facts for the crime of "agavillamiento" (illegal association).⁶⁵³

704. On August 4, 2009, Roberto Tobar and Emiro Carrasquel, members of the press team of the state channel *Venezolana de Televisión (VTV)*, and Renzo García, a journalist with *Color TV*, were attacked in the state of Aragua by a group of demonstrators presumably allied with the opposition. According to the information received, the aggressors were part of a group of persons that protested during the execution of the judicial measure of raiding the home of the *Globovisión* correspondent Carmen Elisa Pecorelli.⁶⁵⁴

⁶⁵² IACHR. *Press Release no. R57/09*. August 5, 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=759&IID=1>; Office of the Attorney General of the Bolivarian Republic of Venezuela. August 4, 2009. *Dictan orden de detención contra Lina Ron* (Order of detention issued against Lina Ron). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa0408.htm>; Office of the Attorney General of the Bolivarian Republic of Venezuela. August 4, 2009. *Ministerio Público presentará en las próximas horas ante Tribunal de Control a Lina Ron* (Attorney General's Office will present Lina Ron before the Tribunal of Control in the next few hours). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa0408V.htm>; Agencia Bolivariana de Noticias. August 4, 2009. *Presidente Chávez informó detención de Lina Ron* (President Chávez reported the detention of Lina Ron). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=193434&lee=4>; Venezolana de Televisión. August 9, 2009. *Presidente Chávez: Grupos anárquicos le hacen daño a la revolución* (President Chávez: Anarchic groups damage the revolution). Available in Spanish at: <http://www.vtv.gov.ve/noticias-nacionales/22020>; Instituto Prensa y Sociedad. August 4, 2009. *Detienen a dirigente de partido político por agresión a sede de Globovisión* (Leader of political party detained for aggression against headquarters of Globovisión). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1940>; El Universal. August 4, 2009. *El Aissami condenó "acción delictiva"* (El Aissami condemned "criminal action"). Available in Spanish at: http://www.eluniversal.com/2009/08/04/pol_art_el-aisami-condeno-1504339.shtml; El Universal. August 5, 2009. *Chávez exige "todo el peso de la santa ley" para Ron y sus seguidores* (Chávez calls for "all the weight of the sainted law" for Ron and her followers). Available in Spanish at: http://www.eluniversal.com/2009/08/05/pol_art_chavez-exige-todo-e-1507451.shtml; Globovisión. August 4, 2008. *Tribunal 18º de Control dicta privativa de libertad contra Lina Ron* (18th Control Tribunal issues order for deprivation of liberty against Lina Ron). Available in Spanish at: <http://www.globovision.com/news.php?nid=123595>; Globovisión. August 4, 2009. *Chávez dice que Lina Ron se presentó a la justicia y que se prestó para un juego "a favor del enemigo"* (Chávez says that Lina Ron presented herself to the court and that she submitted herself for a game "in favor of the enemy"). Available in Spanish at: <http://www.globovision.com/news.php?nid=123610>.

⁶⁵³ Article 286 of the Penal Code states that "[w]hen two or more persons associate with the goal of committing crimes, each one will be punished, for the sole act of association, with imprisonment of two to five years." For its part, Article 286 provides that "[i]f the associates travel through the countryside or the roads and if at least two of them are carrying guns or have them in a determined place, the penalty will be prison for a period of eighteen months to five years." Penal Code of Venezuela. Official Gazette No. 5768E of August 13, 2005. Available in Spanish at: <http://www.fiscalia.gov.ve/leyes/6-CODIGOPENAL.pdf>. See also: Globovisión. September 19, 2009. *Ministerio Público acusó a Lina Ron por los sucesos ocurridos en Globovisión* (Attorney General's Office accused Lina Ron for the events that occurred at Globovisión). Available in Spanish at: <http://www.globovision.com/news.php?nid=127860&clave=a%3A1%3A%7Bi%3A0%3Bs%3A8%3A%22lina+ron%22%3B%7D>; Globovisión. October 14, 2009. *Liberada dirigente Lina Ron* (Leader Lina Ron freed). Available in Spanish at: <http://www.globovision.com/news.php?nid=130114&clave=a%3A1%3A%7Bi%3A0%3Bs%3A8%3A%22lina+ron%22%3B%7D>; El Nacional. October 15, 2009. *Tribunal libera a Lina Ron* (Tribunal liberates Lina Ron). Available in Spanish at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/103957/Nacional/Tribunal-libera-a-Lina-Ron-tras-m%C3%A1s-de-dos-meses-de-arresto-en-la-DIM; Globovisión. October 16, 2009. *Ordenan enjuiciamiento de Lina Ron por ataque contra sede de Globovisión* (Trial of Lina Ron ordered for attack against headquarters of Globovisión). Available in Spanish at: <http://www.globovision.com/news.php?nid=130247&clave=a%3A1%3A%7Bi%3A0%3Bs%3A8%3A%22lina+ron%22%3B%7D>.

⁶⁵⁴ Instituto Prensa y Sociedad. August 7, 2009. *Agreden a periodistas de medios estatales durante cobertura* (Journalists of state media attacked during coverage). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1949>; Agencia Bolivariana de Noticias. August 5, 2009. *Ministerio Público practicó allanamiento en Maracay ajustado a derecho* (Attorney General's Office carried out raid in Maracay in compliance with law). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=193532&lee=2>; Globovisión. August 4,

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705. On August 13, 2009, twelve journalists from the *Capriles* chain of publications were seriously attacked on the streets of Caracas by presumed government sympathizers who labeled them “defenders of the oligarchy.” According to the information received, Octavio Hernández, Manuel Alejandro Álvarez, Gabriela Iribarren, Jesús Hurtado, Marco Ruíz, Usbaldo Arrieta, Fernando Peñalver, Marie Rondón, Greasi Bolaños, Glexis Pastran, César Batiz, and Sergio Moreno González were handing out flyers in the streets that questioned various articles of the then-draft Organic Law on Education, when they were brutally attacked with sticks and rocks by a crowd that called themselves “defenders of the people.” On the same day, the Minister of Popular Power for Communication and Information, Blanca Eekhout, categorically condemned this act of violence.⁶⁵⁵

706. On August 14, 2009, the Attorney General of the Republic, Luisa Ortega Díaz, also condemned these acts and announced the official opening of an investigation by the Attorney General’s Office. On the same date, the Human Rights Ombudswoman, Gabriela del Mar Ramírez exhorted “the competent investigative bodies to take necessary and adequate measures to clarify the facts and determine the responsibilities, in accordance with the law.” On October 15, 2009, the

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2009. *Allanaron residencia de corresponsal de Globovisión en Aragua* (Residence of Globovisión correspondent in Aragua raided). Available in Spanish at: <http://www.globovision.com/news.php?nid=123647>.

⁶⁵⁵ The Organic Law on Education was approved by the National Assembly at midnight on August 13, 2009. Ministry of Communication and Information. August 13, 2009. *Minci rechaza actos de violencia contra periodistas* (Minci [Ministry of Communication and Information] rejects acts of violence against journalists). Available in Spanish at: http://www.minci.gob.ve/noticias/1/191070/minci_rechaza_actos.html; Agencia Bolivariana de Noticias. August 13, 2009. *Minci rechaza actos de violencia contra periodistas* (Minci [Ministry of Communication and Information] rejects acts of violence against journalists). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=194842&lee=4>; Colegio Nacional de Periodistas. August 13, 2009. *El CNP y el SNTP se declaran en emergencia ante las agresiones a los periodistas de la cadena Capriles* (The CNP [National Journalists’ Association] and the SNTP [National Press Workers’ Union] declare an emergency due to the acts of aggression against journalists of the Capriles chain). Available in Spanish at: <http://www.cnpven.org/data.php?link=5&expediente=288>; Globovisión. August 13, 2009. *Doce periodistas de la cadena Capriles heridos tras emboscada oficialista a protesta contra Ley de Educación* (Twelve journalists of the Capriles chain injured after official supporters ambush protest against the Law on Education). Available in Spanish at: <http://www.globovision.com/news.php?nid=124366>; El Nacional. August 13, 2009. *Chavistas agredieron brutalmente a doce periodistas de la cadena Capriles* (Chávez supporters brutally attacked twelve journalists of the Capriles chain). Available in Spanish at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/94225/Nacional/Chavistas-agredieron-brutalmente-12-periodistas-de-la-Cadena-Capriles; Globovisión. August 13, 2009. *Director de Últimas Noticias exigió celeridad en investigación sobre investigaciones sobre la cadena Capriles* (Editor of Últimas Noticias urged swiftness in the investigation of investigations about the Capriles chain). Available in Spanish at: <http://www.globovision.com/news.php?nid=124371>; Espacio Público. August 13, 2009. *Oficialistas agreden a 12 periodistas de Cadena Capriles* (Official supporters attack 12 journalists of the Cadena Capriles). Available in Spanish at: http://www.espaciopublico.info/index.php?option=com_content&task=view&id=517&Itemid=1; Globovisión. August 17, 2009. *Privan de libertad a presunto implicado en agresión a periodistas de la Cadena Capriles* (Suspect in attack against Cadena Capriles jailed). Available in Spanish at: <http://www.globovision.com/news.php?nid=124682>

Attorney General's Office announced the capture of one of the presumed aggressors.⁶⁵⁶ Subsequently, the IACHR was informed that the person was set free.⁶⁵⁷

707. The IACHR observes that on August 18, 2009, President Hugo Chávez affirmed in an interview that proof existed that would demonstrate that the journalists that had been attacked had, in reality, propitiated the attack by some of [his] presumed supporters. The leader stated:

They were not carrying out journalistic duties; they were in a protest, with banners, passing out flyers, proselytizing against the Law on Education. [...] And according to what I understand, and there is proof, they were provoking the people who were over here and over there.⁶⁵⁸

708. The IACHR expresses its concern about this type of declarations by the President of the Republic, which could be interpreted by his followers as governmental approval of commission of crimes of [this] nature. In this respect, it is important to recall that public protest is one of the

⁶⁵⁶ Reporters without Borders. August 17, 2009. *Activist arrested for attack on 12 journalists but polarization persists*. Available at: <http://www.rsf.org/Activist-arrested-for-attack-on-12.html>; Office of the Attorney General of the Bolivarian Republic of Venezuela. August 17, 2009. *Dictan órdenes de aprehensión contra dos presuntos implicados en agresiones a periodistas en el centro de Caracas* (Orders issued to apprehend two suspects in acts of aggression against journalists in the center of Caracas). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa1708.htm>; Ministry of Communication and Information. August 14, 2009. *Defensoría del Pueblo hace un llamado a la tolerancia* (Office of the Human Rights Ombudsman calls for tolerance). Available in Spanish at: <http://minci.gob.ve/noticias/1/191081/defensoria-del-pueblo.html>; Office of the Attorney General of the Bolivarian Republic of Venezuela. August 14, 2009. *Fiscal General de la República rechazó ataque a periodistas* (Attorney General of the Republic rejected attack on journalists). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa1408.htm>; Globovisión. August 14, 2009. *Luisa Ortega Díaz repudió agresiones a periodistas de la Cadena Capriles* (Luisa Ortega Díaz repudiated acts of aggression against journalists of Cadena Capriles). Available in Spanish at: <http://www.globovision.com/news.php?nid=124416>.

⁶⁵⁷ El Universal. August 25, 2009. *Único detenido por agresión a periodistas queda en libertad* (Only detainee for aggression against journalists set free). Available in Spanish at: http://www.eluniversal.com/2009/08/25/pol_art_unico-detenido-por-a-1538816.shtml; El Nacional. August 26, 2009. *Único detenido por agresión a periodistas fue liberado* (Only detainee for aggression against journalists set free). Available in Spanish at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/96082/Medios%20bajo%20ataque/Gabriel-Uzc%C3%A1tegui-ha-sido-liberado; Information provided on November 2, 2009 by Espacio Público to the Office of the Special Rapporteur for Freedom of Expression in the framework of the 137th Ordinary Period of Sessions of the IACHR.

⁶⁵⁸ El Nacional. August 20, 2009. *Periodistas de la Cadena Capriles niegan haber provocado a chavistas agresores* (Journalists of Cadena Capriles deny having provoked aggression by Chávez supporters). Available in Spanish at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/95358/Medios%20bajo%20ataque/Periodistas-de-la-Cadena-Capriles-niegan-haber-provocado-a-chavistas-agresores; Espacio Público. August 20, 2009. *Periodistas rechazan acusaciones de sector oficial* (Journalists reject accusations of the official sector). Available in Spanish at: http://www.espaciopublico.info/index.php?option=com_content&task=view&id=542&Itemid=1; Venezolana de Televisión. August 19, 2009. *Últimas Noticias criminalizó a periodistas de Ávila TV* (Últimas Noticias characterizes as criminal the journalists of Ávila TV). Available in Spanish at: <http://www.vtv.gov.ve/noticias-nacionales/22527>; El Universal. August 19, 2009. *Chávez asegura que periodistas agredidos provocaron lo que les pasó* (Chávez assures that attacked journalists provoked what happened to them). Available in Spanish at: http://www.eluniversal.com/2009/08/19/pol_ava_chavez-asegura-que-p-19A2632685.shtml; El Nacional. August 19, 2009. *CNP considera "risibles" maniobras para descalificar a periodistas agredidos* (CNP [National Journalists' Association] considers "laughable" attempts to discredit attacked journalists). Available in Spanish at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/95240/Nacional/CNP-considera-risibles-maniobras-para-descalificar-a-periodistas-agredidos; El Universal. August 20, 2009. *Periodistas temen que palabras de Chávez generen más ataques* (Journalists fear that Chávez's words generate more attacks). Available in Spanish at: http://politica.eluniversal.com/2009/08/20/pol_art_periodistas-temen-qu-1531697.shtml; El Nacional. August 19, 2009. *Chávez dijo que periodistas provocaron el ataque* (Chávez said that journalists provoked the attack). Available in Spanish at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/95095/Nacional/Ch%C3%A1vez-dijo-que-periodistas-provocaron-el-ataque; Noticias24. August 19, 2009. *Dice que periodistas de la Cadena Capriles agredidos "provocaron" lo que les pasó* (Attacked journalists of Cadena Capriles said to have "provoked" what happened to them). Available in Spanish at: <http://www.noticias24.com/actualidad/noticia/76376/dice-que-periodistas-de-la-cadena-capriles-agredidos-provocaron-lo-que-les-paso/>.

usual ways in which the right to freedom of expression is exercised and that expressions against the government's proposed laws or policies, far from being an incitement to violence, are an integral part of any pluralistic democracy. Additionally, it is important to recall that, as previously stated in this report, when public functionaries exercise their freedom of expression whether in carrying out a legal duty or as a simple exercise of their fundamental right to express themselves, "[they] are subject to certain restrictions such as having to verify in a reasonable manner, although not necessarily exhaustively, the truth of the facts on which their opinions are based, and this verification should be performed subject to a higher standard than that used by private parties, given the high level of credibility the authorities enjoy and with a view to keeping citizens from receiving a distorted version of the facts."⁶⁵⁹

709. On the other hand, the IACHR observes with concern the attacks that were later attributed to the criminal group known as La Piedrita. On September 23, 2008, members of La Piedrita threw teargas bombs at the outside of the *Globovisión* headquarters in Caracas. The attackers left signed pamphlets declaring *Globovisión* and its director Alberto Federico Ravell to be "military objectives." The pamphlets also blamed the television channel for any attack that could be suffered by President Hugo Chávez.⁶⁶⁰ On October 10, 2008, members of La Piedrita attacked and seized the equipment of the team of *Globovisión* journalists who were covering a protest of transit workers in the 23 de Enero neighborhood.⁶⁶¹ It should be noted that days later, the then-Minister of Popular Power for Communication and Information, Andrés Izarra, condemned this action, accusing La Piedrita of carrying out acts of "political infantilism."⁶⁶² The IACHR expresses its particular concern about these attacks, precisely because given their special vulnerability in the current atmosphere, the journalists, editors, and workers of *Globovisión* have been under the protection of provisional measures ordered by the Inter-American Court since 2004⁶⁶³ and because there is still no information about the results of investigations and sanctions to prevent this type of attacks.

⁶⁵⁹ I/A Court H.R., *Case of Apitz-Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 131.

⁶⁶⁰ The allusion to an attack is referring to the possibility of an assassination. Committee to Protect Journalists. October 6, 2008. *Intimidation, accusations should stop*. Available at: <http://cpj.org/2008/10/intimidation-accusations-should-stop.php>; Instituto Prensa y Sociedad. September 26, 2008. *Lanzan panfletos y bombas lacrimógenas a sede de Globovisión* (Pamphlets and teargas bombs thrown at Globovisión headquarters). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1619>; Reporters without Borders. September 25, 2008. *Interior minister justifies attack against Globovisión claimed by pro-government militants*. Available at: <http://www.rsf.org/Interior-minister-justifies-attack.html>; Globovisión. September 23, 2008. *Director de Globovisión señaló que ataque al canal se veía venir por el lenguaje de violencia de algunos funcionarios* (Director of Globovisión states that attack on channel was predictable due to the violent language of some officials). Available in Spanish at: <http://www.globovision.com/news.php?nid=99438>; Globovisión. September 23, 2008. *Lina Ron reivindicó al grupo "La Piedrita" y ratificó declaratoria de Ravell y Globovisión como objetivos militares* (Lina Ron defended the "La Piedrita" group and ratified the declaration of Ravell and Globovisión as military objectives). Available in Spanish at: <http://www.globovision.com/news.php?nid=99439>; El Nacional. September 23, 2008. *Presunto grupo oficialista ataca fachada de Globovisión* (Group of presumed official supporters attack outside Globovisión). Available in Spanish at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/46191.

⁶⁶¹ The information indicates that the team of journalists was made up by Mayela León, Luis Reaño, and Frank Díaz. Inter-American Press Association. *Report on Venezuela. Midyear Meeting of March 13-16, [2009]. Asunción, Paraguay*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&infoid=362&idioma=us.

⁶⁶² El Universal. October 14, 2008. *RSF celebra condena de Izarra a agresión contra Globovisión* (RSF applauds condemnation by Izarra of aggression against Globovisión). Available in Spanish at: http://www.eluniversal.com/2008/10/14/pol_art_rsf-celebra-condena_1091410.shtml.

⁶⁶³ I/A Court H.R., Order of the Inter-American Court of Human Rights of January 29, 2008. Provisional Measures with regard to the Bolivarian Republic of Venezuela. Matter of "Globovisión" Television Station. Available at: http://www.corteidh.or.cr/docs/medidas/globovision_se_04_ing.pdf. Additionally, in the 2008 Annual Report, the IACHR stated that: "As observed in previous years, in 2008 the Commission continues to be troubled by the intimidation targeted at private media outlets, particularly the *Globovisión* television channel, whose executives and staff continued to be protected by provisional measures first ordered by the Inter-American Court in 2004 and confirmed on January 29, 2008." IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, para. 370. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm>.

710. On October 14, 2008, members of La Piedrita threw teargas bombs in the interior of the headquarters of the newspaper *El Nuevo País*. The aggressors also left pamphlets signed by the criminal group that declared the editor of the newspaper, Rafael Poleo, to be a “military objective.”⁶⁶⁴ As has already been stated, the declarations made by Poleo on the live program *A/ó Ciudadano* of October 13, 2008 were characterized by the Venezuelan authorities as “incitation to assassination.”

711. On December 1, 2008, members of La Piedrita threw teargas bombs and signed brochures in front of the building inhabited by the journalist Marta Colomina, who, since 2003, has been under the protection of provisional measures ordered by the Inter-American Court.⁶⁶⁵ According to the information received, the brochures also declared Colomina to be a military objective.⁶⁶⁶

712. On January 1, 2009, members of La Piedrita once again attacked the headquarters of *Globovisión* with teargas bombs and threw pamphlets in which they reiterated that the media and the newspaper *El Nacional* were “military objectives.”⁶⁶⁷ The IACHR applauds the fact that days later, the then-Minister of Popular Power for Communication and Information, Jesse Chacón, had condemned the act, stating that “the government rejecte[d] any action that goes beyond frank discussion about the way a social communications media manages its editorial line.”⁶⁶⁸

713. On January 19, 2009, members of La Piedrita threw teargas bombs at the residence of the director of *RCTV*, Marcel Granier. In later declarations, the leader of La Piedrita, Valentín Santana, declared that they proposed to “pass the arms by [Marcel] Granier.”⁶⁶⁹ The leader of the

⁶⁶⁴ Instituto Prensa y Sociedad. October 24, 2008. *Amenazan a director de diario y lanzan bombas lacrimógenas a sede* (Editor of newspaper threatened and teargas bombs thrown at headquarters). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1632>; Inter-American Press Association. October 15, 2008. *Condena la SIP agresión contra diario El Nuevo País en Venezuela* (IAPA condemns the acts of aggression against *El Nuevo País* newspaper in Venezuela). Available in Spanish at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4075&idioma=sp; Inter-American Press Association. *Report on Venezuela. Midyear Meeting of March 13-16, [2009]. Asunción, Paraguay*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inford=362&idioma=us.

⁶⁶⁵ I/A Court H.R., Order of the Inter-American Court of Human Rights of July 4, 2006. Provisional Measures regarding Venezuela. Matter of Marta Colomina and Liliana Velásquez. Available at: http://www.corteidh.or.cr/docs/medidas/colomina_se_05_ing.pdf.

⁶⁶⁶ Instituto Prensa y Sociedad. December 3, 2008. *Lanzan bombas lacrimógenas en edificio de periodista y la declaran “objetivo de guerra”* (Teargas bombs thrown in journalist’s building and she is declared an “objective of war”). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1669>; *El Nacional*. December 1, 2008. *Colectivo La Piedrita lanza artefacto explosivo contra residencia de Martha Colomina* (La Piedrita group throws explosive device at residence of Martha Colomina). Available in Spanish at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/57300.

⁶⁶⁷ Committee to Protect Journalists. February 9, 2009. *Pro-government group threatens Venezuelan media outlets*. Available at: <http://cpj.org/2009/02/pro-government-group-threatens-venezuelan-media-ou.php>; Reporters without Borders. January 2, 2009. *New Year’s Day Attack on TV station by radical pro-Chávez group*. Available at: http://www.rsf.org/spip.php?page=article&id_article=29875; *El Universal*. January 2, 2009. *Grupo La Piedrita lanzó bomba lacrimógena en Globovisión* (La Piedrita group throws teargas bomb in Globovisión). Available in Spanish at: http://www.eluniversal.com/2009/01/01/pol_ava_grupo-la-piedrita_01A2180231.shtml.

⁶⁶⁸ Espacio Público. January 5, 2009. *Jesse Chacón condena agresión a medios de comunicación* (Jesse Chacón condemns aggression against communications media). Available in Spanish at: http://www.espaciopublico.info/index.php?option=com_content&task=view&id=269&Itemid=2.

⁶⁶⁹ Granier also stated that his residence had been the object of a similar attack during the same month. Instituto Prensa y Sociedad. January 21, 2009. *Lanzan bombas lacrimógenas a casa de director de RCTV Internacional* (Teargas bombs thrown at home of director of RCTV International). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1706>; Colegio Nacional de Periodistas. January 19, 2009. *Grupo “La Piedrita” amenaza nuevamente* (“La Piedrita” group threatens again). Available in Spanish at: <http://cnpccaracas.org/?p=6324>;

La Piedrita group also recognized its responsibility for the attacks against headquarters of *Globovisión* and *El Nuevo País*, as well as the residences of Marta Colomina and Marcel Granier, in an interview published in a weekly on February 6, 2009.⁶⁷⁰

714. The IACHR applauds the fact that after this series of events and the publication of the interview mentioned previously, President Hugo Chávez condemned the actions of La Piedrita.⁶⁷¹ Nevertheless, as of the date of this report, the IACHR has not received information about his capture or about the investigations or sanctions that would prevent this type of attacks. It is important to note that on May 22, 2009, the Special Rapporteurship sent a communication to the State in which it expressed its concern about the acts of violence carried out by La Piedrita up to this date. However, no advances in the investigation, prosecution, or sanctioning of those responsible for these acts has been reported.

715. In relation to these acts of violence, the IACHR exhorts the State to investigate the existence of these violent groups and proceed to disarm and dismantle them as completely and as quickly as possible, given that, as the IACHR has indicated, "these groups have been the driving force behind violence and direct threats made against [diverse sectors of the Venezuelan population]."⁶⁷²

716. As indicated by the IACHR in its *Report on the Situation of Human Rights in Venezuela* (2003), "a monopoly on force must be maintained solely by the agencies of law enforcement, under the legitimate rule of law; the most complete disarmament possible of all civilian groups must be undertaken immediately."⁶⁷³

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Globovisión. January 19, 2009. *Residencia de Marcel Granier también fue atacada con bombas* (Residence of Marcel Granier was also attacked with bombs). Available in Spanish at: <http://www.globovision.com/news.php?nid=108308&clave=a%3A1%3A%7Bi%3A0%3Bs%3A17%3A%22leopoldo+castillo%22%3B%7D>; Inter-American Press Association. *Report on Venezuela. Midyear Meeting of March 13-16, [2009]. Asunción, Paraguay.* Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inford=362&idioma=us..

⁶⁷⁰ Communication of May 5, 2009 by *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression; Noticias 24. February 6, 2009. *La Piedrita pasará por las armas a enemigos de la revolución* (La Piedrita will take up arms against enemies of the Revolution). Available in Spanish at: <http://www.noticias24.com/actualidad/noticia/24132/habla-valentin-santana-jefe-del-colectivo-la-piedrita/>; Committee to Protect Journalists. February 9, 2009. *Pro-government group threatens Venezuelan media outlets.* Available at: <http://cpj.org/2009/02/pro-government-group-threatens-venezuelan-media-ou.php>; Inter-American Press Association. *Report on Venezuela. Midyear Meeting of March 13-16, [2009]. Asunción, Paraguay.* Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inford=362&idioma=us..

⁶⁷¹ Agencia Bolivariana de Noticias. February 7, 2009. *Chávez rechaza violencia de grupo La Piedrita y pide captura de su líder* (Chávez rejects violence of La Piedrita group and calls for the capture of its leader). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=168871&lee=4>; El Nacional. February 8, 2009. *Chávez ordena detener a líder de "La Piedrita"* (Chávez orders detention of leader of "La Piedrita"). Available in Spanish at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/67463/Pol%C3%ADtica/Ch%C3%A1vez-ordena-detener-a-l%C3%ADder-de-La-Piedrita; El Universal. February 9, 2009. *Chávez califica de terrorista y fascista a Colectivo La Piedrita* (Chávez characterizes the Colectivo la Piedrita as terrorist and fascist). Available in Spanish at: http://www.eluniversal.com/2009/02/09/pol_art_chavez-califica-de-t-1261095.shtml; Committee to Protect Journalists, February 9, 2009. *Pro-government group threatens Venezuelan media outlets.* Available at: <http://cpj.org/2009/02/pro-government-group-threatens-venezuelan-media-ou.php>.

⁶⁷² IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 250. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

⁶⁷³ IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 250. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

717. With respect to the existing mechanisms to protect communications media and journalists who have been threatened in relation to their editorial line, the State, in a communication of August 13, 2009, stated that: "The victim who has made a denunciation [before the Attorney General's Office] may obtain some measure of protection in accordance with the Law on Protection of Victims, Witnesses, and Others Subject to Proceedings, which stipulates that this may be 'informal, administrative, judicial, or of any other character in order to guarantee the rights of protected persons.' [...] The protection of the law does not distinguish whether or not the aggrieved person is a journalist, since the law provides equal protection for all citizens. In the cases of the communications media, because they are legal persons in a strict sense they cannot enjoy the measures of protection, because they are abstract entities. In this sense the protection falls upon the personnel of the communications media or the journalists who work there, since according to the law they are the only ones that can be considered victims."⁶⁷⁴

718. In this vein, the IACHR recommends that the State intensify the efforts aimed at investigating the acts of violence attributed to these violent groups, and that it continue adopting the urgent and necessary measures to dismantle them, energetically and publicly condemning their actions, strengthening criminal investigative capacities, and sanctioning the illegal actions of these groups to prevent the repetition of these acts in the future.

719. Finally, the IACHR urges the State to investigate promptly all the cases summarized in this section, to make its strongest effort to avoid the repetition of these crimes, and to ensure that they do not remain in impunity. As has been stated in other opportunities, the lack of sanctions for the perpetrators and the masterminds of the murders, acts of aggression, threats, and attacks related to the practice of journalism propitiates the occurrence of new crimes and generates a notorious effect of self-censorship that seriously undermines the possibility of a truly open, uninhibited, and democratic debate. Principle 9 of the Declaration of Principles states that: "[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

g. Recommendations

720. In light of the forgoing considerations, the IACHR recommends that the Venezuelan State:

1. Bring its domestic legislation into agreement with the parameters established in the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man, and the Declaration of Principles on Freedom of Expression. In particular, it should repeal the provisions on *desacato*, *vilipendio*, and insult to the National Armed Forces. Additionally, it should modify the text of Article 29.1 of the Law on Social Responsibility in Radio and Television, Articles 9, 10, and 11 of the Organic Law on Education, and Resolution No. 047 of the Ministry of Popular Power for Communication and Information, Norms on the Mechanisms and Conditions of Assignment of Airtime to Independent National Producers on Providers of Radio Services.

⁶⁷⁴ Bolivarian Republic of Venezuela. August 13, 2009. Questionnaire on human rights presented at the request of the Inter-American Commission on Human Rights. Office of the State Agent for Human Rights before the Inter-American and International Systems, pp. 111-112.

2. Ensure that the use of the power to use the communications media to disseminate state messages is in accordance with inter-American standards, especially with respect to satisfying the requirement of strict necessity. In particular, it is necessary to revise Article 192 of the Organic Law on Telecommunications and Article 10 of the Law on Social Responsibility in Radio and Television.
3. Guarantee the most absolute impartiality and due process in all the administrative and judicial proceedings to enforce the legislation on broadcasting. In particular, the opening of such proceedings and the imposition of sanctions must be the duty of impartial and independent organs, regulated by legal norms that are precise and delimited, and governed by that which is provided in Article 13 of the American Convention. In no case may the media's editorial line be a relevant factor for the adoption of any decision relating to this subject matter.
4. Make all decisions relating to broadcasting subject to the laws, the Constitution, and the international treaties in force and strictly respect all the guarantees of due process, the principle of good faith, and the inter-American standards that guarantee the right to freedom of expression of all persons without discrimination. Ensure that none of its actions is motivated by or aimed at rewarding media that agree with government policies or at punishing those that are critical or independent.
5. Maintain from the highest levels of the state the public condemnation of acts of violence against journalists and communications media, with the aim of preventing actions that foment these crimes, and avoiding the continued development of a climate of stigmatization of those who hold a stance critical of government actions.
6. Ensure that public officials refrain from making declarations that generate an atmosphere of intimidation that limits the right to freedom of expression. In particular, the State must create a climate in which all persons can express their ideas and opinions without fear of being persecuted, attacked, or sanctioned for it.
7. Adopt the measures that are necessary to protect the life and personal integrity of social communicators and the infrastructure of the communications media. In particular, the State has the obligation to carry out serious, impartial, and effective investigations of the acts of violence and harassment against journalists and communications media, identifying, judging, and sanctioning those responsible.
8. Promote the incorporation of international standards on freedom of expression through the judicial system, which constitutes an effective tool for the protection and guarantee of the current normative framework for freedom of expression.

CHAPTER III INTER-AMERICAN LEGAL FRAMEWORK OF THE RIGHT TO FREEDOM OF EXPRESSION

1. This chapter explains the content and scope of the right to freedom of expression within the legal framework of the Inter-American System of Human Rights. The purpose of this chapter is to systematize the jurisprudence and doctrines developed by the Inter-American Court of Human Rights and by the Inter-American Commission on Human Rights, as well as the reports and opinions of the Office of the Special Rapporteur on the matter.

2. The following sections summarize the Inter-American doctrine and jurisprudence on the following topics: the importance and function of the right to freedom of expression; the principal characteristics of the right to freedom of expression; the types of speech protected, specially protected, and not protected by the right to freedom of expression; and the limitations on the right to freedom of expression. The chapter also discusses the standards that apply to the prohibition of censorship and indirect restrictions on freedom of expression, as well as to the right to access to information. Finally, specific sections are dedicated to various issues that have been discussed by the doctrine and jurisprudence, which are fundamental because of their importance to current democratic society: the protection of journalists and social communications media; the exercise of freedom of expression by public officials; freedom of expression in the area of electoral processes; and pluralism and diversity in the process of mass communication. The right to access information will be discussed separately in chapter IV of this report.

A. Importance and function of the right to freedom of expression

1. Importance of freedom of expression within the Inter-American legal framework

3. The legal framework of the Inter-American system for the protection of human rights is probably the international framework that provides the greatest scope and the broadest guarantees of protection to the right to freedom of thought and expression. In effect, Article 13 of the American Convention on Human Rights,¹ Article IV of the American Declaration of the Rights and Duties of Man,² and Article 4 of the Inter-American Democratic Charter³ offer a number of

¹ Inter-American Convention on Human Rights, Article 13: "Freedom of Thought and Expression 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. // 2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: (1) respect for the rights or reputations of others; or (2) the protection of national security, public order, or public health or morals. // 3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions. // 4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence. // 5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law."

² American Declaration of the Rights and Duties of Man, Article IV: "Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever."

³ Inter-American Democratic Charter, Article 4: "Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy. // The constitutional subordination of all state institutions to the legally constituted civilian authority and respect for the rule of law on the part of all institutions and sectors of society are equally essential to democracy."

reinforced guarantees that do not appear to be equaled in the universal system or in any other regional system of protection.

4. From a comparative perspective, when the texts of Article 13 of the American Convention, Article IV of the American Declaration, and Article 4 of the Inter-American Democratic Charter are contrasted with the relevant provisions of other international human rights treaties—specifically with Article 19 of the International Covenant on Civil and Political Rights or with Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms—it is clear that the Inter-American framework was designed by the American States to be more generous and to reduce to a minimum the restrictions to the free circulation of information, opinions and ideas.⁴ This has been interpreted by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights as a clear indication of the importance ascribed to free expression by the hemisphere's societies. Specifically referring to Article 13 of the American Convention on Human Rights, the Inter-American Commission has pointed out that its wording "is indicative of the importance that the authors of the Convention attached to the need to express and receive any kind of information, thoughts, opinions and ideas."⁵ The importance that Article 13 confers upon freedom of expression also means that the restrictions provided for in other international instruments are not applicable in the American context, nor should such instruments be used to interpret the American Convention restrictively. In such cases, the American Convention should prevail by virtue of the *pro homine* principle—widely accepted by all democratic States—according to which the norm most favorable to human beings should prevail.⁶

5. Inter-American case law has explained that the inter-American legal framework places this high value on freedom of expression because it is based on a broad concept of the autonomy and dignity of the individual, and because it takes into account the instrumental value of freedom of expression for the exercise of all other fundamental rights, as well as its essential role within democratic systems, as discussed below.

2. Functions of freedom of expression

6. The importance of freedom of expression stems mainly from its triple function within democratic systems.

7. First, it is one of the individual rights that most clearly reflects the virtue that marks – and characterizes – human beings: the unique and precious capacity to think about the world from our own perspective and communicate with one another in order to construct, through a deliberative process, not only the model of life that each one has a right to adopt, but the model of society in which we want to live. All our creative potential in arts, in science, in technology, in politics—in short, all our individual and collective creative capacity—fundamentally depends on the respect and promotion of the right to freedom of expression, in all its dimensions. This is therefore an individual right without which the first and foremost of our liberties would be denied: our right to think by ourselves and share our thoughts with others.

⁴ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 50; IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

⁵ IACHR. Report No. 11/96. Case 11.230. Merits. Francisco Martorell. Chile. May 3, 1996. para. 56.

⁶ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 52.

8. Second, the Inter-American Commission and Court have underlined in their case law that the importance of freedom of expression within the catalogue of human rights also stems from its structural relationship to democracy.⁷ This relationship, which has been characterized by the bodies of the inter-American human rights system as “close,” “indissoluble,” “essential,” and “fundamental” –*inter alia*– explains in large part the interpretive developments on the issue of freedom of expression in the various pertinent decisions of the Commission and the Court.⁸ The link between freedom of expression and democracy is so important that, according to the Inter-American Commission, the very purpose of Article 13 of the American Convention is to strengthen the operation of deliberative and pluralistic democratic systems through the protection and promotion of the free circulation of information, ideas and expressions of all kinds.⁹ Likewise, Article 4 of the Inter-American Democratic Charter characterizes freedom of expression and freedom of the press as “essential components of the exercise of democracy.” Similarly, the freedom of expression rapporteurs of the UN, the OSCE and the OAS recalled in their first Joint Declaration of 1999 that “freedom of expression is a fundamental international human right and a basic component of civil society based on democratic principles.” Indeed, the full exercise of the right to express one’s own ideas and opinions, and to circulate all available information, as well as the possibility of deliberating in an open and uninhibited manner about the matters that concern us all, is an indispensable condition for the consolidation, functioning and preservation of democratic regimes. The formation of an informed public opinion that is aware of its rights, citizen control over the conduct of public affairs and the accountability of public officials, would not be possible if this right was not guaranteed. In this same sense, the case law has emphasized that the democratic function of freedom of expression deems it a necessary condition to prevent the consolidation of authoritarian systems and to facilitate personal and collective self-determination,¹⁰ as well as to insure that “the

⁷ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 70; I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 85; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 112; I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 82; I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. para.105; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. para. 116.

⁸ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 70; I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 85; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 116. I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 86.

⁹ IACHR. Arguments before the Inter-American Court of Human Rights in the *Case of Ivcher-Bronstein v. Peru*, cited in I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. para. 143.d); IACHR. Pleadings before the Inter-American Court of Human Rights in the *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile*, cited in I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. para. 61.b).

¹⁰ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 70; I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 85; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 116; I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 86; I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. para. 73; IACHR. Report No. 130/99. Case 11.740. Merits. Víctor Manuel Oropeza. Mexico. November 19, 1999. para. 46; I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment

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mechanisms of citizen control and complaints" function.¹¹ In this regard, if the exercise of the right to freedom of expression tends not only towards the personal fulfillment of those who express themselves but also towards the consolidation of truly democratic societies, the State has the obligation to generate the conditions to ensure that the public debate not only satisfies the legitimate needs of all as consumers of a given information (entertainment, for example), but also as citizens. That is to say, the necessary conditions must be given for there to be a public, plural and open deliberation about the matters that concern us all as citizens of a given State.

9. Finally, Inter-American case law has explained that freedom of expression is a key instrument for the exercise of all other fundamental rights. Indeed, it is an essential mechanism for the exercise of the rights to participation, religious freedom, education, ethnic or cultural identity and, needless to say, equality, understood not only as the right to be free from discrimination, but as the right to enjoy certain basic social rights. Given the important instrumental role it fulfils, freedom of expression is located at the heart of the human rights protection system in the Americas. As stated by the Inter-American Commission, "lack of freedom of expression is a cause that 'contributes to lack of respect for the other human rights.'"¹²

10. In short, the preservation of freedom of expression is a necessary condition for the free and peaceful functioning of democratic societies in the Americas. According to the Inter-American Commission, "[f]ull and free discussion keeps a society from becoming stagnant and unprepared for the stresses and strains that work to tear all civilizations apart. A society that is to be free both today and in the future must engage openly in rigorous public debate about itself."¹³

B. Main characteristics of the right to freedom of expression

1. Entitlement to the right to freedom of expression

11. Pursuant to Article 13 of the American Convention, freedom of expression is a right of *every person*, under equal conditions and without discrimination of any kind.

12. According to the relevant jurisprudence, the entitlement to the right to freedom of expression cannot be restricted to a profession or a group of individuals, nor applied solely to freedom of the press.¹⁴ In this respect, for example, the ruling in *Tristán Donoso v. Panama* states that: "The American Convention guarantees this right to every individual, irrespective of any other consideration; so, such guarantee should not be limited to a given profession or group of individuals. Freedom of expression is an essential element of the freedom of the press, although they are not synonymous and the exercise of the first does not condition exercise of the second. The case in question involves a lawyer who claims protection under Article 13 of the Convention."¹⁵

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of January 28, 2009. Series C No. 194. para. 105; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. para. 116.

¹¹ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. para.105; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. para. 116.

¹² IACHR. Report No. 38/97. Case 10.548. Merits. Hugo Bustíos Saavedra. Peru. October 16, 1997. para. 72.

¹³ IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

¹⁴ I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 114.

¹⁵ I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 114.

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2. Dual dimension – individual and collective – of freedom of expression

13. As the case law of the inter-American system has explained on numerous occasions, freedom of expression is a right that has two dimensions: an individual dimension, consisting of the right of each person to express her own thoughts, ideas and information, and a collective or social dimension, consisting of society's right to obtain and receive any information, to know the thoughts, ideas and information of others, and to be well-informed.¹⁶

14. Bearing in mind this dual dimension, it has been held that freedom of expression is a *means for the exchange* of information and ideas among individuals and for mass communication among human beings, which involves not only the right to communicate to others one's own point of view and the information or opinions of one's choosing, but also the right of all people to receive and have knowledge of such points of view, information, opinions, reports and news, freely and without any interference that blocks or distorts them.¹⁷ It has been specified in this respect that it is as important for the average citizen to have knowledge of others' opinions, or of the information made available by others, as it is for him to have the right to impart his own.¹⁸

15. A specific act of expression involves both dimensions simultaneously. Likewise, a limitation to the right to freedom of expression affects both dimensions at the same time.¹⁹ Thus,

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¹⁶ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 53; I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 75; I/A Court H. R., *Case of López-Álvarez v. Honduras. Merits, Reparations and Costs*. Judgment of February 1, 2006. Series C No. 141. para. 163; IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*, cited in I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 101.1).a); I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. para. 146; I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 77; I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. para. 64; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 30; IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V; IACHR. Report No. 130/99. Case 11.740. Merits. Víctor Manuel Oropeza. Mexico. November 19, 1999. para. 51; IACHR. Report No. 11/96. Case 11.230. Merits. Francisco Martorell. Chile. May 3, 1996. para. 53.

¹⁷ I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 110; I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 79; I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. para. 66; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 32; IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

¹⁸ I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. para. 66; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 32.

¹⁹ I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 107; I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 81; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 33; IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*, cited in I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 101.1).a); IACHR. Report No. 90/05. Case 12.142. Merits. Alejandra Marcela Matus Acuña et al. Chile. October 24, 2005. para. 39.

for example, in the case of *Palamara Iribarne v. Chile*, the Inter-American Court held that when Chilean military criminal justice authorities prevented (by means of prohibitions and physical seizures) the petitioner from publishing a book that he had already written and that was in the process of being printed and distributed, both dimensions of freedom of expression were violated: Mr. Palamara's right to exercise his freedom by writing and publishing the book was adversely affected, and the right of the Chilean public to receive the information, ideas and opinions set forth in that writing was also infringed.

16. The two dimensions of freedom of expression are of equal importance; they are inter-dependent and must be guaranteed simultaneously, in full, in order for the right enshrined in the Inter-American instruments to be completely effective.²⁰

17. One of the main consequences of the duty to guarantee both dimensions simultaneously is that one of them cannot be affected by invoking the preservation of the other as a justification; thus, for example, "[o]ne cannot legitimately rely on the right of a society to be honestly informed in order to put in place a regime of prior censorship for the alleged purpose of eliminating information deemed to be untrue in the eyes of the censor. It is equally true that the right to impart information and ideas cannot be invoked to justify the establishment of private or public monopolies of the communications media designed to mold public opinion by giving expression to only one point of view."²¹

3. Duties and responsibilities contained within freedom of expression

18. The exercise of freedom of expression entails duties and responsibilities for those who express themselves. The basic duty derived from it is the duty not to violate the rights of others while exercising this fundamental freedom. The scope of the duties and responsibilities also depends on the specific situation in which the right is exercised, and the technical method used to voice and impart the expression.

19. The following chapters will examine in greater detail the content of this responsibility specifically as it concerns journalists, the communications media and public officials or those who aspire to hold public office, as it acquires specific features in regard to them.

C. Types of speech protected by freedom of expression

1. Types of protected speech according to form

a. Forms of expression specifically protected by inter-American instruments

20. Article 13 of the American Convention establishes the right of every person to freedom of expression, and specifies that this right encompasses the "freedom to seek, receive, and

²⁰ I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 80; I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. para. 149; I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. para. 67; IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*, cited in I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 101.1).a).

²¹ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 33.

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." In its interpretation of the scope of the right to freedom of expression, the Declaration of Principles on Freedom of Expression issued by the Inter-American Commission on Human Rights indicates that this fundamental and inalienable right refers to human expression "in all its forms and manifestations," and that it covers the right of every person, under equal conditions, "to seek, receive and impart information and opinions freely," "by any means of communication," as well as the "right to communicate his/her views by any means and in any form." The Declaration of Principles also states expressly that every person has the right to "access to information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries," and to "update it, correct it and/or amend it" if necessary, as well as the right to "access to information held by the State."

21. In their decisions, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have given a broad content to the right to freedom of expression enshrined in Article 13 of the American Convention, and have derived from its individual and collective dimensions a series of rights protected by that article in relation to different forms of human expression.²² According to these bodies, Article 13 of the American Convention reflects a broad concept of freedom of expression that is based on the autonomy and dignity of the individual,²³ and is meant to serve an important democratic function, as discussed below.²⁴

22. The main specific types of expression that have been addressed in the decisions of the Inter-American Commission and the Inter-American Court are the ones set forth below.

23. *The right to speak*, that is, to express one's thoughts, ideas, information or opinions orally. This is a basic right which, according to the Commission and the Court, is one of the pillars of freedom of expression.²⁵

24. The right to speak necessarily entails people's right to use the language of their choice to express themselves.²⁶ Accordingly, the Inter-American Court in the case of *López Alvarez v. Honduras* examined the case of a member of an ethnic group who had been deprived of his liberty, and during the course of his incarceration had been adversely affected by the prohibition, imposed by the prison Director, against speaking in the language of his ethnic group. In the Court's opinion, this prohibition was a violation of Article 13 of the American Convention, in that "one of the mainstays of the freedom of expression is precisely the right to speak, and (...) this necessarily

²² I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 75.

²³ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ivcher Bronstein v. Peru*, cited in I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. para. 143.d).

²⁴ IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

²⁵ I/A Court H. R., *Case of López-Álvarez v. Honduras. Merits, Reparations and Costs*. Judgment of February 1, 2006. Series C No. 141. para. 164; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 109; I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 78; I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. para. 147; I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. para. 65; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 31.

²⁶ I/A Court H. R., *Case of López-Álvarez v. Honduras. Merits, Reparations and Costs*. Judgment of February 1, 2006. Series C No. 141. para. 164.

implies the right of people to use the language of their choice when expressing their thoughts. The expression and dissemination of thoughts and ideas are indivisible; therefore a restriction on the possibilities of spreading information directly represents, in the same measure, a limit to the right to express oneself freely."²⁷

25. *The right to write*, that is, to express one's thoughts, ideas, information, or opinions in written or printed form,²⁸ also in the language of one's choice. The Inter-American Commission and Court have protected various manifestations of the right to write, for example, in the case of those who write books,²⁹ news articles³⁰ and opinion pieces.³¹

26. *The right to disseminate* spoken or written expressions of thoughts, information, ideas, or opinions, through the means of dissemination of one's choosing, in order to communicate them to the greatest possible number of people. On this point the Inter-American Court has stressed the following: (a) freedom of expression is not limited to the abstract right to speak or write; rather, it encompasses inseparably the right to disseminate the thought, information, ideas, and opinions by any appropriate means chosen, in order to reach as many people as possible;³² (b) to guarantee this freedom effectively, the State must not only protect the exercise of the right to speak or write ideas and information but also has the duty to refrain from restricting their dissemination through the prohibition or disproportionate regulation of the means chosen for others to receive them;³³ and (c) in establishing that freedom of expression encompasses the right to impart information and ideas "by any (...) medium," the American Convention establishes that the expression and dissemination

²⁷ I/A Court H. R., *Case of López-Álvarez v. Honduras. Merits, Reparations and Costs*. Judgment of February 1, 2006. Series C No. 141. para. 164.

²⁸ I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 109; I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 78; I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. para. 147; I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. para. 65.

²⁹ I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135; I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177.

³⁰ I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107.

³¹ I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111.

³² I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 73; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 109; I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 78; I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. para. 147; I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. para. 65; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 31.

³³ I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 73; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 109; I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 78; I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. para. 147; I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. para. 65; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 31.

of thoughts and ideas are indivisible, and therefore any limitation on the means and possibilities for the dissemination of the expression is, directly and in the same measure, an infringement of freedom of expression³⁴ –which implies, among other things, that restrictions on the communications media are also restrictions to freedom of expression.³⁵ As such, in the case of *Palamara Iribarne v. Chile*, the Inter-American Court held that respect for freedom of expression requires States not only to allow individuals to express themselves verbally or in writing but also to refrain from preventing the dissemination of their expressions through means such as the publishing of a book. According to the Court, “in order to ensure the effective exercise of Mr. Palamara Iribarne’s right to freedom of thought and expression, it was not enough for the State to allow him to write his ideas and opinions. The protection of such right implied the duty of the State not to restrict their dissemination, enabling him to distribute his book by any appropriate means to make his ideas and opinions reach the maximum number of people and, in turn, allowing these people to receive this information.”³⁶

27. *The right to artistic and symbolic expression, to the dissemination of artistic expression, and to access to art*, in all its forms.³⁷

28. *The right to seek, receive and have access to expressions, ideas, opinions and information of all kinds*. According to the Inter-American Commission and Court, the right to freedom of expression also enables individuals to seek, procure, obtain and receive all types of information, ideas, expressions, opinions and thoughts. The right of access to information, particularly information held by the State, is a specific and crucial manifestation of this freedom that has warranted special attention in the inter-American system, and will be examined in greater detail later in chapter IV of this report.

29. *The right of access to information about oneself contained in public or private databases or registries*, with the corresponding right to update, correct or amend it. This matter will be dealt with in more detail in chapter IV of the present report.

30. *The right to possess information, whether written or in any other medium, to transport such information, and to distribute it*. The inter-American bodies have protected this manifestation of freedom of expression, for example, in cases involving the possession of printed media for distribution or personal use,³⁸ or the possession, transportation, sending and receipt of books.³⁹

³⁴ I/A Court H. R., *Case of López-Álvarez v. Honduras. Merits, Reparations and Costs*. Judgment of February 1, 2006. Series C No. 141. para. 164; I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 72; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 109; I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 78; I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. para. 147; I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. para. 36.

³⁵ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 36.

³⁶ I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 73.

³⁷ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile*, cited in I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. para. 61.b).

³⁸ IACHR. Report No. 3/98. Case 11.221. Merits. Tarcisio Medina Charry. Colombia. April 7, 1998. para. 77.

³⁹ IACHR. Report No. 2/96. Case 10.325. Merits. Steve Clark *et al.* Grenada. March 1, 1996.

2. Types of speech protected according to content

a. Presumption of coverage *ab initio* for all types of speech, including offensive, shocking or disturbing speech

31. In principle, all forms of speech are protected by the right to freedom of expression, independently of their content and degree of government and social acceptance. This general presumption of coverage of all expressive speech is explained by the State's primary duty of content-neutrality and, as a consequence, by the necessity to guarantee that, in principle, there are no persons, groups, ideas or means of expression excluded *a priori* from public debate.

32. Particularly important is the rule according to which freedom of expression must be guaranteed not only with regard to the dissemination of ideas and information that are received favorably or considered inoffensive or indifferent but also in cases of speech that is offensive, shocking, unsettling, unpleasant or disturbing to the State or to any segment of the population.⁴⁰ This is required by the pluralism, tolerance and spirit of openness without which a democratic society cannot exist.⁴¹ In this vein, the Commission has pointed out the special importance of protecting freedom of expression "as regards minority views, including those that offend, shock or disturb the majority,"⁴² and it has emphasized that restrictions to freedom of expression "must not 'perpetuate prejudice or promote intolerance.'"⁴³ Likewise, it is clear that the duty to not interfere with the right of access to information of all kinds extends to the circulation of information, ideas and forms of expression that may or may not have the personal approval of those who represent State authority at a given time.⁴⁴

b. Specially protected speech

33. While it is true that all forms of expression are protected in principle by the freedom enshrined in Article 13 of the Convention, there are certain types of speech that receive special protection because of their importance to the exercise of other human rights, or to the consolidation, proper functioning and preservation of democracy. In the case law of the inter-American system, the types of specially protected speech are the following three: (a) political speech and speech involving matters of public interest; (b) speech regarding public officials in the

⁴⁰ I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 113; I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. para. 69; I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. para. 105; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. para. 116; IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

⁴¹ I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 113; I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. para. 69; I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. para. 105; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. para. 116; IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

⁴² IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

⁴³ IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

⁴⁴ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile*, cited in I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. para. 61.c).

exercise of their duties and candidates for public office; and (c) speech that is an element of the identity or personal dignity of the person expressing herself.

i. Political speech and speech involving matters of public interest

34. The operation of democracy demands the greatest possible degree of public debate on the functioning of society and the State in all of their aspects, that is, on matters of public interest. In a democratic and pluralistic system, the acts and omissions of the State and of government officials must be subject to rigorous scrutiny, not only by the internal control authorities, but also by the press and by public opinion. The conduct of public affairs and issues of common interest must be controlled by society as a whole. The democratic control of government through public opinion encourages the transparency of State activities and the accountability of public officials for their actions, and is a mean of achieving the maximum degree of citizen participation. It follows that the adequate functioning of democracy requires the greatest possible circulation of reports, opinions and ideas on matters of public interest.⁴⁵

35. Along these lines, inter-American case law has defined freedom of expression as “the right of the individual and the entire community to engage in active, challenging and robust debate about all issues pertaining to the ‘normal and harmonious functioning of society.’”⁴⁶ Such case law has emphasized that freedom of expression is one of the most effective ways to denounce corruption and that, in the debate of matters concerning public interest, the right to freedom of expression protects both expressions that are inoffensive and well-received by public opinion and those that shock, irritate or unsettle public officials, candidates for public office or any sector of the population.⁴⁷

36. Consequently, the expression of statements, information and opinions regarding matters of public interest, the State and its institutions enjoy greater protection under the American Convention on Human Rights. This means that the State must refrain more rigorously from placing limitations on these forms of expression, and that State entities and officials, as well as those who aspire to hold government positions, must have a higher threshold of tolerance in the face of criticism because of the public nature of their duties.⁴⁸ In a democratic society, given the

⁴⁵ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 57 and 87; I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 84, 86 and 87; I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 83; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 127.

⁴⁶ IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V; IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 72.c).

⁴⁷ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 88; I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. para. 69; I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. para. 152; I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 83.

⁴⁸ I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 83; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 125; IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*, cited in I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 101.2).c).

importance of monitoring the conduct of public affairs through opinion, there is a narrower margin for any restriction of political debate or discourse on matters of public interest.⁴⁹

37. For example, in the case of *Tristán Donoso v. Panama*, the Inter-American Court found that a report on the Attorney General's use of an illegal recording of an attorney's private conversation, in the context of intense questioning of the Attorney General's power to order wiretaps, was a matter currently in the public interest. In that respect, the Court stated, "the manner in which a high ranking public official – such as the *Procurador General de la Nación* [National Attorney General] – exercises his or her statutory powers – in this case, the wiretapping of telephone conversations – and the manner in which domestic rules and regulations are abided by in therefore doing, is a matter of public interest. It is against the background of the series of challenges publicly made against the former Attorney General by various State authorities, such as the Ombudsman and the President of the Supreme Court, regarding his actions in connection with telephone wiretapping, that the alleged victim stated in a press conference that such public official had tape-recorded a telephone conversation and had disclosed such recording to the *Junta Directiva del Colegio Nacional de Abogados* [National Bar Association Governing Board] [...]. The Court considers that Mr. Tristán Donoso made statements regarding events that had the greatest public interest in a context of intense public debate regarding the powers of the *Procurador General de la Nación* [National Attorney General] to wiretap and record telephone conversations, a debate in which court authorities, among others, were involved."⁵⁰ According to the Court, the importance of not stifling democratic debate on a matter in the public interest is a factor that should be considered by a judge when establishing possible subsequent responsibility for freedom of expression: "Likewise, as has already been held by the Court, the Judiciary must take into account the context in which the statements involving matters of public interest are made; the judge shall 'assess the respect of the rights and reputations of others in relation to the value in a democratic society of open debate regarding matters of public interest or concern.'"⁵¹

38. The prevailing importance of discussion on matters of public interest leads, in addition, to a heightened protection of the right of access to information on public affairs. Although this topic shall be explained in greater detail below, it is pertinent to recall that citizens are able to question, investigate and consider whether public duties are being performed properly only when they have access to information of public interest that is under the State's control.⁵²

39. The case law of the inter-American system has similarly stressed the importance of the role of the communications media in providing broad information about public interest issues affecting society.⁵³ It has asserted on this point that freedom of expression grants the heads of communications media, as well as the journalists who work for them, the right to investigate and

⁴⁹ I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 127; I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. para. 155; IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

⁵⁰ I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 121.

⁵¹ I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 123.

⁵² I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 86.

⁵³ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 57.

publicize events of public interest.⁵⁴ It has also held that the prosecution of individuals, including journalists and other media professionals, for the mere act of investigating, writing and publishing public interest information violates freedom of expression because it has a chilling effect on the public debate of issues that are of interest to society⁵⁵ and results in self-censorship.⁵⁶

ii. Speech regarding public officials in the exercise of their duties and candidates for public office

40. The expression of statements, information, ideas and opinions on public officials in the exercise of their duties and on candidates for public office also enjoys a special degree of protection under the American Convention, for the same reasons that support the special protection of political speech and speech on matters of public interest.

41. As previously mentioned, the democratic oversight of government through public opinion promotes the transparency of the State's activities and the responsibility of public officials for their performance; it also encourages broader citizen participation. As such, in the democratic context, speech regarding public officials or individuals who perform public duties, as well as speech regarding candidates for public office, must enjoy a particularly strong margin of openness. In this sense, in a democratic society, public officials and those who aspire to be public officials have a distinct threshold of protection that exposes them to a greater degree of scrutiny and public criticism. This is justified by the public interest nature of the activities they engage in, as they have exposed themselves voluntarily to heightened scrutiny, and because they have an enormous capacity to call information into question through their power to appeal to the public.⁵⁷ Effectively, due to a profile that implies greater influence on society and easier access to the media, public officials have greater opportunity to give explanations or respond to questions and criticism.⁵⁸

42. Given that speech and information concerning public officials, private citizens who involve themselves voluntarily in public affairs, candidates for public office, enjoy a greater degree

⁵⁴ I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. para. 157.

⁵⁵ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case Kimel v. Argentina*, cited in I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 37.

⁵⁶ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Palamara-Iribarne v. Chile*, cited in I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 64.e).

⁵⁷ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. paras. 86-88; I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 83; I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. para. 69; I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. paras. 152 and 155; I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 83; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. paras. 125-129; I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 87; I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193, par. 115.

⁵⁸ I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 122.

of protection,⁵⁹ the State must refrain to a higher degree from imposing limitations on these forms of expression. Such individuals, because of the public nature of the duties they perform, are subject to a different type of protection to their reputation or their honor as compared to other people, and, correspondingly, must have a higher threshold of tolerance to criticism.⁶⁰ In this sense, given that the right to freedom of expression enables the individual and the community to participate in active, robust and challenging debate on all aspects relative to the functioning of society, this right covers debate that may be critical of or even offensive to public officials, candidates for public office or individuals involved in shaping public policy.⁶¹ As stated by the Inter-American Commission, “[t]he sort of political debate encouraged by the right to free expression will inevitably generate some speech that is critical of and even offensive to those who hold public office or are intimately involved in the formation of public policy.”⁶² This does not mean that public officials cannot be judicially protected when their honor is subjected to unjustified attack, but such protection must be consistent with the principles of democratic pluralism,⁶³ and it must be afforded through mechanisms that do not have a potential for creating inhibition or self-censorship.

43. The case law of the inter-American system has also held that freedom of expression includes the right to denounce human rights violations committed by public officials; that the obstruction or silencing of this type of complaint is a violation of freedom of expression in both its individual and collective dimensions;⁶⁴ and that in a democratic society the press has the right to inform freely and to criticize the government, and the people have the right to be informed of different views as to what happens in the community. The denunciation of human rights violations committed by agents of the State is especially protected.⁶⁵

44. Different decisions of the Inter-American Commission and Court illustrate the type of speech covered under this increased level of protection. One example of this rule is given by the case of *Palamara Iribarne v. Chile*. Mr. Palamara had been criminally convicted for the offence of

⁵⁹ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 86; I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 82.

⁶⁰ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. paras. 86-88; I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. paras. 83-84; I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. para. 69; I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. paras. 152 and 155; I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 83; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 128; IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Herrera-Ulloa v. Costa Rica*, cited in I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. paras. 125-29; I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 87.

⁶¹ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 72.c).

⁶² IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

⁶³ I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 128.

⁶⁴ IACHR. Report No. 20/99. Case 11.317. Merits. Rodolfo Robles Espinoza and Sons. Peru. February 23, 1999.

⁶⁵ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ivcher-Bronstein v. Peru*, cited in I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. paras. 143.g-h).

desacato, because of critical declarations he had made against the officers of a military criminal court who were in charge of a prosecution against him.

45. The Inter-American Court, referring to Mr. Palamara's statements to the media in which he criticized the actions of the military criminal court in his case, stated that it was "logical and appropriate that statements concerning public officials and other individuals who perform public services are afforded, as set forth in Article 13(2) of the Convention, greater protection, thus allowing some latitude for broad debate, which is essential for the functioning of a truly democratic system."⁶⁶ The Court found that this standard was applicable to Palamara's critical statements regarding the actions of the military criminal court in the proceedings against him. According to the Inter-American Court, "[d]emocratic checks and balances, exercised by society through public opinion, encourage transparency in State activities and promote accountability of public officials for their administration. This is why there should be more tolerance and openness to criticism in the face of statements and opinions advanced by individuals in the exercise of said democratic mechanism. This is applicable to officers and members of the Navy, including those who preside over courts. Moreover, said democratic mechanism of checks and balances promotes greater participation among people in matters of social interest."⁶⁷

46. Along these same lines, in the case of *Herrera Ulloa v. Costa Rica*,⁶⁸ the Inter-American Court ruled that the accurate reprinting in a local newspaper of certain statements published in the European press, which seriously affected the reputation of a high Costa Rican government official stationed in Belgium, was entitled to special protection. The publications were about the alleged commission of serious criminal offenses by the (then) diplomatic representative of Costa Rica before the International Atomic Energy Agency, in relation to the alleged payment of illegal commissions. The Court emphasized that, in relation to the admissible limitations to freedom of expression, a distinction must always be made between expressions referring to public officials and those that refer to private citizens. It explained that, "it is logical and appropriate that statements concerning public officials and other individuals who exercise functions of a public nature should be accorded, in the terms of Article 13(2) of the Convention, a certain latitude in the broad debate on matters of public interest that is essential for the functioning of a truly democratic system. The foregoing considerations do not, by any means, signify that the honor of public officials or public figures should not be legally protected, but that it should be protected in accordance with the principles of democratic pluralism."⁶⁹ It also held that, "[a] different threshold of protection should be applied, which is not based on the nature of the subject, but on the characteristic of public interest inherent in the activities or acts of a specific individual. Those individuals who have an influence on matters of public interest have voluntarily exposed themselves to more intense

⁶⁶ I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 83; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 82.

⁶⁷ I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 83; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 82.

⁶⁸ I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107.

⁶⁹ I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 128.

public scrutiny and, consequently, in this domain, they are subject to a higher risk of being criticized, because their activities go beyond the private sphere and belong to the realm of public debate."⁷⁰

47. A third case from the Inter-American Court that addresses speech that receives special protection under the American Convention is the case of *Canese v. Paraguay*.⁷¹ In this case, the Court examined the situation of Ricardo Canese, a candidate in the 1992 Paraguayan presidential election, who was convicted of defamation as a result of statements he made while he was a candidate and during the course of the campaign. He had said that his opponent in the race was the "straw man" of the family of the former dictator Stroessner and had concealed his financial interests in a consortium that was involved in the construction and development of the Itaipú Hydroelectric Complex. A criminal complaint was filed by certain partners of the consortium, and as a result of those statements Mr. Canese was convicted of the offense of defamation and sentenced to a term of incarceration and the payment of a fine, and while the case was pending he was permanently barred from leaving the country; this bar was lifted only under exceptional circumstances, and in an inconsistent manner. The Inter-American Court, after reiterating the important democratic function of the full exercise of freedom of expression and its heightened importance in the electoral arena, concluded that in this case there had been a violation of the freedom of expression protected by Article 13. To arrive at this conclusion, the Court took into particular consideration that Mr. Canese's statements had been made in the context of a presidential election campaign with regard to matters of public interest, "circumstances in which opinions and criticisms are issued in a more open, intense and dynamic way, according to the principles of democratic pluralism," reason for which in this case "the judge should have weighed respect for the rights or reputations of others against the value for a democratic society of an open debate on topics of public interest or concern."⁷²

48. As it had done in its prior decisions, the Court concluded that the criminal proceedings and the judgment against Mr. Canese constituted an unnecessary and excessive punishment that limited the open debate of issues of public interest and restricted the victim's freedom of expression during the rest of the election campaign. In the Court's judgment, "the freedom of thought and expression of the alleged victim was restricted disproportionately, without taking into consideration that his statements referred to matters of public interest;"⁷³ the case therefore entailed a restriction or limitation to freedom of expression that was excessive in a democratic society, contrary to Article 13 of the Convention.

49. A fourth case from the Inter-American Court that illustrates this same rule is the case of *Kimel v. Argentina*.⁷⁴ In this case the Inter-American Court examined the situation of an Argentinean writer and journalist, Eduardo Kimel, who had written and published a book in which he harshly criticized the actions of a federal judge. The judge, who was by then retired, had previously been assigned the task of investigating the massacre of certain members of a religious order during

⁷⁰ I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 129.

⁷¹ I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111.

⁷² I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 105.

⁷³ I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 106.

⁷⁴ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177.

the military dictatorship. In the book, Mr. Kimel asserted that the judge had acted in an acquiescent manner with the dictatorship because, having been aware of evidence that the crime was committed on the orders of high military commanders, he halted the investigation.⁷⁵ As a consequence of the book's publication, the retired judge filed a criminal action for libel against Mr. Kimel, who was sentenced to one year in prison (suspended) and ordered to pay monetary compensation. The Inter-American Court ruled that this case involved a violation of Article 13 of the Convention in that the State used its punitive authority unnecessarily and disproportionately. It arrived at this conclusion by taking into account, among other factors, (i) that Mr. Kimel's criticism was with respect to issues of notorious public interest; and (ii) that the book in question concerned the actions of a judge in the exercise of his official duties. In this respect, the Court stressed that, as a public official, the judge was exposed to a greater degree of criticism by public opinion; that "democratic checks promote the transparency of the actions of the State and foster the accountability of public officials," reason for which they must demonstrate "greater tolerance to the statements and opinions expressed by individuals in the exercise of such democratic power," given that "[t]hese are the requirements of the pluralism inherent in a democratic society, which requires the greatest possible flow of information and opinions on issues of public interest;" and that in debate on matters of public interest, the American Convention protects both expressions that are inoffensive and well-received by public opinion and those that "shock, irritate or disturb public officials or any sector of society," because "in a democratic society, the press must inform extensively on issues of public interest which affect social rights, and public officials must account for the performance of their duties."⁷⁶

50. A fifth case is that of *Tristán Donoso v. Panama*, in which the Court protected the rights of Mr. Tristán Donoso. Donoso, an attorney, was convicted of the crime of slander after he called a press conference to accuse the Attorney General of recording and illegally using his private communication. Later, the Attorney General was acquitted of the charge in court. In its ruling, the Inter-American Court held that, "any expression regarding the suitability of an individual for holding public office or regarding the acts performed by public officials in the course of their duties enjoys greater protection, thus fostering democratic debate."⁷⁷ Likewise, the Court indicated that, "in a democratic society, public officials are more exposed to scrutiny and criticism by the general public. This different protection threshold is justified by the fact that public officials have voluntarily exposed themselves to stricter scrutiny. Their activities go beyond their private life and expand to enter the arena of public debate."⁷⁸

⁷⁵ The relevant fragment of Mr. Kimel's book, which is cited in the Inter-American Court's judgment, is as follows: "[Judge Rivarola] adopted all applicable steps and procedures. He collected the police reports containing the preliminary information, requested and had forensic and ballistics reports made, and summoned to appear a number of people who might be able to provide information for the elucidation of the case. Notwithstanding, an examination of the judicial record poses an initial question: Did the authorities actually intend to find out clues which might lead to the murderers? Under the military dictatorship judges were normally acquiescent, if not accomplices to the dictatorial regime. In the case of the Palatine clergymen, the [J]udge (...) complied with most of the formal requirements regarding the investigation, though it is evident that a number of decisive elements that could have shed light on the murder were not taken into consideration. The evidence that the order to carry out the murder had come from within the core of the military structure in power checked the development of the investigation, bringing it to a standstill." I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 42.

⁷⁶ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. paras. 87-88.

⁷⁷ I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 115

⁷⁸ I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 115

51. The Court found in this case that the punishment imposed was disproportionate. First, the Court took into account that the statements for which Tristán Donoso was convicted were in reference to “a person that held one of the highest public offices in his country, the *Procurador General de la Nación* [National Attorney General].”⁷⁹ In addition, the Court found that the issue was one of interest to the public, given the context and the broad debate within which the statements had been made. Finally, the Court held that given the knowledge the attorney had at the moment of making his statements, “it was not possible to sustain that his expression was groundless and, consequently, that the criminal remedy was a necessary action.”⁸⁰ All of this is in spite of the fact that Tristán Donoso essentially accused the Attorney General of a crime for which he was later acquitted.

52. Up until December 2009, the last case decided by the Inter-American Court on this subject was *Usón Ramírez v. Venezuela*. Mr. Usón, a retired member of the military, was sentenced for the crime of “insult against the Armed Forces,” for issuing several opinions that were critical of the performance of said institution in the so-called case of “Fuerte Mara.” In that case, a group of soldiers suffered severe burnings while being detained in a punishment cell. Mr. Usón was sentenced for saying, on a television program, that if the information that was circulating regarding the kind and degree of the burnings was accurate, the soldiers must have been deliberately attacked with a flamethrower. According to Mr. Usón, the kind of burnings that were described by the father of one of the soldiers could only be the product of this kind of weapon, and the use of such weapon had to be premeditated, because of the different actions that had to be taken in order to get the flamethrower into the detention facility and load and activate it, issues on which Mr. Usón had expertise due to his status as a former member of the Armed Forces. As a consequence of these opinions, Mr. Usón Ramírez was tried and sentenced to five years and six months in jail for the crime of “insult against the National Armed Forces,” following a criminal provision set forth in Article 505 of the Organic Code Military Justice whereby “whoever insults, offends, or disparages the National Armed Forces or any of its units shall be subject to three to eight years in prison.”

53. In this case, the Inter-American Court judged that the criminal law applied to convict Mr. Usón did not abide by the principle of legality, because it did not clearly establish the scope of the conduct protected by the right to freedom of expression nor the scope of the penalty for “insult against the armed forces.” Furthermore, the Court considered that the application of criminal law in this case was not suitable, necessary or proportionate. The Court considered that Mr. Usón’s assertions were worthy of special protection because they made reference to State entities about which there was an important public debate going on: “[T]he remarks made by Mr. Usón Ramírez were related to matters that clearly were of public interest. Despite the existence of public interest in the events in Fuerte Mara, a facility belonging to the National Armed Forces, Mr. Usón Ramírez was tried and sentenced without taking into account the requirements of the American Convention regarding the larger tolerance required regarding any affirmations and considerations expressed by citizens exercising their democratic control.”⁸¹ The Court found that the State violated, among other things, the principle of legality and the right to freedom of thought and expression recognized in Articles 9, 13.1 and 13.2 of the American Convention, in relation to Articles 1.1 and 2 of that Convention, to the prejudice of Mr. Francisco Usón Ramírez. As a consequence, the Court ordered the State to leave without effect, within a year, the criminal military procedure and to change, within a reasonable period of time, Article 505 of the Organic Code of Military Justice.

⁷⁹ I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 122

⁸⁰ I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 126

⁸¹ I/A Court H.R., *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. para. 83.

iii. Speech that expresses essential elements of personal identity or dignity

54. A third type of expression that enjoys special protection under the American Convention involves forms of speech that express constituent elements of one's personal identity or dignity.

55. The case law of the inter-American system has addressed this point expressly in reference to the use of language by ethnic or minority groups. It has held that the use of one's own language is one of the most important elements of the identity of an ethnic group, because it safeguards the expression, dissemination and transmission of its culture. It has further held that it is one of the elements that distinguishes the members of indigenous groups from the general population, and shapes their cultural identity. As such, it has concluded that the prohibition on use one's own language, insofar as it is an expression of belonging to a cultural minority, is especially serious and violates the personal dignity of its members, and is also discriminatory.⁸²

56. This was the decision adopted by the Inter-American Court in the case of *López Álvarez v. Honduras*, which examined the prohibition imposed by the warden of a prison, banning the Garifuna inmates from speaking in their own language. The Court held that this constituted a restriction that was not only unnecessary and unjustified but also was particularly serious, "since the mother tongue represents an element of identity of Mr. Alfredo López Álvarez as a Garifuna. In this way, the prohibition affected his personal dignity as a member of that community. (...) States must take into consideration the characteristics that differentiate the members of the Indian populations from that of the population in general and that make up their cultural identity. Language [is] one of the most important elements of identity of any people, precisely because it guarantees the expression, diffusion, and transmission of their culture."⁸³

57. Other forms of speech that, in accordance with the previous reasoning, should enjoy a special level of protection are religious speech and speech that expresses one's own sexual orientation and gender identity, because they express an integral element of personal identity and dignity. In effect, Article 12.1 of the Convention, by protecting freedom of conscience and religion, provides expressly that this right entails "freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private;" and Article 12.3 establishes that "freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedom of others." Therefore, because of its close relation with the dignity, liberty, and equality of all human beings, speech that expresses one's own sexual orientation and gender identity is part of this category of specially protected speech. In this respect, it is worth recalling that Resolution 2435 (XXXVIII-O/08)⁸⁴ of the General Assembly of the Organization of American States marked a milestone on the matter at the international level.

3. Speech not protected by freedom of expression

58. Without prejudice to the presumption of coverage *ab initio* of all forms of human expression by freedom of expression, there are certain types of speech that are excluded from this freedom's scope of coverage by virtue of express prohibitions set forth in international human rights

⁸² I/A Court H. R., *Case of López-Álvarez v. Honduras. Merits, Reparations and Costs*. Judgment of February 1, 2006. Series C No. 141. para. 169.

⁸³ I/A Court H. R., *Case of López-Álvarez v. Honduras. Merits, Reparations and Costs*. Judgment of February 1, 2006. Series C No. 141. para. 169.

⁸⁴ AG/RES. 2435 (XXXVIII-O/08)

law. There are three principle types of speech that do not enjoy protection under Article 13 of the Convention, according to the international treaties in force.

59. *Propaganda for war and advocacy of hatred that constitute incitements to lawless violence.* Article 13.5 of the Convention expressly states that “[a]ny propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.” The IACHR has said, following the settled international doctrine and jurisprudence on the subject, that the imposition of sanctions for the abuse of freedom of expression under the charge of incitement to violence (understood as the incitement to commit crimes, the breaking of public order or national security) must be backed up by actual, truthful, objective and strong proof that the person was not simply issuing an opinion (even if that opinion was hard, unfair or disturbing), but that the person had the clear intention of committing a crime and the actual, real and effective possibility of achieving this objective.⁸⁵ Acting otherwise would mean admitting the possibility of punishing opinions, and all the States would be authorized to suppress any kind of thought or expression critical of the authorities that, like anarchism and opinions radically opposed to the established order, question the existence of current institutions. In a democracy, the legitimacy and strength of institutions are strengthened by the force of the public debate over their operation, not by its suppression. Furthermore, the inter-American case law has clearly established that, in order to impose any kind of penalty in the name of the defense of public order (understood as security, public health or morals), it is necessary to show that the concept of “order” that is being defended is not an authoritarian, but a democratic order understood as the existence of the structural conditions that enable all people to exercise their rights in freedom, with neither discrimination nor fear of punishment as a consequence thereof. In effect, for the Inter-American Court, generally speaking, public order cannot be invoked to suppress a right guaranteed in the American Convention, to denaturalize it or to deprive it of its real content. If this concept is invoked as a source of limitations to human rights, it must be interpreted in a way strictly attached to the fair demands of a democratic society that keeps in mind the equilibrium among the interests at stake and the need to preserve the object and goals of the American Convention.⁸⁶

60. *Direct and public incitement to genocide,* proscribed under international treaty law by Article III(c) of the Convention on the Prevention and Punishment of the Crime of Genocide, as well as under customary international law.

61. *Child pornography,* prohibited in absolute terms by the Convention on the Rights of the Child (Article 34-c), by the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, and by ILO Convention No. 182 on the Worst Forms of Child Labor (Article 3-b). This prohibition, read in conjunction with Article 19 of the American Convention on Human Rights, under which “[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state,” means necessarily that child pornography, as a form of speech that is violently harmful

⁸⁵ On this issue, see the following cases of the European Court of Human Rights: *Karatas v. Turkey* [GC], no. 23168/94. ECHR 1999-IV; *Gerger v. Turkey* [GC], no. 24919/94, 8 July 1999; *Okçuoglu v. Turkey* [GC], no. 24246/94, 8 July 1999; *Arslan v. Turkey* [GC], no. 23462/94, 8 July 1999, *Erdogdu v. Turkey*, no. 25723/94, § 69, ECHR 2000 – VI. Also see I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. para. 77.

⁸⁶ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 67.

to the prevailing rights of children and their best interests, must be excluded from the protection provided by freedom of expression.

D. Limits on freedom of expression

1. Admissibility of limitations under the American Convention on Human Rights

62. Freedom of expression is not an absolute right.⁸⁷ Article 13 of the American Convention provides expressly—in paragraphs 2, 4 and 5—that it can be subject to certain limitations, and establishes the general framework of the conditions required for such limitations to be legitimate.⁸⁸ The general rule is set forth in paragraph 2, according to which “[t]he exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: (a) respect for the rights or reputations of others; or (b) the protection of national security, public order, or public health or morals.” Paragraph 4 provides that “[n]otwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence;” and paragraph 5 establishes that “[a]ny propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.”

63. In the interpretation of this article, the case law of the inter-American system has developed a three-part test to control the legitimacy of limitations, according to which they must meet a set of specific conditions in order to be admissible under the American Convention. These conditions are explained in detail below. The Inter-American Commission and Court have also considered that (a) certain forms of limitations of freedom of expression are inadmissible, and (b) certain types of limitations, due to the type of speech they affect or the means that they use, must be put to a more strict and rigorous test in order to be valid under the Convention. This issue will also be addressed below.

64. The standards for the admissibility of restrictions are applied to all of the constitutive elements of freedom of expression in its diverse manifestations. Thus, for example, limitations imposed upon the expression of a person’s own thoughts and ideas, access to information, the

⁸⁷ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 54; I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 79; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 120; I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 110; I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. para. 106; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. para. 117; IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

⁸⁸ I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 120; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 35; IACHR. Report No. 11/96. Case 11.230. Merits. Francisco Martorell. Chile. May 3, 1996. para. 55; IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 72.a)

dissemination and circulation of information and upon the communications media must all meet these conditions.⁸⁹

65. In addition, the rules setting the conditions that restrictions to freedom of expression must meet in order to be legitimate are applied to the laws that establish them as such, as well as to the administrative, judicial, police or other decisions that bring them into being—that is, to every manifestation of State authority that affects the full exercise of freedom of expression.⁹⁰ The types of State acts constituting limitations to freedom of expression addressed in the case law of the inter-American system include: the decisions of prosecutors and judges of the military criminal justice system in cases they are prosecuting,⁹¹ orders given by members of the Armed Forces to their subordinates,⁹² orders given by the Directors of prison centers regarding the conduct of inmates,⁹³ the decisions of criminal courts,⁹⁴ administrative acts of the executive branch,⁹⁵ and even legal and constitutional provisions,⁹⁶ among others.

66. The Inter-American Court has also held that the compatibility of limitations with the American Convention must be evaluated considering the facts of the case in their totality and the circumstances and context in which they arose, and not by examining only the act in question.⁹⁷ In this respect, in the case of *Tristán Donoso* the Court held that both the context in which the expression in question was made, as well as the importance of democratic debate on subjects of public interest, are elements that a judge should consider when establishing subsequent responsibility: “the Judiciary must take into account the context in which the statements involving matters of public interest are made; the judge shall ‘assess the respect of the rights and reputations of others in relation to the value in a democratic society of open debate regarding matters of public interest or concern.’”⁹⁸

⁸⁹ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 36.

⁹⁰ I/A Court H. R., *Case of López-Álvarez v. Honduras. Merits, Reparations and Costs*. Judgment of February 1, 2006. Series C No. 141. para. 165.

⁹¹ I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135.

⁹² I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135.

⁹³ I/A Court H. R., *Case of López-Álvarez v. Honduras. Merits, Reparations and Costs*. Judgment of February 1, 2006. Series C No. 141.

⁹⁴ I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107; I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177; I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193.

⁹⁵ I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74.

⁹⁶ I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73.

⁹⁷ I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. para. 154.

⁹⁸ I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 123

2. Conditions that limitations must meet in order to be legitimate under the American Convention

a. General rule: compatibility of limitations with the democratic principle

67. In general terms, the case law of the inter-American system has maintained that “restrictions on freedom of expression must incorporate the just demands of a democratic society,”⁹⁹ that “[t]he norms under which these restrictions are interpreted must be compatible with the preservation and development of democratic societies as articulated in Articles 29 and 32 of the American Convention,”¹⁰⁰ and that “interpretation of the Article 13(2) restrictions on freedom of expression must be ‘judged by reference to the legitimate needs of democratic societies and institutions’ precisely because freedom of expression is essential to democratic forms of governance.”¹⁰¹ In the following paragraphs, the specific conditions that arise from this general rule are explained.

b. Specific conditions derived from Article 13.2: the three-part test

68. As it has been interpreted in the case law of the inter-American system, Article 13.2 of the Convention requires that the following three conditions be met in order for a limitation to freedom of expression to be admissible: (1) the limitation must have been defined in a precise and clear manner by a law, in the formal and material sense; (2) the limitation must serve compelling objectives authorized by the Convention; and (3) the limitation must be necessary in a democratic society to serve the compelling objectives pursued, strictly proportionate to the objective pursued, and appropriate to serve said compelling objective.

69. It is incumbent upon the authority imposing the limitations to prove that these conditions have been met. Furthermore, all of the stated conditions must be met simultaneously in order for the limitations to be legitimate pursuant to the American Convention. The content of each condition is explained in greater detail below.

i. The limitations must be set forth in laws that are drafted clearly and precisely

70. Every limitation to freedom of expression must be established in advance, expressly, restrictively and clearly¹⁰² in a law – in the formal and material sense.¹⁰³ This means that the text of

⁹⁹ IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

¹⁰⁰ IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

¹⁰¹ IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

¹⁰² I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. paras. 39-40; I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135, par. 46; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 120; I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 117; I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135; IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V; IACHR. Report No. 11/96. Case 11.230. Merits. Francisco Martorell. Chile. May 3, 1996. para. 55; IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 72.a).

¹⁰³ In this respect, the applicable definition is the one provided by the Inter-American Court in Advisory Opinion 6/86, by which the expression “laws” does not refer to any legal provision, but to general normative acts adopted by the constitutionally established and democratically elected legislative body, in accordance with the procedures established in the Constitution, and for the pursuit of the common good.

the law must establish unambiguously the grounds for subsequent liability for the exercise of freedom of expression. The laws that set limits to freedom of expression must be drafted in the clearest and most specific terms possible, as the legal framework must provide legal certainty to the public.

71. In this sense, vague or ambiguous legal provisions that grant, through this channel, very broad discretionary powers to the authorities, are incompatible with the American Convention, because they can support potential arbitrary acts that are tantamount to prior censorship or that establish disproportionate liabilities for the expression of protected speech.

72. Vague, ambiguous, broad or open-ended laws, by their mere existence, discourage the dissemination of information and opinions out of fear of punishment, and can lead to broad judicial interpretations that unduly restrict freedom of expression. As such, the State must specify the conduct that may be subject to subsequent liability in order to prevent adverse impacts upon the free expression of protest and disagreement with the actions of the authorities.

73. When limits on freedom of expression are established by criminal laws, the Court has established that they must satisfy the principle of strict legality: "should the restrictions or limitations be of a criminal nature, it is also necessary to strictly meet the requirements of the criminal definition in order to adhere to the *nullum crimen nulla poena sine lege praevia* principle."¹⁰⁴ The latter is expressed in the need "to use strict and unequivocal terms, clearly restricting any punishable behaviors,"¹⁰⁵ which requires "a clear definition of the incriminated behavior, setting its elements and defining the behaviors that are not punishable or the illicit behaviors that can be punishable with non-criminal measures."¹⁰⁶ The Court has also pointed out that in the case of military criminal regulations, these "must clearly set forth without any ambiguities, *inter alia*, which criminal offenses fall within the specific military scope, and the illegal nature of criminal offenses by means of a description of the injury to or endangerment of military legal interests which have been seriously attacked, which may justify the exercise of punitive military power, as well as establish the appropriate sanction."¹⁰⁷ In sum, in the judgment of the Court, a crime must be formulated "previously, in an express, accurate, and restrictive manner,"¹⁰⁸ because "criminal law is the most restrictive and severe mean to establish liabilities for illicit behavior, taking into account that the legal framework shall provide juridical certainty to citizens."¹⁰⁹

74. For example, in the case of *Usón Ramírez v. Venezuela*, the Court considered that the terms used to draft the law establishing the crime of insult against the Armed forces, for which Mr. Usón had been convicted, did not abide by the minimum standards demanded by the principle of strict legality. As a consequence, the Court considered that that law violated Articles 9 and 13.2 of

¹⁰⁴ I/A Court H.R., *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. para. 55.

¹⁰⁵ I/A Court H.R., *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. para. 55.

¹⁰⁶ I/A Court H.R., *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. para. 55.

¹⁰⁷ I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 126.

¹⁰⁸ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 54; I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 63.

¹⁰⁹ I/A Court H.R., *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. para. 55.

the American Convention. In that sense, the judgment explained: “The Court observes that the description of punishable violation in Article 505 of the Military Justice Organic Code¹¹⁰ does not establish the elements that may offend, slander or disparage, nor does not specify whether it is important that the active subject attributes facts that damage the honor or whether it suffices simply to give an offensive or disparaging opinion, without attributing any illicit acts, for example, for the imputation of the crime. That is, this Article responds to a description that is vague and ambiguous and it does not specify clearly the typical forum for the criminal behavior, which could lead to broad interpretations allowing the determined behaviors to be penalized unduly by using the criminal provision.¹¹¹ The ambiguity of this criminal provision raises doubts and opens up possibilities for the discretionary exercise of authority, something particularly undesirable when it comes to establishing the criminal liabilities of individuals and penalizing them in a manner that seriously affects fundamental goods such as freedom. Moreover, the mentioned article of the law merely establishes the penalty that should be imposed, without consideration of the intent to cause discredit, damage to reputation or prestige, or harm to the passive subject. By not stating the required intention, the law allows for the subjectivity of the person offended to determine the existence of a crime even when the person involved did not had the intention to slander, offend or discredit the passive subject. This statement is particularly forceful when, according to the statements made by the expert proposed by the State¹¹² in the public hearing of this case, ‘there is no legal definition of military honor’ in Venezuela.”¹¹³ According to the Court, a provision like the one established in the criminal Military Code to describe the crime of “insult to the armed forces” does not respond to the “legality requirements of Article 9 of the Convention and the provisions of Article 13.2 of the Convention regarding the imposition of further liabilities.”¹¹⁴

ii. The limitations must serve compelling objectives authorized by the American Convention

75. The restrictions imposed must pursue one of the limited compelling objectives set forth in the American Convention, to wit: the protection of the rights of others, the protection of national security, public order, or public health or morals. These are the only objectives authorized by the Convention, which is explained by the fact that the limitations must be necessary to achieve imperative public interests that, because of their importance in specific cases, clearly prevail over the social need for the full enjoyment of freedom of expression protected by Article 13.

76. States are not free to interpret in any way the content of these objectives for purposes of justifying a limitation to freedom of expression in specific cases. The case law of the inter-American system has paid considerable attention to the interpretation of some of these objectives, specifically to the notion of “protection of the rights of others” and to the notion of “public order,” as indicated below.

¹¹⁰ This articles establishes that “whoever insults, offends, or disparages the National Armed Forces or any of its units shall be subject to three to eight years in prison”.

¹¹¹ I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 92.

¹¹² Expert deposition of Angel Alberto Bellorin in front of the I/A Court H.R., in the public hearing held on April 1, 2009.

¹¹³ I/A Court H.R., *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. para. 56.

¹¹⁴ I/A Court H.R., *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. para. 57.

- *The “protection of the rights of others” as an objective that justifies limiting freedom of expression*

77. The Inter-American Commission and Court have held that the exercise of human rights must be carried out with respect for other rights, and that in the process of harmonizing competing rights, the State plays a critical role by establishing the subsequent liability necessary to achieve such harmonization.¹¹⁵ Particular emphasis has been placed throughout the case law of the inter-American system on the guidelines that must govern this exercise of balancing and harmonization whenever the exercise of freedom of expression conflicts with the right of others to their honor, reputation and good name. In view of the importance of the rules established with regard to such conflicts, this issue will be addressed separately in this chapter.

78. In addition, the case law of the inter-American system has been clear in specifying that in cases where limitations to freedom of expression are imposed for the protection of the rights of others, it is necessary for those rights to be clearly harmed or threatened, and that it is the burden of the authority imposing the limitation to demonstrate this requirement; if there is no clear harm to another’s right, the subsequent imposition of liability is unnecessary.

79. The Inter-American Court has also specified that the protection of freedom of expression or freedom of information cannot be invoked as an objective that in turn justifies the restriction of freedom of expression or information, because that is an antinomy: “In principle, it would be a contradiction to invoke a restriction to freedom of expression as a means of guaranteeing it. Such an approach would ignore the primary and fundamental character of that right, which belongs to each and every individual as well as the public at large.”¹¹⁶ Likewise, the Court has indicated that it is also impossible to justify the imposition of a system for the control of freedom of expression in the name of a supposed guarantee of the accuracy and truthfulness of the information society receives, as it could be the source of gross abuses, and in the end violates society’s right to information,¹¹⁷ which includes the right to be informed of different interpretations and views of the world and to choose the one considered most suitable.

80. In any case—as discussed below—when there is an actual abuse of freedom of expression that causes harm to the rights of others, the means least restrictive to freedom of expression must be used to repair that harm. The first means to be used is the right of correction or reply enshrined in Article 14 of the American Convention. If that is insufficient, and if it is shown that serious harm was caused intentionally or with obvious disregard for the truth, it is possible to resort to the imposition of civil liability in accordance with the strict conditions derived from Article 13.2 of the Convention. Finally, with respect to the use of criminal law mechanisms, it should be noted that both the Inter-American Commission and the Inter-American Court of Human Rights have considered, in all of the specific cases submitted for their consideration and decision, that the protection of the honor or reputation of public officials, politicians or individuals involved in the formulation of public policy through the instruments of criminal law—that is, through criminal prosecution or conviction for criminal defamation offenses, or through *desacato* legislation [laws

¹¹⁵ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177.

¹¹⁶ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 77.

¹¹⁷ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 77.

against insulting, threatening or injuring a public official]—was disproportionate and unnecessary in a democratic society. This topic will be examined in greater detail later in this chapter.

- *The notion of “public order” for purposes of the imposition of limitations to freedom of expression.*

81. According to the Inter-American Court, in general terms, “public order” cannot be invoked to suppress a right guaranteed by the Convention, to change its nature or to deprive it of its real content. If this concept is invoked as a basis for limitations to human rights, it must be interpreted in strict adherence to the just demands of a democratic society, which take into account the balancing of different interests at stake and the necessity of preserving the object and purpose of the American Convention.¹¹⁸

82. In this sense, for purposes of limitations to freedom of expression, the Court defines “public order” as “the conditions that assure the normal and harmonious functioning of institutions based on a coherent system of values and principles.”¹¹⁹ Under this definition, it is clear to the Court that the defense of public order requires the broadest possible circulation of information, opinions, news and ideas—that is, the maximum degree of exercise of freedom of expression. According to the Court: “that same concept of public order in a democratic society requires the guarantee of the widest possible circulation of news, ideas and opinions as well as the widest access to information by society as a whole. Freedom of expression constitutes the primary and basic element of the public order of a democratic society, which is inconceivable without free debate and the possibility that dissenting voices be fully heard. (...) It is also in the interest of the democratic public order inherent in the American Convention that the right of each individual to express himself freely and that of society as a whole to receive information be scrupulously respected.”¹²⁰ The Inter-American Commission has likewise explained that a functional democracy is the highest guarantee of public order, and that the right to freedom of expression is the cornerstone of the existence of a democratic society.¹²¹

83. Moreover, any impairment of public order that is invoked as a justification to limit freedom of expression must be based on real and objectively verifiable causes that present the certain and credible threat of a potentially serious disturbance of the basic conditions for the functioning of democratic institutions. Consequently, it is not sufficient to invoke mere conjecture regarding possible disturbances of public order, nor hypothetical circumstances derived from the interpretations of the authorities in the face of events that do not clearly present a reasonable threat of serious disturbances (“anarchic violence”). A broader or more indeterminate interpretation would inadmissibly open the door to arbitrariness and would fundamentally restrict the freedom of expression that is an integral part of the public order protected by the American Convention.

¹¹⁸ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 64.

¹¹⁹ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 64.

¹²⁰ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 69.

¹²¹ IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

iii. **The limitations must be necessary in a democratic society to serve the compelling objectives pursued, strictly proportionate to the objective pursued, and appropriate to serve such compelling objective**

84. States that impose limitations upon freedom of expression are obligated to demonstrate that they are necessary in a democratic society to serve the compelling objectives pursued.¹²²

85. Indeed, Article 13.2 uses the term “*necessary*,” the link between the necessity of the limitations and democracy is derived, in the opinion of the Inter-American Court, from a harmonic and comprehensive interpretation of the American Convention in light of its object and purpose, and bearing in mind Articles 29 and 32 as well as the preamble. “It follows from the repeated reference to ‘democratic institutions’, ‘representative democracy’ and ‘democratic society’ that the question whether a restriction on freedom of expression imposed by a state is ‘necessary to ensure’ one of the objectives listed in subparagraphs (a) or (b) must be judged by reference to the legitimate needs of democratic societies and institutions. (...) The just demands of democracy must consequently guide the interpretation of the American Convention and, in particular, the interpretation of those provisions that bear a critical relationship to the preservation and functioning of democratic institutions.”¹²³

86. Now, the adjective “necessary” is not synonymous with “useful,” “reasonable” or “convenient.”¹²⁴ In order for a limitation be legitimate, it must be established that there is clear and compelling need for its imposition; that is, it must be established that the legitimate and compelling objective cannot reasonably be accomplished by any other means less restrictive to human rights.

87. The requirement of “necessity” also means that the full exercise and scope of the right to freedom of expression must not be limited beyond what is strictly indispensable in guaranteeing the full exercise and scope of the right to freedom of expression.¹²⁵ This requirement suggests that the restrictive measure taken should be the least serious measure available “to safeguard essential legally protected interests from the more serious attacks which may impair or endanger them.” Otherwise, the restriction would imply abuse of power by the State.¹²⁶ In other words, among the various options available for reaching the same objective, the State should choose the one that least restricts the right protected by Article 13 of the Convention.

¹²² I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. paras. 120-23; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 46.

¹²³ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 44.

¹²⁴ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 46; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 122; IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

¹²⁵ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 83; I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 85; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. paras. 121-122; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 46.

¹²⁶ I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 119.

88. In addition, any limitation to the right to freedom of expression must be an appropriate instrument for meeting the aim pursued through its imposition; that is, it must be a measure that is effectively conducive to attaining the legitimate and compelling objectives in question. In other words, the limitations must be suitable to contribute to the achievement of the aims compatible with the American Convention, or be capable of aiding in the accomplishment of such aims.¹²⁷

89. Limitations to freedom of expression must not only be appropriate to meet their stated objectives and necessary. In addition, they must be strictly proportionate to the legitimate aims that justify them, and must be closely tailored to the accomplishment of that aim, interfering to the least possible extent with the legitimate exercise of the freedom.¹²⁸ To determine the strict proportionality of the restrictive measure, it must be determined whether the sacrifice of freedom of expression it entails is exaggerated or excessive in relation to the advantages obtained through such measure.¹²⁹

90. According to the Inter-American Court, in order to establish the proportionality of a restriction when freedom of expression is limited for purposes of preserving other rights, three factors must be examined: (i) the degree to which the competing right is affected (serious, intermediate, moderate); (ii) the importance of satisfying the competing right; and (iii) whether the satisfaction of the competing right justifies the restriction to freedom of expression. There are no *a priori* answers or formulas of general application in this field. The results of the analysis will vary in each case; in some cases freedom of expression will prevail, and in others the competing right will prevail.¹³⁰ If the subsequent imposition of liability in a specific case is disproportionate, or does not conform to the interests of justice, there is a violation of Article 13.2 of the American Convention.

c. Types of limitations that are incompatible with Article 13

91. In addition, and by virtue of Article 13, it has been established that certain types of limitations are contrary to the American Convention. Limitations imposed upon freedom of expression may not be tantamount to censorship, so they can only impose liability subsequent to the abusive exercise of this right; they may not be discriminatory or produce discriminatory effects; they may not be imposed through indirect mechanisms such as those proscribed by Article 13.3 of the Convention; and they must be exceptional.

¹²⁷ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177.

¹²⁸ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 83; I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 85; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 123; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 46; IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*, cited in I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 101.1).b).

¹²⁹ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 83

¹³⁰ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 84.

i. The limitations must not amount to prior censorship, for which reason they may be established only through the subsequent and proportional imposition of liability

92. Limitations to freedom of expression may not constitute direct or indirect mechanisms of prior censorship.¹³¹ In this respect it must be noted that, save for the exception established in Article 13.4 of the Convention, prior measures of limitation to freedom of expression inevitably entail the undermining of this freedom. In other words, this right cannot be subject to prior or preventive control measures, but whoever abuses its exercise may be subject to subsequent liability.¹³² The content of the prohibition against censorship and the direct and indirect forms of censorship proscribed by the American Convention will be explored in more detail later.

93. Article 13.2 foresees expressly the possibility of requiring subsequent liability for the abusive exercise of freedom of expression, and it is only through this mechanism that admissible restrictions to freedom of expression may be established.¹³³ That is, the limitations must always be established through laws that prescribe subsequent liability for legally defined conduct, and not through prior controls on the exercise of freedom of expression. This is the precise meaning that the case law of the inter-American system has given expressly to the terms “restrictions” or “limitations” within the framework of the American Convention. According to the Inter-American Commission, “[u]nder Article 13, any restriction of the rights and guarantees contained therein must take the form of a subsequent imposition of liability. Abusive exercise of freedom of expression may not be subject to any other kind of limitation. As that article indicates, anyone who has exercised this freedom shall be answerable for the consequences for which he is responsible.”¹³⁴ The manner in which these types of limitations have been approached by the case law is explained in more detail further ahead.

ii. The limitations cannot be discriminatory nor have discriminatory effects

94. Limitations imposed on freedom of expression “must not ‘perpetuate prejudice or promote intolerance.’”¹³⁵ Therefore, such limitations cannot be discriminatory nor have discriminatory effects, as that would additionally violate Article 24 of the American Convention.¹³⁶ It must be recalled in this respect that according to Article 13 of the American Convention, freedom of expression is a right of “everyone,” and that by virtue of Principle 2 of the IACHR Declaration of Principles on Freedom of Expression, “[a]ll people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.”

¹³¹ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 54; I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 79; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 120.

¹³² I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 39; IACHR. Report No. 11/96. Case 11.230. Merits. Francisco Martorell. Chile. May 3, 1996. para. 7.

¹³³ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 54; I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 79; IACHR. Report No. 11/96. Case 11.230. Merits. Francisco Martorell. Chile. May 3, 1996. para. 58; IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

¹³⁴ IACHR. Report No. 11/96. Case 11.230. Merits. Francisco Martorell. Chile. May 3, 1996. para. 58.

¹³⁵ IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

¹³⁶ I/A Court H. R., *Case of López-Álvarez v. Honduras. Merits, Reparations and Costs*. Judgment of February 1, 2006. Series C No. 141. para. 170.

95. The Inter-American Court has indicated that differential treatment of individuals because they are affiliated with a media outlet with a critical or independent editorial position could fall into the prohibited category of differential treatment for “political opinions,” enshrined in Article 1(1) of the American Convention.¹³⁷ Likewise, the Court has indicated that the use of that category (“political opinions”) would not necessarily depend on an individual actually having directly expressed critical or dissident positions, or even that an individual share the editorial positions of the media outlet where he or she works. It is enough that the entity or official effecting the differential treatment identify the subject of the treatment with the critical media outlet and discriminate against the subject for that reason. In this sense, the Court has recognized the possibility that “a person be discriminated against based on a perception that others have of their relationship with a group or social sector, regardless of the whether the perception corresponds to reality or the victim’s self-identification.”¹³⁸

96. Another illustrative example of the limitations to freedom of expression that are contrary to Article 13 of the Convention due to their discriminatory nature is provided in the aforementioned judgment of the Inter-American Court in the case of *López Alvarez v. Honduras*.¹³⁹ In this case, as previously discussed, it was ruled that the prohibition imposed by a prison Director banning inmates who were members of an ethnic group from speaking their own language was openly discriminatory against Mr. López Alvarez as a member of such ethnic group. As such, it constituted a violation of the freedom of expression protected in the American Convention on Human Rights.

iii. The limitations may not be imposed by indirect means such as those proscribed by Article 13.3 of the American Convention

97. Restrictions to freedom of expression may not be established through mechanisms that amount to indirect restrictions to the exercise of this right, which are prohibited by Article 13.3 of the American Convention. That article states that, “The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.” In that same sense, the IACHR’s Declaration of Principles on Freedom of Expression holds in Principle 5 that, “Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.” Also, Principle 13 of the same Declaration holds that, “The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression,

¹³⁷ I/A Court H. R., Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194. para. 349; I/A Court H. R., Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195. para. 380

¹³⁸ I/A Court H. R., Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194. para. 349; I/A Court H. R., Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195. para. 380

¹³⁹ I/A Court H. R., Case of López-Álvarez v. Honduras. Merits, Reparations and Costs. Judgment of February 1, 2006. Series C No. 141.

and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

98. The Inter-American Court has held that Article 13.3 is not exhaustive since it does not preclude from consideration “any other means” or indirect methods, such as those derived from new technology.¹⁴⁰ Likewise, the Court has indicated that the State can be responsible for indirect restrictions on the right to freedom of expression when it is remiss in its duty to guarantee that right in the face of a real or immediate and predictable risk, or when it fails in its duty to provide protection.¹⁴¹ These restrictions can take place even when the public officials who cause or tolerate them do not derive benefit from them, as long as the “method or means effectively restrict, even if indirectly, the communication of ideas and opinions.”¹⁴²

iv. Exceptional nature of the limitations

99. The limitations imposed must be the exception to the general rule of respect for the full exercise of freedom of expression.¹⁴³ In this respect, the Inter-American Commission and the Court have examined whether specific limitations fall within a State pattern or tendency to unduly limit or restrict the exercise of this right, in which case they would be inadmissible for lack of an exceptional nature. The logical rationale underlying this condition is that the limitations regulated in Article 13.2 are restricted as a guarantee of freedom of expression, so that certain persons, groups, ideas or means of expression are not excluded *a priori* from public debate.¹⁴⁴

3. Stricter standards of control for certain limitations due to the type of speech they address

100. As discussed previously, there are certain forms of speech that are accorded a heightened degree of protection under Article 13 of the American Convention, namely: (a) political speech and speech regarding matters of public interest; (b) speech regarding public officials in the exercise of their duties or candidates for public office; and (c) speech that expresses an essential element of the personal identity or dignity of the individual. This heightened degree of protection entails a series of stricter standards for verifying the validity of limitations by the authorities on these

¹⁴⁰ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 340; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. para. 367

¹⁴¹ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. paras. 107-110, 340; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. paras. 118-21, 367

¹⁴² I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. para. 368; see also I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 340.

¹⁴³ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs.* Judgment of August 31, 2004. Series C No. 111. para. 72.a); I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs.* Judgment of January 27, 2009. Series C No. 193. para. 110.

¹⁴⁴ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile*, cited in I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs.* Judgment of February 5, 2001. Series C No. 73. para. 61.e).

types of expression. In terms of inter-American jurisprudence, there is a very limited margen for imposing restrictions on these forms of expression.

101. First, the Inter-American Court and Commission on Human Rights have held consistently that the test for the necessity of limitations must be applied more strictly whenever dealing with expressions concerning the State, matters of public interest, public officials in the performance of their duties, candidates for public office, private citizens involved voluntarily in public affairs, or political speech and debate.¹⁴⁵

102. Second, in these cases the analysis of the proportionality of the measure must bear in mind 1) the greater degree of protection accorded to speech concerning the suitability of public officials and their performance, or of those who aspire to hold public office; 2) speech concerning political debate or debate on matters of public interest – due to the need for a broader degree of openness for the wide-ranging debate required in a democratic system and the citizen oversight inherent in it- and 3) the correspondingly heightened threshold of tolerance for criticism that State institutions and officials must demonstrate when confronted by the statements and opinions of persons exercising such oversight. In such cases, the demands of the protection of these individuals' right to their honor and reputation must be balanced against the interests of an open debate on public affairs.¹⁴⁶ On the point, for example, the Inter-American Court in the case of *Tristán Donoso v. Panama*, recalled that "any expression regarding the suitability of an individual for holding public office or regarding the acts performed by public officials in the course of their duties enjoy greater protection, thus fostering democratic debate."¹⁴⁷

4. Means of limitation of freedom of expression in order to protect the rights of others to honor and reputation

a. General rules

103. The case law of the inter-American system has considered in general terms that fundamental rights must be exercised with respect for other rights, and that in the process of harmonization the State plays an essential role through the establishments of the limits and liabilities necessary for the purpose of such harmonization.¹⁴⁸

¹⁴⁵ See I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107; I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111; I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135; I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177; IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

¹⁴⁶ See I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177; I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107.

¹⁴⁷ I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 115.

¹⁴⁸ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 75.

104. Honor, dignity and reputation are also human rights enshrined in Article 11 of the American Convention, which limits State or individual interference with them.¹⁴⁹ According to Article 13.2 of the American Convention, the protection of the honor and reputation of others can be a reason to establish restrictions to freedom of expression; that is, it can be a reason for establishing subsequent liability for the abusive exercise of such freedom.¹⁵⁰ Nevertheless, it is clear—as previously mentioned—that the exercise of the right to honor, dignity and reputation must be reconciled with the right to freedom of expression, as it is not a right with a higher level or hierarchy.¹⁵¹ The honor of individuals must be protected without prejudice to the exercise of freedom of expression or the right to receive information. When a State demonstrates a tendency or pattern of privileging the right to honor over freedom of expression, restricting the latter when it is in tension with the former, it violates the principle of harmonization that arises from the general obligation to respect and ensure all the rights recognized in the American Convention.¹⁵²

105. It has been specified in this regard that the simultaneous exercise of the rights to honor and to freedom of expression must be guaranteed through a balancing exercise in each specific case, which ponders the weight of each right in the circumstances of the individual case.¹⁵³

106. In cases involving a conflict between public officials' right to honor and the right to freedom of expression, freedom of expression should prevail in principle (or *prima facie*), given that in the debate on matters in the public interest, this right has greater weight. The IACHR and the Inter-American Court refer precisely to this when they indicate that expression in the public interest constitutes speech that is the object of special protection under the American Convention. For the Court, the special protection of expression that refers to public officials or matters in the public interest has been justified citing, among other things, the importance of maintaining a legal framework that fosters public debate and the fact that officials voluntarily subject themselves to a greater level of scrutiny by society and have greater opportunity to give explanations of or response to facts in which they are involved. In this respect, the Court has said: "[I]t is established in international law that the threshold for protecting the honor of public officials should allow for the broadest control by citizens regarding the way they discharge their duties (...). This different honor protection standard is justified by the fact that public officials voluntarily expose themselves to control by society, which results in a greater risk of having their honor affected and also the possibility – given their status – of having greater social influence and easy access to the media to provide explanations or to account for any events in which they take part."¹⁵⁴ This has been expressly recognized by the Court by establishing that, in applying the proportionality test, it must be taken into account that expressions regarding the practices of State institutions enjoy greater

¹⁴⁹ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 55; I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 111.

¹⁵⁰ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 71; I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 118.

¹⁵¹ IACHR. Report No. 11/96. Case 11.230. Merits. Francisco Martorell. Chile. May 3, 1996. para. 70.

¹⁵² IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile*, cited in I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. para. 61.i)

¹⁵³ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 51; I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 93.

¹⁵⁴ I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 122.

protection, in the interest of furthering democratic debate within society.¹⁵⁵ This is so because it is assumed that in a democratic society the institutions or bodies of the State, as such, are exposed to the criticism and scrutiny of the public, and its activities are part of the broader public debate.¹⁵⁶ This threshold is not based on the quality of the subject involved, but rather on the public interest in its activities.¹⁵⁷ Assessments and opinions of citizens in the exercise of such democratic control, therefore, should be entitled to greater tolerance.¹⁵⁸ These are the demands of the kind of pluralism that is appropriate for a democratic society,¹⁵⁹ which requires the broadest flow of information and opinions regarding issues of public interest.¹⁶⁰

107. In addition, the Court has considered that to grant “automatic protection” to the reputation of the institutions of the State and its members is incompatible with Article 13 of the Convention. In the case *Usón*, the Court held that “establishing disproportionate sanctions for giving opinions on an alleged illicit fact of public interest that involved military institutions and their members, thus providing a larger and automatic protection to their honor or reputation, without considering the larger protection due to the exercise of freedom of expression in a democratic society, is incompatible with Article 13 of the American Convention.”¹⁶¹

108. In cases of imposition of subsequent liabilities aimed at protecting the rights of others to honor or reputation, the requirements established in Article 13.2 of the Convention for limiting the right to freedom of expression must be strictly complied with. In the words of the Commission, “any potential conflict in the application of Articles 11 and 13 of the Convention can be resolved by resorting to the language of Article 13 itself,”¹⁶² that is, through the subsequent imposition of liability that meets the specified requirements. As stated above, the requirements that must be met by any restriction of freedom of expression have been clearly established in the case law, and may be summarized as follows. First, the existence of a clear harm or threat of harm to the rights of others must have been proven: it is necessary for the rights whose protection is being sought to be clearly harmed or threatened, and the burden of proof is on the party requesting the

¹⁵⁵ I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 2, 2004. Series C No. 107. para. 128; I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs.* Judgment of May 3, 2008. Series C No. 177. para. 86; I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs.* Judgment of August 31, 2004. Series C No. 111. para. 103.

¹⁵⁶ I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 2, 2004. Series C No. 107. para. 129; *Case Kimel v. Argentina. Merits, Reparations and Costs.* Judgment of May 3, 2008. Series C No. 177. para. 86; I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs.* Judgment of August 31, 2004. Series C No. 111. para. 103.

¹⁵⁷ I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 2, 2004. Series C No. 107. para. 129; *Case Kimel v. Argentina. Merits, Reparations and Costs.* Judgment of May 3, 2008. Series C No. 177. para. 86; I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs.* Judgment of November 22, 2005. Series C No. 135. para. 92.

¹⁵⁸ I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs.* Judgment of September 19, 2006. Series C No. 151. para. 87; *Case Kimel v. Argentina. Merits, Reparations and Costs.* Judgment of May 3, 2008. Series C No. 177. para. 86; I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs.* Judgment of November 22, 2005. Series C No. 135. para. 83.

¹⁵⁹ I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs.* Judgment of February 6, 2001. Series C No. 74. para. 152; *Case Kimel v. Argentina. Merits, Reparations and Costs.* Judgment of May 3, 2008. Series C No. 177. para. 87; I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs.* Judgment of August 31, 2004. Series C No. 111. para. 83.

¹⁶⁰ I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 2, 2004. Series C No. 107. para. 113.

¹⁶¹ I/A Court H.R., *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 20, 2009. Series C No. 207. para. 86.

¹⁶² IACHR. Report No. 11/96. Case 11.230. Merits. Francisco Martorell. Chile. May 3, 1996. para. 75.

limitation. Unless there is clear and arbitrary harm to the right of another, the subsequent imposition of liability is unnecessary.¹⁶³ In this sense, it is incumbent upon the State to demonstrate that it is truly necessary to restrict freedom of expression in order to protect a right that has effectively been harmed or is being threatened.¹⁶⁴ Second, there must be clear and precise legal provisions establishing such subsequent liabilities, drafted in unequivocal terms that delimit unlawful conduct clearly, set forth the elements of such conduct with specificity and enable it to be differentiated from lawful conduct. Otherwise, doubts will arise, the door will be opened to arbitrariness on the part of the authorities, the principle of legality will not be respected,¹⁶⁵ and the risk arises that these laws could be used to adversely affect freedom of expression. Laws that limit freedom of expression must be written with such clarity that any sort of interpretation is unnecessary. Even specific judicial interpretations are not sufficient to compensate for overly-broad formulations, as judicial interpretations change, or are not followed strictly, and are not general in nature.¹⁶⁶ Third, the absolute necessity of the imposition of liabilities must have been proven, bearing in mind that the test for the necessity of restrictions to freedom of expression, when they are imposed through laws that establish liabilities for those who express their opinions, is more demanding. In those cases, taking into account the requirement of reconciling the protection of freedom of expression and the protection of other rights in a rational and balanced manner, without adversely affecting the right to freedom of expression as a bulwark of a democratic system, the absolute necessity of resorting, in a truly exceptional manner, to the imposition of legal liability against those who express themselves must be demonstrated.

109. In particular, the strict necessity test to be applied requires that, in order to repair the harm which has been inflicted, the State must choose the least costly means for freedom of expression. Therefore, recourse must be made in the first instance to the right of correction or reply, which is set forth expressly in Article 14 of the American Convention.¹⁶⁷ Only when this is insufficient to repair the harm that has been inflicted may recourse be made to the imposition of legal liabilities more costly for those who have abused their right to freedom of expression, and – while doing so- have produced an actual and serious damage to the rights of others or to juridical assets specially protected by the American Convention.

110. In the events in which the right of correction or reply is insufficient to re-establish the right to reputation or honor of those who have been affected by a given exercise of freedom of

¹⁶³ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 72.f).

¹⁶⁴ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 72.e).

¹⁶⁵ IACHR, *Case of Castillo Petruzzi*, cited in I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 63.

¹⁶⁶ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. paras. 72.s)-u).

¹⁶⁷ Article 14 provides: "1.Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish. // 2.The correction or reply shall not in any case remit other legal liabilities that may have been incurred. // 3.For the effective protection of honor and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special privileges."

expression, and recourse may therefore be had to other mechanisms of legal liability,¹⁶⁸ such recourse to the imposition of legal liability must strictly comply with certain specific requirements in addition to the ones mentioned above, namely: (a) *Application of the standard of actual malice*. In resorting to the imposition of liability for alleged abuses of freedom of expression, the standard of assessment of “actual malice” must be applied; that is, it must be demonstrated that the person expressing the opinion did so with the intent to cause harm and the knowledge that she was disseminating false information, or that she did so with a reckless disregard for the truth of the facts. With regard to communications professionals and journalists, Principle 10 of the IACHR Declaration of Principles on Freedom of Expression provides that “in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.” As an example, in the case of *Tristán Donoso v. Panama*, the Inter-American Court heard the case of an attorney convicted of slander after making a statement in a press conference accusing the Attorney General of having illegally intercepted his communications. The Attorney General was later acquitted of this charge in court. According to the Inter-American Court, due to the context in which the interceptions were revealed, the attorney had good reason to consider that the statements he made corresponded to true facts and that he was distributing true information. In the words of the Court: “[when] Mr. Tristán Donoso called the press conference, there were various and important information and assessment elements allowing him to consider that his statement was not groundless regarding the responsibility of the former Attorney General for the recording of the conversation.”¹⁶⁹ In this same sense, the judge in the lower court in the slander trial against Mr. Tristán Donoso found that there was no crime because “in order for there to be a crime, the person who makes the accusation must know it is false, which was not the case.”¹⁷⁰ The Inter-American Court stated that among the elements which must be weighed for the exceptional application of the punishment is “the malice with which [the damaging party] acted.”¹⁷¹ The Court has also established that when an assertion that may jeopardize the reputation of a person is conditioned upon the confirmation of a fact, the existence of the willful purpose of insulting, offending or disparaging must be ruled out. For example, in the *Usón* decision, the Court considered that the assertions for which Mr. Usón was convicted had been formulated in a conditional manner and that therefore a willful intention to injure could not be inferred from them. “Mr. Usón Ramírez was not stating that a premeditated crime had been committed, but that in his opinion such a crime would seem to have been committed if the hypothesis about the use of the flamethrower was true. An opinion conditioned in such a way cannot be subjected to truthful requirements. Furthermore, the above shows that Mr. Usón Ramírez lacked any specific intention to insult, offend or disparage, since if he had had the will to do so, he would not have conditioned his opinion in such a way.”¹⁷² (b) *Burden of proof*. In cases where legal liability is imposed against a person who has abused his right to freedom of expression, the party alleging harm is the one that must bear the burden of proof in demonstrating that the pertinent statements were false, and that

¹⁶⁸ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile*, cited in I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. para. 61.d)

¹⁶⁹ I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 125

¹⁷⁰ I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 102

¹⁷¹ I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 125

¹⁷² I/A Court H.R., *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. para. 86.

they effectively caused the harm that is being invoked.¹⁷³ Moreover, the Inter-American Court in the case of *Herrera Ulloa v. Costa Rica* held that requiring the person who expressed himself to legally prove the veracity of the facts asserted in his statements, and failing to accept the *exceptio veritatis* on his behalf, “is an excessive limitation on freedom of expression that does not comport with Article 13.2 of the Convention.” In any case, and as just explained, even if the *exceptio veritatis* should be a defense against any type of liability, it cannot be the only such defense; as long as the expressions under consideration are reasonable, liability cannot be imposed for expressions on matters of current public interest. (c) Finally, it is important to bear in mind in this respect that only facts, and not opinions, are susceptible to judgments of truthfulness or untruthfulness.¹⁷⁴ Consequently, nobody may be punished for expressing opinions about other persons when such opinions do not imply false accusations of verifiable facts.

111. The type of subsequent legal liabilities to which recourse may be had whenever the right of correction or reply has been insufficient to repair the harm caused to the rights of others are in principle the mechanisms of civil liability. Such civil liabilities, as the UN, OAS and OSCE Special Rapporteurs on Freedom of Expression stated in their Joint Declaration of 2000, “should not be so large as to exert a chilling effect on freedom of expression and should be designed to restore the reputation harmed, not to compensate the plaintiff or to punish the defendant; in particular, pecuniary awards should be strictly proportionate to the actual harm caused and the law should prioritize the use of a range of non-pecuniary remedies.” On this subject, the jurisprudence of the Inter-American Court has held that not only criminal sanctions but also civil ones can have a chilling or intimidating effect on the exercise of freedom of expression. For example, in the case of *Tristán Donoso*, the Court held that the civil sanction imposed on Mr. Tristán Donoso was, because of the large sum that the Attorney General requested as reparation for the facts that he considered constituted slander, just as intimidating and inhibiting for the exercise of freedom of expression as a criminal sanction: “[T]he facts the Tribunal is examining show that the fear of a civil penalty, considering the claim by the former Attorney General for a very steep civil reparation, may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to compromise the personal and family life of an individual who accuses a public official, with the evident and very negative result of self-censorship both of the affected party and of other potential critics of the actions taken by a public official.”¹⁷⁵

112. Finally, it is important to point out that the Inter-American Commission and Court of Human Rights have both held, in all of the specific cases they have examined and decided on the issue, that the protection of the honor and reputation of public officials or candidates for public office through the prosecution or criminal conviction for defamation offenses of persons expressing themselves was disproportionate and unnecessary in a democratic society.

¹⁷³ I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 132; IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*, cited in I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 101.2).I); IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. paras. 72.o)-p); I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 120.

¹⁷⁴ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 93; I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 124.

¹⁷⁵ I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 129

113. The Court's decisions are based on: (i) the higher levels of protection granted to speech concerning the State, matters of public interest and public officials in the exercise of their duties and candidates who aspire to hold public office; (ii) the high demands placed on limitations to this type of speech; and (iii) the strict requirements of validity that resorting to legal sanctions must meet in order to limit freedom of expression. On this point, the case law has explained that public officials as well as candidates for public office enjoy, like everyone, the right to honor protected by the Convention. However, public officials in a democratic society have a different threshold of protection, which exposes them in greater measure to public criticism. This is justified by the public interest nature of the activities in which they engage; because they have exposed themselves voluntarily to stricter scrutiny; because their activities go beyond the private sphere into the realm of public debate; and because they have appropriate means of defense.¹⁷⁶ This does not mean that public officials cannot be legally protected with respect to their honor, but such protection must be consistent with democratic pluralism and must weigh the interest of such protection against the interests of open public debate on public affairs.¹⁷⁷ It has been emphasized that the imposition of criminal liability, such as under the criminal defamation laws, to protect the honor and reputation of public officials or candidates for public office causes fear and inhibition and has a chilling effect on the practice of critical expression and on journalism in general, preventing debate on matters of interest to society. It has also been underscored that there are other, less restrictive means by which persons involved in matters of public interest can defend their reputation from unfounded attacks. Such means are, in the first instance, the increase of democratic debate, to which public officials have broad access, and, should that prove to be insufficient for repairing a harmed inflicted willfully, recourse could be made to civil remedies, applying the standard of actual malice.¹⁷⁸ In addition, in the *Kimel* case, the Court stated that the legal definition of the criminal offense concerning the protection of honor in Argentina violated the principle of strict legality because of its extreme vagueness. Consequently, it ordered the amendment of that law.

114. The Inter-American Court has found it unnecessary to confirm the truth of a statement to dismiss the possibility of criminal or civil penalty. As previously mentioned, it is enough that there exist sufficient reason for making the statement, as long as the statement is of public interest. As a consequence, even if the stated facts (for example, the commission of a crime) cannot be proven in a trial, the individual who made the statements in question will be protected as long as he or she had no prior knowledge of the falsity of the statement or did not act with grave negligence (total disregard for the truth). In the aforementioned case of *Tristán Donoso*, upon studying the proportionality of the criminal and civil penalties imposed on an attorney who, at a press conference, had accused the Attorney General of illegally intercepting his telephone calls – a charge which subsequently could not be proven in court – the Court indicated that it would not analyze whether the statements given at the press conference by the victim constituted slander

¹⁷⁶ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. paras. 86-87; I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. paras. 83-84; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. paras. 128-29; I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 115; IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

¹⁷⁷ I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 128.

¹⁷⁸ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 72; IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*, cited in I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 101.4).c).

under Panamanian law,¹⁷⁹ “but whether in the instant case, upon imposing a criminal punishment on Mr. Tristán Donoso and the consequences thereof, such as additional pecuniary compensation, the amount of which is pending determination, the State has violated or restricted the right enshrined in Article 13 of the Convention.”¹⁸⁰ In the trial before the Court, disproportionality originated in the fact that the statements referred to a matter of public interest and there was enough reason to make them, even though a judge later considered them not proven.

115. The Inter-American Commission has considered that the use of criminal law mechanisms to punish speech concerning matters of public interest, public officials, candidates for public office or politicians *in and of itself* violates Article 13 of the American Convention: there is no compelling social interest that justifies it; it is unnecessary and disproportionate; and it can also constitute an indirect means of censorship given its intimidating and inhibiting effect on debate concerning matters of public interest.¹⁸¹ The Inter-American Commission has also stressed that resorting to criminal law instruments in order to punish specially protected speech is not only a direct limitation to freedom of expression but also can be considered an indirect method of restricting the expression of opinions because of its intimidating, silencing and inhibiting effects on the free flow of ideas, opinions and information of all kinds. The mere possibility of being criminally prosecuted for making critical statements on matters of public interest may lead to self-censorship given its threatening nature. In the words of the Inter-American Commission, “considering the consequences of criminal sanctions and the inevitable chilling effect they have on freedom of expression, criminalization of speech can only apply in those exceptional circumstances when there is an obvious and direct threat of lawless violence. [...] [T]he State’s use of its coercive powers to restrict speech lends itself to abuse as a means to silence unpopular ideas and opinions, thereby repressing the debate that is critical to the effective functioning of democratic institutions. Laws that criminalize speech which does not incite lawless violence are incompatible with freedom of expression and thought guaranteed in Article 13, and with the fundamental purpose of the American Convention of allowing and protecting the pluralistic, democratic way of life.”¹⁸²

116. Consistent with the above, Principle 10 of the IACHR Declaration of Principles on Freedom of Expression states that “[p]rivacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

117. In turn, the Inter-American Court, in its judgment in the case of *Kimel v. Argentina*, held as follows: “The Court does not deem any criminal sanction regarding the right to inform or give one’s opinion to be contrary to the provisions of the Convention; however, this possibility

¹⁷⁹ Cfr. I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 106.

¹⁸⁰ I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 94.

¹⁸¹ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*, cited in I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 101.2); IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 72.h).

¹⁸² IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

should be carefully analyzed, pondering the extreme seriousness of the conduct of the individual who expressed the opinion, his actual malice, the characteristics of the unfair damage caused, and other information which shows the absolute necessity to resort to criminal proceedings as an exception.”¹⁸³ These same considerations were reaffirmed in the case of *Tristán Donoso v. Panama*. Interpreting this statement in consonance with the Inter-American Court’s jurisprudence, is it reasonable to conclude that, in principle, resort to criminal proceedings is prohibited with regard to specially protected speech that could offend the honor or reputation of public officials, candidates for public office, or persons directly related to issues of public interest. In other cases, when dealing with an accusation made in good faith, limiting debate through the use of the criminal law has such grave effects on democratic accountability that this option does not comply with the requirements of extreme and absolute necessity. For this reason, in the case of *Kimel v. Argentina*, the Inter-American Court found that the State had violated the American Convention by convicting a journalist who accused a judge of being complicit in the commission of the worst human rights violations.

b. Cases in which the Inter-American Court has examined the conflict between the right to freedom of expression and personal rights like public officials’ right to honor and reputation

118. Article 11 of the Convention prohibits all “unlawful attacks on [the] honor or reputation” of individuals and “imposes on States the duty to provide legal protection from such attacks.” According to the Court, “the right to have honor respected relates to self-esteem and self-worth, whereas reputation refers to the opinion other persons have about someone.”¹⁸⁴

119. As previously established, the protection of the individual’s right to honor and to reputation, covered under Article 11 of the Convention, can conflict with freedom of expression. These cases should evaluate, in keeping with the aforementioned considerations, which of the two rights should take priority at a given moment. In all the cases in which the Court has studied the tension between the honor and reputation of individuals who hold – or are seeking to hold – public office, and the right to freedom of expression, it has found that the latter right takes precedence. In every case, the Court has applied the principle of precedence of freedom of expression in matters of current public interest. The following aside briefly presents the cases in which the Inter-American Court of Human Rights has ruled on the issue.

120. The first of these cases, *Herrera Ulloa v. Costa Rica*, discussed above, dealt with the situation of Costa Rican journalist Mauricio Herrera Ulloa, who was convicted of violating the honor of a Costa Rican government official stationed abroad, for having accurately reprinted information from European newspapers regarding the alleged unlawful conduct of that official. The journalist was convicted on four counts of criminal defamation, and was ordered to pay a fine and to publish the holding of the court’s judgment in the newspaper. Furthermore, the judgment found the civil action for damages resulting from said crimes to be admissible, and ordered Mr. Herrera and the newspaper *La Nación* to pay damages and court costs. Finally, the newspaper *La Nación* was ordered to change the content of its online edition by removing the link from the diplomat’s surname to the articles at the heart of the controversy and providing a new link from those articles to the holding of the court’s judgment.

¹⁸³ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 78.

¹⁸⁴ I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 57

121. The Inter-American Court of Human Rights held that the penalties constituted a violation of the freedom of expression protected by the American Convention on Human Rights. In its judgment, the Court highlighted the dual dimension—individual and collective—of freedom of expression, the crucial democratic function of this right, and the central role of the communications media. After recalling the requirements set forth in the Convention for restrictions to freedom of expression to be legitimate, it concluded that Mr. Herrera had been subjected to the excessive and unnecessary use of the punitive power of the State, which failed to respect said Convention requirements. It took into particular account that: (a) Mr. Herrera was a journalist who was conveying facts and opinions of public interest; (b) the exercise of his right resulted in statements critical of a public official in the exercise of his duties, and the official was exposed to a greater degree of criticism than private citizens; and (c) Mr. Herrera had limited himself to faithfully reprinting information published in the foreign press on the conduct of a Costa Rican diplomatic official. The Court emphasized that his criminal conviction had had a chilling effect on the practice of journalism and on debate concerning matters of public interest in Costa Rica, stating that “[t]he effect of the standard of proof required in the judgment is to restrict freedom of expression in a manner incompatible with Article 13 of the American Convention, as it has a deterrent, chilling and inhibiting effect on all those who practice journalism. This, in turn, obstructs public debate on issues of interest to society.”¹⁸⁵ Consequently, it found Costa Rica in violation of the Convention and ordered that it make reparations for the violation of Article 13 of the Convention, in the form of setting aside the conviction and paying compensation for non-pecuniary damages to journalist Herrera Ulloa.

122. In the second of these cases, the *Canese* case, also discussed previously, the Court examined the situation of Ricardo Canese, a presidential candidate in the 1992 elections in Paraguay. Mr. Canese was convicted of criminal defamation as a consequence of statements he made while he was a candidate, and during the course of the campaign, concerning the conduct of his opponent in relation to the Itaipú Hydroelectric Complex. He was sentenced to a term of incarceration and the payment of a fine. Also, during the course of the case he was permanently prohibited from leaving the country.

123. The Inter-American Commission argued before the Court that the imposition of criminal liability and criminal penalties for political speech within the context of an election is contrary to Article 13 of the Convention, because there is no imperative social interest that justifies the criminal penalty; because the restriction is disproportionate; and because it is an indirect restriction, given that criminal penalties have an intimidating effect on all debate involving public figures and matters in the public interest. Consequently, it affirmed that statements made in electoral contests must not be criminalized, and that recourse should be made instead to civil penalties, based on the standard of actual malice: “[I]n other words, it is necessary to prove that, by disseminating the information, the author intended to cause harm or knew full well that he was disseminating false information.”¹⁸⁶

124. The Inter-American Court, after highlighting the considerable democratic function of the full exercise of freedom of expression and its heightened importance in the electoral arena, concluded that in this case the freedom of expression protected by Article 13 was violated. Indeed, the Court took into account that: (a) criminal law is the most restrictive and severe means for

¹⁸⁵ I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 133.

¹⁸⁶ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 72.h).

establishing liability for unlawful conduct; and (b) Mr. Canese's statements had been made in the context of a presidential election campaign with regard to matters of public interest, which places them in a category warranting greater protection under Article 13 of the Convention. It therefore concluded that the case and the criminal sentence issued against Mr. Canese constituted an unnecessary and excessive punishment that limited the open debate of issues in the public interest and restricted the victim's freedom of expression during the rest of the electoral campaign. Furthermore, it emphasized that the criminal case and the conviction, together with the accompanying restrictions on leaving the country, were indirect means of restricting freedom of expression.

125. The case of *Kimel v. Argentina* was also examined in the preceding sections. In that case, upon finding that Article 13 of the American Convention had been violated by means of the conviction of Mr. Eduardo Kimel for having published a book critical of the way in which a judge had conducted the investigation of a massacre committed during the years of the dictatorship, the Inter-American Court maintained that the punitive power of the State had been used unnecessarily and disproportionately. To arrive at this conclusion, the Court considered not only the greater degree of protection afforded to Mr. Kimel's statements in his book because they referred to the conduct of a public official but it also considered other reasons, namely: (a) that the Argentinean criminal defamation laws were extremely vague and ambiguous, thus contradicting the requirement of specific legality; (b) the fact that the prosecution and punishment of the investigative journalist had reflected a notorious abuse of the punitive power of the State, "taking into consideration the crimes charged to Mr. Kimel, the impact they had on his legally protected interests, and the nature of the sentence imposed on the journalist—deprivation of freedom;" and (c) the obvious disproportionality and excess in affecting Mr. Kimel's freedom of expression in relation to the alleged harm to the right to honor of the individual who had served as a public official. Such disproportion was inferred by the Court from the joint evaluation of several factors, including that the exercise of freedom of expression was done through opinions that did not entail the accusation of crimes or the indication of facts or issues relating to the judge's personal life; that the opinions amounted to a critical value judgment on the conduct of the judicial power during the dictatorship; that the opinion was imparted bearing in mind the facts verified by the journalist; and that opinions, unlike facts, cannot be subjected to judgments of truthfulness or untruthfulness. As a consequence of the international responsibility of the State of Argentina for having violated the American Convention, the Court ordered that it: (1) compensate Mr. Kimel for pecuniary and non-pecuniary damages and reimburse his legal costs and expenses; (2) set aside the criminal conviction against him and all of the consequences derived from it; (3) remove Mr. Kimel's name from public records registering his criminal history; (4) duly publish the decision of the Inter-American Court as a measure of satisfaction; (5) hold a public act to recognize its responsibility; and (6) bring its domestic law in line with the American Convention on Human Rights insofar as it concerns criminal defamation offenses, "so that the lack of accuracy acknowledged by the State (...) be amended in order to comply with the requirements of legal certainty so that, consequently, they do not affect the exercise of the right to freedom of thought and expression."¹⁸⁷

126. In the case of *Tristán Donoso*, the Inter-American Court studied the situation of attorney Santander Tristán Donoso, convicted of the crime of slander for statements made about the Attorney General in a press conference. In the statements, Tristán Donoso had accused the Attorney General of recording a private telephone conversation between him and one of his clients, which he alleged the Attorney General later distributed to others. After the Attorney General pressed charges for libel and slander, Mr. Tristán Donoso was convicted and sentenced to 18 months in prison, along with a fine of 750 balboas; a restriction on practicing public service for the

¹⁸⁷ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 128.

same time period; and reparations for material and moral damages whose amount would be determined in a liquidation proceeding before a lower court.

127. The representatives of the victim argued before the Inter-American Court that, first, “the exercise of freedom of expression is not exclusively reserved for journalists.”¹⁸⁸ Likewise, they indicated that the violation of the right to freedom of expression occurred because, among other causes, Panamanian legislation did not recognize standards of actual malice nor the compensatory (non-punitive) nature of sanctions, and did not set forth measures to guarantee the proportionality of the sanctions. For its part, the State argued that at no time had Mr. Tristán Donoso’s right to freedom of expression been restricted and that the public accusation Mr. Tristán Donoso had made against the Attorney General could be understood neither as “‘criticism’ nor as ‘public discourse’ on the actions of a public official.” In the State’s estimation, “giving slander the connotation of news ‘of great public interest’ is the same as legitimizing all illegitimate acts done in the name of the exercise of freedom of expression, as long as they catch the attention of the public.”¹⁸⁹

128. In its judgment, the Inter-American Court emphasized that although the Convention does protect the right to freedom of expression, it is not an absolute right since the Convention provides for the possibility of imposing subsequent liability for its abuse. Likewise, the Court held that the Convention protects the right to honor and recognizes the dignity of all people. From there, it derived limitations on the actions of the State and individuals, as well as the possibility of requesting protective legal measures.¹⁹⁰

129. Finally, the Court indicated that in a democratic society, expression on the suitability of officials enjoys greater protection, since those officials decided to expose themselves voluntarily to greater scrutiny; since the activities they take part in are of public interest; and since they have greater opportunity to reply publicly to statements that affect them. On applying the test to verify the legitimacy of a subsequent sanction on Mr. Tristán Donoso, the Court found that although it met the standard of legality (the crime of slander was defined by law, both formally and materially) and the standard of suitability (recourse to criminal law was a measure that could effectively contribute to protecting the right to the honor or reputation of the individual affected), the subsequent sanction was unnecessary because, given that the individual in question had a high public profile, there were other means of protecting the personal rights affected. The cost of freedom of expression was disproportionate. Effectively, in the case at hand, the Court held that the matter was one of public interest, and it was therefore important to guarantee the broadest level of debate. It held that the attorney had enough reason to believe at that moment that it was, effectively, the Attorney General who had intercepted his communication. Finally, the Court found that the official had the ability to respond to the statements in question. In light of the aforementioned, the application of criminal law or of disproportionate civil sanctions was not only not necessary for the protection of the Attorney General’s honor and reputation, but implied a very high cost in terms of its effects on democratic discourse.

130. In this case, the Court reiterated its jurisprudence on the limits of the use of the punitive power of the State: “In a democratic society punitive power is exercised only to the extent that is strictly necessary in order to safeguard essential legally protected interests from the more serious attacks which may impair or endanger them. The opposite would result in the abusive

¹⁸⁸ I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 91.

¹⁸⁹ I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 92.

¹⁹⁰ I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. paras. 110-11.

exercise of the punitive power of the State.”¹⁹¹ The Court reaffirmed the importance of weighing “the extreme seriousness of the conduct of the individual who expressed the opinion, his actual malice, the characteristics of the unfair damage caused, and other information which shows the absolute necessity to resort to criminal proceedings as an exception.”¹⁹²

131. In the case of *Usón Ramírez v. Venezuela*, Mr. Usón, a retired member of the military, was sentenced for the crime of “insult against the Armed Forces” for issuing several opinions criticizing the performance of said institution in the so-called case of “Fuerte Mara.” In that case, a group of soldiers suffered severe burnings while being detained in a punishment cell. Mr. Usón was sentenced for saying in a TV interview that, if the information that was circulating regarding the kind and degree of the burns was accurate, the soldiers must have been deliberately attacked with a flamethrower. According to Mr. Usón, the kind of burns that were described by the father of one of the soldiers could only be the product of this kind of weapon, and the use of such weapon had to be premeditated, given the different actions that had to be taken in order to get the flamethrower into the detention facility, load it and activate it. Mr. Usón had been invited to the TV show because he had been a member of the Armed Forces until 1992, when he retired for disagreements with the government and some high military officials. As a consequence of these opinions, Mr. Usón Ramírez was tried and sentenced to five years and six months in jail for the crime of “insult against the National Armed Forces,” following a criminal provision set forth in Article 505 of the Organic Code Military Justice whereby “whoever insults, offends, or disparages the National Armed Forces or any of its units shall be subject to three to eight years in prison.”

132. In this case, the Court strictly applied the three-prong test, and found that several of its requirements have not been met. Specifically, the Court found that the measure that was restricting freedom of expression—that is, the imposition of a sentence for the crime of insult against the armed forces—was not properly formulated, thus it violated the principle of strict legality. According to the Court, the criminal regulation was “vague and ambiguous,” such that it failed to respond to “the legality requirements of Article 9 of the Convention and the provisions of Article 13.2 of the Convention regarding the imposition of further liabilities.”¹⁹³ Furthermore, the Court found that the imposed penalty was neither suitable nor necessary, as it was “excessively vague and ambiguous.” The judgment recalled that “the Tribunal has considered on previous occasions that the exercise of the punitive power of the State has been abusive and unnecessary to protect the right to honor when the criminal provision in question does not establish clearly what behaviors involve a serious damage to such right. That was what happened in the case of Mr. Usón Ramírez.”¹⁹⁴

133. Finally, regarding proportionality, the Court found that the consequences of the application of the measure had been truly serious, and that freedom of expression was disproportionately affected. “As regards the affectation of the freedom of expression, the Court considers the consequences of being subjected to trial in a military court (...); the criminal trial itself; the preventive deprivation of freedom imposed on him; the sanction depriving him of liberty for five years and six months to which he was sentenced; his inclusion in the criminal record; the loss of

¹⁹¹ I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 119.

¹⁹² I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 120.

¹⁹³ I/A Court H.R., *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. para. 57.

¹⁹⁴ I/A Court H.R., *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. para. 75.

revenues during the time he was in prison; the affectation of the exercise of the rights that are restricted due to the sanction imposed; being far from his family and loved ones; the latent risk of losing his personal liberty, and the stigmatizing effect of the criminal sanction imposed on Mr. Usón Ramírez show that the further liabilities established in this case were truly serious.”¹⁹⁵ Moreover, the Court considered that the fact that the assertions made by Mr. Usón were specially protected (specially protected speech), because they were made with the intention of questioning the performance of an institution of the State that was under public scrutiny at the time, had not been taken into account. “The remarks made by Mr. Usón Ramírez were related to matters that were clearly of public interest. Despite the existence of public interest in the events in Fuerte Mara, a facility that belonged to the Armed Forces of the State, Mr. Usón Ramírez was tried and sentenced without taking into account the requirements of the American Convention regarding the greater tolerance required regarding any affirmations and considerations expressed by citizens exercising their democratic control.”¹⁹⁶

134. Based on these arguments, the Court concluded that “imposing any further liabilities on Mr. Usón Ramírez for the crime of offense against the Armed Forces violated his right to freedom of expression, since the requirements of legality, need and proportionality were not respected when restricting said right. Consequently, the State violated the right to freedom of expression set forth in Articles 9, 13.1 and 13.2 of the American Convention, in relation to the general obligation to respect and guarantee these rights and freedoms established in Article 1.1 of said Convention, and the duty to reform national law established in Article 2, to the prejudice of Mr. Usón Ramírez.”¹⁹⁷

c. Fundamental incompatibility of “desacato laws” and the American Convention

135. The Inter-American Commission and the Court have declared that so-called *desacato* laws contradict the freedom of expression protected by Article 13 of the American Convention.¹⁹⁸

136. The so-called *desacato* laws, according to the definition provided by the Inter-American Commission—and regardless of their specific denomination within domestic legal systems—“are a class of legislation that criminalizes expression which offends, insults or threatens a public functionary in the performance of his or her official duties.”¹⁹⁹ In the countries in which these laws exist, they are justified by several reasons, most notably the protection of the proper functioning of government, or public order: “Desacato laws are said to play a dual role. First, by protecting public functionaries from offensive and/or critical speech, these functionaries are left unhindered to perform their duties and thus, the Government itself is allowed to run smoothly. Second, *desacato* laws protect the public order because criticism of public functionaries may have a destabilizing effect on national government since, the argument goes, it reflects not only on the individual criticized but on the office he or she holds and the administration he or she serves.”²⁰⁰

¹⁹⁵ I/A Court H.R., *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. para. 81.

¹⁹⁶ I/A Court H.R., *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. para. 84.

¹⁹⁷ I/A Court H.R., *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. para. 88.

¹⁹⁸ I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 88; IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

¹⁹⁹ IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

²⁰⁰ IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V. In this same opinion, the Commission explained that the design and content of *desacato* laws varies among the States that have them in force: “The application of *desacato* laws varies among OAS member states. In certain countries, *desacato* laws penalize only

137. In the Commission's view, these justifications do not find support in the American Convention on Human Rights. In its opinion, the *desacato* laws "conflict with the belief that freedom of expression and opinion is the 'touchstone of all freedoms to which the United Nations is consecrated' and 'one of the soundest guarantees of modern democracy;'"²⁰¹ as such, the *desacato* laws are an illegitimate restriction to freedom of expression, because (a) they do not serve a legitimate purpose under the Convention, and (b) they are not necessary in a democratic society. According to the Commission, "[t]he use of *desacato* laws to protect the honor of public functionaries acting in their official capacities unjustifiably grants a right to protection to public officials that is not available to other members of society. This distinction inverts the fundamental principle in a democratic system which holds the Government subject to controls, such as public scrutiny, in order to preclude or control abuse of its coercive powers. If one considers that public functionaries acting in their official capacity are the Government for all intents and purposes, then it must be the individual and the public's right to criticize and scrutinize the officials' actions and attitudes in so far as they relate to the public office."²⁰²

138. In the Commission's opinion, given that the right to freedom of expression enables individuals and society to participate in active and vigorous debates on all matters of interest to society, and that this type of debate necessarily generates certain speech that is critical of or offensive to public officials or those persons involved in the shaping of public policy, "[a] law that targets speech that is considered critical of the public administration by virtue of the individual who is the object of the expression, strikes at the very essence and content of freedom of expression. Such limitations on speech may affect not only those directly silenced, but society as a whole."²⁰³ Principle 11 of the IACHR Declaration of Principles on Freedom of expression clearly affirms that, "[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as *desacato* laws, restrict freedom of expression and the right to information."

139. In addition to being a direct restriction to freedom of expression, the *desacato* laws also restrict it indirectly, "because they carry with them the threat of imprisonment and/or fines for those who insult or offend a public official. (...) The fear of criminal sanctions necessarily discourages people from voicing their opinions on issues of public concern particularly when the legislation fails to distinguish between facts and value judgments. Political criticism often involves value judgments. (...) [T]he burden *desacato* laws place on persons wishing to participate in debate over the proper functioning of the public administration is not lessened by the possibility of proving truth as a defense. Even those laws which allow truth as a defense inevitably inhibit the free flow of ideas and opinions by shifting the burden of proof onto the speaker. This is particularly the case in the political arena where political criticism is often based on value judgments, rather than purely fact-based statements. Proving

...continuation

insulting speech which is said in the presence of the public functionary or by direct communication, such as a letter or telephone call [see Article 456, Penal Code of El Salvador]. Other *desacato* laws penalize any speech which insults, offends or threatens a public functionary, whether made directly to the person in question or through an indirect medium, such as the press [See Article 173, Penal Code of Uruguay]. In general, however, the protection of *desacato* laws only extends to public functionaries performing in their official capacity. In addition, OAS member states differ as to defenses allowed in charges of *desacato*. In some countries, *desacato* laws require that defendants prove the veracity of their impugned statements as a defense. [See Article 413, Penal Code of Guatemala]. In others, the law does not allow the defense of truth to be introduced with regard to insulting or offensive language against public functionaries. [See Article 307, Penal Code of Costa Rica]. Penalties for *desacato* range from fines to prison sentences."

²⁰¹ IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

²⁰² IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

²⁰³ IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

the veracity of these statements may be impossible, since value judgments are not susceptible to proof."²⁰⁴ Likewise, the threat of criminal liability for dishonoring the reputation of a public official, even if it is done through an opinion or a value judgment, can be used as a method to suppress criticism and silence political adversaries; by protecting public officials from defamatory statements, such threats of liability establish a structure that in the end protects the government itself from criticism.²⁰⁵

140. From another perspective, *desacato* laws are based on an erroneous notion of the preservation of public order, which is incompatible with democratic systems and contrary to the definition of such "public order" as may legitimately justify a limitation to freedom of expression: "the rationale behind *desacato* laws reverses the principle that a properly functioning democracy is indeed the greatest guarantee of public order. These laws purport to preserve public order precisely by restricting a fundamental human right which is recognized internationally as a cornerstone upon which democratic society rests. *Desacato* laws, when applied, have a direct impact on the open and rigorous debate about public policy that Article 13 guarantees and which is essential to the existence of a democratic society. In this respect, invoking the concept of "public order" to justify *desacato* laws directly inverts the logic underlying the guarantee of freedom of expression and thought guaranteed in the Convention."²⁰⁶

141. In more specific terms, *desacato* laws are unnecessary because abusive attacks on the reputation and honor of public officials may be counteracted through other less restrictive means: "The special protection *desacato* laws afford public functionaries from insulting or offensive language is incongruent with the objective of a democratic society to foster public debate. This is particularly so in light of a Government's dominant role in society, and particularly where other means are available to reply to unjustified attacks through the government's access to the media or individual civil actions of libel and slander. Any criticism that is not related to the officials' position may be subject, as is the case for all private individuals, to ordinary libel, slander and defamation actions. In this sense, the Government's prosecution of a person who criticizes a public official acting in his or her official capacity does not comply with the requirements of Article 13.2 because the protection of honor in this context is conceivable without restricting criticism of the public administration. As such, these laws are also an unjustified means to limit certain speech that is already restricted by laws that all persons, regardless of their status, may invoke."²⁰⁷ Moreover, *desacato* laws are contrary to the notion that in a democratic society public officials must be exposed to a greater extent to public scrutiny and demonstrate a higher tolerance for criticism.

142. In sum, in the opinion of the Inter-American Commission, the enforcement of criminal *desacato* laws against those who criticize public officials is *per se* contrary to the Convention, given that it is an imposition of subsequent liability for the exercise of freedom of expression that is unnecessary in a democratic society, and is disproportionate because of its serious effects on the person expressing the opinion and on the free flow of information in society. *Desacato* laws are a means of silencing unpopular ideas and opinions, and discourage criticism by generating fear of legal action, criminal punishment and monetary sanctions. *Desacato* laws are disproportionate in terms of the penalties they establish for criticizing State institutions and their members; they suppress the debate that is essential to the functioning of a democratic system, and unnecessarily restrict freedom of expression.

²⁰⁴ IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

²⁰⁵ IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

²⁰⁶ IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

²⁰⁷ IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

143. The Inter-American Court has also examined, in specific cases, the disproportionate nature of *desacato* laws and of the prosecution under those laws of individuals who exercise their freedom of expression. For example, in the aforementioned case of *Palamara Iribarne v. Chile*,²⁰⁸ the Court examined the situation of a civilian employee of the Chilean Armed Forces who had been criminally prosecuted for having attempted to publish a book without the authorization of his military superiors, had been subjected to various actions amounting to prior censorship, and while the case was pending had made statements to the media that were critical of the actions of the military criminal justice system in his case. Based on the foregoing, he was subsequently prosecuted for the offense of *desacato*. According to the Inter-American Court, “by pressing a charge of contempt, criminal prosecution was used in a manner that is disproportionate and unnecessary in a democratic society, which led to the deprivation of Mr. Palamara-Iribarne’s right to freedom of thought and expression with regard to the negative opinion he had of matters that had a direct bearing on him and were closely related to the manner in which military justice authorities carried out their public duties during the proceedings instituted against him. The Court believes that the contempt laws applied to Palamara-Iribarne established sanctions that were disproportionate to the criticism leveled at government institutions and their members, thus suppressing debate, which is essential for the functioning of a truly democratic system, and unnecessarily restricting the right to freedom of thought and expression.”²⁰⁹

144. In the *Tristán Donoso* case, the Inter-American Court highlighted the positive fact that after convicting Mr. Tristán Donoso for slander based on the statements he made about a senior official, the country’s laws changed to prohibit sanctions for *desacato* and other limitations on freedom of expression.²¹⁰

E. The prohibition against censorship and indirect restrictions to freedom of expression

1. The prohibition against direct prior censorship

145. Article 13.2 of the American Convention on Human Rights provides expressly that “[t]he exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: (a) respect for the rights or reputations of others; or (b) the protection of national security, public order, or public health or morals.” The only exception to this prohibition against prior censorship is found in Article 13.4 of the Convention, pursuant to which, “[n]otwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.”

146. Interpreting these Convention standards, the Declaration of Principles on Freedom of Expression of the Inter-American Commission provides in Principle 5 that “prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression;” and Principle 7 establishes that “[p]rior conditioning of expressions, such as

²⁰⁸ I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135.

²⁰⁹ I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 88.

²¹⁰ I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 133

truthfulness, timeliness or impartiality is incompatible with the right to freedom of expression recognized in international instruments. ”

147. Prior censorship is the prototype of extreme and radical violation of freedom of expression, as it entails the suppression of such freedom. It takes place when means are established through public authority to impede *in advance* the free circulation of information, ideas, opinions or news, by any means that subjects the expression or dissemination of information to State control—for example, through the prohibition or seizure of publications, or any other procedure with the same aim.²¹¹ According to the Inter-American Commission, prior censorship “implies restricting or preventing expression before it has been circulated, preventing not only the individual whose expression has been censored, but also all of society, from exercising their right to the information. In other words, prior censorship produces ‘a radical suspension of freedom of expression through preventing the free circulation of information, ideas, opinions, or news.’ As has been stated previously, ‘this constitutes a radical suspension not only of the right of each person to express himself, but also of the right of every person to be well informed, and therefore affects one of the basic conditions of a democratic society.’”²¹² Cases of prior censorship result in the radical violation of each person’s right of expression, as well as the right of all people to be well-informed and to receive and know the expressions of others; as such, one of the basic conditions of a democratic society is adversely affected.²¹³

148. According to the Inter-American Court, “Article 13(4) of the Convention establishes an exception to prior censorship, since it allows it in the case of public entertainment, but only in order to regulate access for the moral protection of children and adolescents. In all other cases, any preventive measure implies the impairment of freedom of thought and expression.”²¹⁴ This feature distinguishes this treaty from other international human rights conventions, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms or the International Covenant on Civil and Political Rights. In the opinion of the Inter-American Commission on Human Rights, “the fact that no other exception to this provision is provided is indicative of the importance that the authors of the Convention attached to the need to express and receive any kind of information, thoughts, opinions and ideas.”²¹⁵

149. The following, among others, are examples of prior censorship according to the case law of the inter-American system: the seizure of books, printed materials and electronic copies of documents; the judicial prohibition against publishing or circulating a book;²¹⁶ the prohibition of a

²¹¹ I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 68.

²¹² IACHR. Report No. 90/05. Case 12.142. Merits. Alejandra Marcela Matus Acuña *et al.* Chile. October 24, 2005. para. 35.

²¹³ I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 68; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 54; IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*, cited in I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 101.5).

²¹⁴ I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. para. 70.

²¹⁵ IACHR. Report No. 11/96. Case 11.230. Merits. Francisco Martorell. Chile. May 3, 1996. para. 56.

²¹⁶ I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135; IACHR. Report No. 2/96. Case 10.325. Merits. Steve Clark *et al.* Grenada. March 1, 1996; IACHR. Report No. 11/96. Case 11.230. Merits. Francisco Martorell. Chile. May 3, 1996; IACHR. Report No. 90/05. Case 12.142. Merits. Alejandra Marcela Matus Acuña *et al.* Chile. October 24, 2005.

public official from making critical comments with regard to a specific case or institution;²¹⁷ an order to include or remove specific links, or the imposition of specific content in Internet publications; the prohibition against showing a film;²¹⁸ or the existence of a constitutional provision that establishes prior censorship in film production.²¹⁹

150. In one of its first judgments dealing with freedom of expression, the Inter-American Court addressed the issue of prior censorship, in this case, of movies. Indeed, in the case of *Olmedo Bustos and others v. Chile*²²⁰ the Court examined a prohibition imposed by the Chilean judicial authorities on the exhibition of the film "The Last Temptation of Christ" at the request of a group of citizens who had filed a claim seeking that remedy, invoking the protection of the image of Jesus Christ, of the Catholic Church, and of their own rights. The Inter-American Court, highlighting some of the salient features of freedom of expression—namely, its double dimension as an individual and collective right, and its critical democratic function—and recalling that this right covers both information that is favorable, indifferent or harmless as well as that which is shocking, disturbing or offensive for the State or for society, concluded that the Chilean authorities had engaged in an act of prior censorship that was incompatible with Article 13 of the American Convention on Human Rights. It held in this regard that the violation of the Convention had been produced not only by the judicial decisions which had been called into question, but by the existence of an article in the Chilean constitution which established a system of prior censorship for cinematographic production, thus conditioning the acts of all three branches of public power; it therefore ordered Chile to adapt its internal legal system to the Convention's provisions.

151. Another illustrative case in which the Inter-American Court issued a ruling on acts of censorship was *Palamara Iribarne v. Chile*.²²¹ As previously mentioned, Mr. Palamara Iribarne, a retired military officer who was working as a civilian employee of the Navy, wrote a book entitled *Ethics and Intelligence Services*, which dealt in general terms with some aspects of military intelligence and the need for it to be governed by ethical parameters. Nevertheless, when the book was in the process of being printed and prepared for commercial distribution, it was subject to several restrictive measures, to wit: (i) Mr. Palamara's military superiors forbade him from publishing the book; (ii) said military superiors verbally ordered Mr. Palamara to withdraw all of the records of the publication from the publishing house; (iii) by order of a Prosecutor, all of the writings, documents and publications relating to the book were seized from the publishing house, and the copies that had already been printed were seized from the publishing house and from Mr. Palamara's house, as were the leftover pages and the publication's electrostatic plates; (iv) the court also ordered Mr. Palamara to erase the digital version of the book from his personal computer, and ordered the elimination of the electronic version of the text from a diskette and the publishing house's computer; (v) legal proceedings were conducted to recover the copies of the book that were already in various people's possession; and (vi) Mr. Palamara was legally prohibited from making critical remarks concerning the criminal cases pending against him, or the image of the Chilean Navy.

²¹⁷ I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135.

²¹⁸ I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73.

²¹⁹ I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73.

²²⁰ I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73.

²²¹ I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135.

152. In the opinion of the Inter-American Court, all of these acts controlling the exercise of Mr. Palamara's right to disseminate information and ideas—when the book had already been printed and was in the process of being publicized and sold—prevented the book from being disseminated effectively through distribution in the marketplace, and prevented the public from having access to its content. To the Court, such measures of control “constituted acts of prior censorship that are incompatible with the parameters set by the Convention inasmuch as there was no element that, pursuant to said treaty, would call for the restriction of the right to freely publish his work, which is protected by Article 13 of the Convention.”²²² Consequently, the Court ordered reparations including the payment of compensation for damages to Mr. Palamara; it further ordered that he be permitted to publish the book, that the seized materials be returned to him, that the electronic version of the text be reconstructed, and that the judgments issued in the criminal cases be set aside.

2. The prohibition against indirect restrictions to freedom of expression by the authorities

153. There are different ways of unlawfully affecting freedom of expression, ranging from the extreme of radical suppression through acts of prior censorship, to other forms that are less evident (more subtle) but equally contrary to the American Convention.²²³ Aside from extreme violations consisting of the suppression of freedom of expression through direct actions such as censorship, “any governmental action that involves a restriction of the right to seek, receive and impart information and ideas to a greater extent or by means other than those authorized by the Convention” is also a violation of the American Convention.²²⁴

154. It is in this sense that Article 13.3 of the American Convention provides that “[t]he right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.”

155. The Inter-American Court has held that Article 13.3 is not exhaustive since it does not prevent the consideration of “any other measures” or indirect methods, such as those derived from new technologies.²²⁵ Likewise, the Tribunal has indicated that State responsibility for indirect restrictions can also come from acts between private individuals since that responsibility includes not only indirect government restrictions, but “also private (...) controls” that have the same result.²²⁶ In these cases, however, as will be seen further on, State responsibility is only valid if the

²²² I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 78.

²²³ I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 68; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 54.

²²⁴ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 55.

²²⁵ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. para. 340; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. para. 367

²²⁶ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. paras. 107-10 and 340; I/A Court H. R., *Case of Perozo et al. Vs.*

obligation to guarantee the right—derived from the legal framework—is demonstrated to have been infringed.²²⁷ Finally, these restrictions constitute infringement even when the public officials who generate or tolerate them do not derive any advantage from them, as long as “the method or means effectively restrict, even if indirectly, the communication of ideas and opinions.”²²⁸

156. Interpreting this provision of the Convention, the Declaration of Principles on Freedom of Expression of the Inter-American Commission provides in Principle 5 that “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression;” and Principle 13 establishes that “[t]he exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

157. Inter-American jurisprudence has in different rulings condemned State adoption of measures that indirectly restrict freedom of expression. For example, it has condemned the obligatory membership in a professional organization as a necessary requirement to practice journalism,²²⁹ as well as the arbitrary use of State regulatory power when it is used to take action designed to intimidate the board of a media outlet or revoke the citizenship of the director of a media outlet as a consequence of the editorial perspective of the programs it broadcasts.²³⁰ Another means of indirect restriction involves statements by public officials that, in context, can constitute “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute to public deliberation through the expression and diffusion of their thoughts.”²³¹ Likewise, in spite of the fact that the case in question was not proved, the Court has held that the

...continuation

Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195. paras. 118-21, 367.

²²⁷ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. paras. 107-110. I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. paras. 118-21, 367.

²²⁸ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 340; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. para. 368

²²⁹ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 76.

²³⁰ I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs.* Judgment of February 6, 2001. Series C No. 74. paras. 158-163.

²³¹ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 139; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. para. 151

disproportionate or discriminatory requirement of “accreditations or authorizations for the written media to participate in official events” would constitute an indirect restriction.²³²

158. On this subject, the Inter-American Commission has also explained that a single State act may constitute simultaneously a limitation to freedom of expression contrary to the requirements of Article 13.2 of the Convention and an indirect or subtle means of restricting freedom of expression. For example, the imposition of criminal penalties for certain expressions contrary to the interests of the Government constitutes a direct limitation to this right in contravention of Article 13 by virtue of being unnecessary and disproportionate; however, it is also an indirect limitation of this right because it may silence or discourage future expressions, thus inhibiting the circulation of information and causing the same result as direct censorship.²³³ Along this same line of reasoning, the Commission has stated that the prosecution of individuals, including journalists and communications professionals, for the mere act of investigating, writing about and publishing information that is of interest to the public violates freedom of expression by discouraging public debate on matters of concern to society, since the mere threat of being prosecuted criminally for critical statements concerning matters of public interest may result in self-censorship, given its intimidating effect.²³⁴

159. The Special Rapporteurs of the UN, the OAS and the OSCE have also addressed the issue of indirect restrictions to freedom of expression by the authorities. For example, in their Joint Declaration of 2002 they affirmed that “[g]overnments and public bodies should never abuse their custody over public finances to try to influence the content of media reporting; the placement of public advertising should be based on market considerations.”

160. To date, the issue of regulation of the communications media and the requirements that must be met in order to prevent the violation of freedom of expression has not been ruled on expressly by the bodies of the inter-American system. However, the UN, OAS and OSCE Special Rapporteurs on Freedom of Expression addressed this issue directly in their Joint Declaration of 2003. After preliminarily “[c]ondemning attempts by some governments to limit freedom of expression and to control the media and/or journalists through regulatory mechanisms which lack independence or otherwise pose a threat to freedom of expression,” and “[n]oting the importance of protecting broadcasters, both public and private, from interference of a political or commercial nature,” they made statements on the political and economic independence of regulatory bodies, differences among various media subject to regulation, systems for registering communications media, and restrictions on content. With respect to (i) the political and economic independence of regulatory entities, the Special Rapporteurs declared that “[a]ll public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by an appointments process for members which is transparent, allows for public input and is not controlled by any particular political party.” As for (ii)

²³² I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. para. 346; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. para. 375

²³³ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*, cited in I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. paras. 102.3.a) and 102.3.e); IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 72.i).

²³⁴ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Palamara-Iribarne v. Chile*, cited in I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 64.e); IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*, cited in I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 101.2).

the differences among various communications media, they asserted that “[r]egulatory systems should take into account the fundamental differences between the print and broadcast sectors, as well as the Internet,” that “[b]roadcasters should not be required to register in addition to obtaining a broadcasting license,” that “[t]he allocation of broadcast frequencies should be based on democratic criteria and should ensure equitable opportunity of access,” and that “[a]ny regulation of the Internet should take into account the very special features of this communications medium.” With regard to (iii) systems for the registration of the communications media, the Rapporteurs declared that “[i]mposing special registration requirements on the print media is unnecessary and may be abused and should be avoided,” and that “[r]egistration systems which allow for discretion to refuse registration, which impose substantive conditions on the print media or which are overseen by bodies which are not independent of government are particularly problematical.” Finally, in terms of (iv) restrictions on content, they stated that “[c]ontent restrictions are problematical,” that “[m]edia-specific laws should not duplicate content restrictions already provided for in law as this is unnecessary and may lead to abuse,” and that “[c]ontent rules for the print media that provide for quasi-criminal penalties, such as fines or suspension, are particularly problematical.”

3. The prohibition against indirect restrictions to freedom of expression by causes other than the abuse of State restrictions

161. Freedom of expression can also be adversely affected without the direct intervention of the State; for example, when as a consequence of the existence of monopolies or oligopolies in the ownership of the communications media, “means tending to impede the communication and circulation of ideas and opinions” are established in practice.²³⁵ The Inter-American Court has understood that Article 13.3 prohibits not only government restrictions but also private controls that produce the same result. In this sense, the Court has held that Article 13.3 imposes on the States an obligation of guarantee as pertains to relations among individuals that could cause an indirect restriction of freedom of expression: “Article 13.3 of the Convention imposes on the State obligations to guarantee, even in the realm of the relationships between individuals, since it not only covers indirect governmental restrictions, but also ‘individual...controls’ that produce the same result.”²³⁶ Read in conjunction with Article 1.1 of the American Convention, this means—in the Court’s opinion—that the American Convention is violated not only when the State imposes indirect restrictions on the circulation of ideas or opinions through its agents but also when it has failed to ensure that the establishment of private controls does not result in the violation of freedom of expression.²³⁷

162. Along these lines, the Declaration of Principles on Freedom of Expression issued by the Inter-American Commission on Human Rights sets forth, in Principle 12, that “[m]onopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people’s right to information. In no case should such laws apply exclusively to the

²³⁵ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 56.

²³⁶ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. para. 339; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. para. 367.

²³⁷ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 48.

media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”

163. The UN, OAS and OSCE Special Rapporteurs on Freedom of Expression have addressed in their various Joint Statements the issue of indirect restrictions to freedom of expression derived from economic and commercial factors. Thus, in the Joint Declaration of 2001, they stated that “[e]ffective measures should be adopted to prevent undue concentration of media ownership,” and that “[m]edia owners and media professionals should be encouraged to conclude agreements to guarantee editorial independence; commercial considerations should not unduly influence media content.” Likewise, in the Joint Declaration of 2002 they declared themselves “[c]ognizant of the threat posed by increasing concentration of ownership of the media and the means of communication, in particular to diversity and editorial independence;” and they affirmed that “[m]edia owners have a responsibility to respect the right to freedom of expression and, in particular, editorial independence.”

164. The UN, OAS and OSCE Special Rapporteurs have also spoken to the specific issue of the promotion of diversity in the media and in the allocation of frequencies. In their various Joint Declarations, they have highlighted the importance of this issue for the full exercise of freedom of expression. For example, in the Joint Declaration of 2001 they adopted a section on “Broadcasting,” in which it was affirmed (i) that “[p]romoting diversity should be a primary goal of broadcast regulation; diversity implies gender equity within broadcasting, as well as equal opportunity for all sections of society to access the airwaves;” (ii) that “[b]roadcast regulators and governing bodies should be so constituted as to protect them against political and commercial interference;” and (iii) that “[e]ffective measures should be adopted to prevent undue concentration of media ownership.”

165. As will be studied in detail, indirect restrictions coming from private individuals do not originate solely in economic factors that in practice restrict the free flow of ideas. Another of these kinds of restrictions studied by the Court has been the restriction on freedom of expression through acts of violence carried out by private individuals. In this regard, in two cases in which the violence against journalists linked to certain media outlets were committed mainly by private groups in reaction to the editorial stance of the outlet or the content of its reporting, the Inter-American Court observed that, “the State’s international responsibility can be the result of violating acts committed by third parties, which in principle would not be attributable to it.”²³⁸ This occurs if the State fails to comply, by action or omission of its agents in a position of guarantors of human rights, the obligations *erga omnes* included in Articles 1(1) and 2 of the [American] Convention.”²³⁹ The Court added that, “a State is not responsible for any violation of human rights committed by individuals. The *erga omnes* nature of the conventional obligations to guarantee does not imply an unlimited responsibility of the States with regard to any act of individuals. The specific circumstances of the case and the concretion of those obligations to guarantee must be analyzed, considering the predictability of a real and immediate risk.”²⁴⁰

²³⁸ Cf I/A Court H. R., *Case of the “Mapiripán Massacre” v. Colombia. Merits, Reparations and Costs*. Judgment of September 15, 2005. Series C No. 134. para. 11.a) and I/A Court H. R., *Case of Valle Jaramillo et al Vs. Colombia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 192. para. 77.

²³⁹ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. para. 109; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. para. 120.

²⁴⁰ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. para. 110; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. para. 121.

F. Journalists and the social communications media

1. Importance of journalism and the media for democracy; characterization of journalism under the American Convention

166. Journalism, in the context of a democratic society, is one of the most important manifestations of freedom of expression and information. The work of journalists and the activities of the press are fundamental elements for the functioning of democracies, as journalists and the communications media keep society informed of events and their varied interpretations—a necessary condition for public debate to be robust, informed and vigorous.²⁴¹ It is also clear that an independent and critical press is a fundamental element for the effectiveness of other freedoms in a democratic system.²⁴²

167. Indeed, the case law of the inter-American system has been consistent in reaffirming that, as a cornerstone of democratic society, freedom of expression is an essential condition for society to be sufficiently informed;²⁴³ that the greatest amount possible of information is required for the general welfare and that the full exercise of freedom of information is precisely what guarantees this maximum circulation;²⁴⁴ and that the free circulation of ideas and news is inconceivable without a plurality of sources of information and respect for the communications media.²⁴⁵

168. The importance of the press and the status of journalists are explained in part by the indivisibility of the expression and dissemination of thoughts and information, and by the fact that a restriction to the possibilities for dissemination is, directly and to the same extent, a limit to freedom of expression in both its individual and collective aspects.²⁴⁶ It follows that, in the opinion of the Inter-American Court, government restrictions to the circulation of information must be minimized, considering the importance of freedom of expression in a democratic society and the responsibility that such importance places upon journalists and communications professionals.²⁴⁷

169. Its direct nexus to freedom of expression distinguishes journalism from other professions. In the opinion of the Inter-American Court, the practice of journalism means that a person is involved in activities defined by or consisting of the freedom of expression that the American Convention protects specifically. Such activities are guaranteed specifically through a right that coincides in its definition with journalistic activity. Thus, the professional practice of

²⁴¹ I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. paras. 117-118.

²⁴² IACHR. Report No. 5/99. Case 11.739. Merits. Héctor Félix Miranda. Mexico. April 13, 1999. para. 42; IACHR. Report No. 130/99. Case 11.740. Merits. Víctor Manuel Oropeza. Mexico. November 19, 1999. para. 46.

²⁴³ I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. para. 68.

²⁴⁴ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 77.

²⁴⁵ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 78.

²⁴⁶ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 31-32.

²⁴⁷ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 57.

journalism cannot be differentiated from the exercise of freedom of expression, for example, by the criterion of remuneration. They are “obviously interwoven” activities, and the professional journalist is simply a person who exercises his freedom of expression continuously, steadily and for pay.²⁴⁸ Because of its close overlap with freedom of expression, journalism cannot be thought simply as the provision of a professional service to the public through the application of knowledge acquired at a university or by those persons who are registered with a particular professional association (as can occur with other professions); journalism is linked to the freedom of expression inherent in every human being. According to the Court, journalists are engaged professionally in the exercise of the freedom of expression defined expressly in the Convention, through social communications.

170. Therefore, in the case law of the inter-American system, the reasons of public order that justify the compulsory membership in associations that exists for other professions cannot be invoked validly in the case of journalism, because it leads to the permanent limitation, to the detriment of those who are not association members, of the right to make full use of the faculties that Article 13 recognizes with respect to every person; “[h]ence, it would violate the basic principles of a democratic public order on which the Convention itself is based.”²⁴⁹ Thus, Principle 6 of the Statement of Principles on Freedom of Expression issued by the Inter-American Commission states that “[c]ompulsory membership or the requirements of a university degree for the practice of journalism constitute unlawful restrictions of freedom of expression.”

171. Similarly, the UN, OAS and OSCE Special Rapporteurs on Freedom of Expression recalled in their Joint Declaration of 2003 that “the right to freedom of expression guarantees everyone the freedom to seek, receive and impart information through any medium and that, as a result, attempts to limit access to the practice of journalism are illegitimate,” and they declared (i) that “[i]ndividual journalists should not be required to be licensed or to register;” (ii) that “[t]here should be no legal restrictions on who may practice journalism;” (iii) that “[a]ccreditation schemes for journalists are appropriate only where necessary to provide them with privileged access to certain places and/or events, and that such schemes should be overseen by an independent body and accreditation decisions should be taken pursuant to a fair and transparent process, based on clear and non discriminatory criteria published in advance;” and (iv) that “[a]ccreditation should never be subject to withdrawal based only on the content of an individual journalist’s work.”

172. As for the communications media, the case law of the inter-American system has stressed that they play an essential role as vehicles or instruments for the exercise of freedom of expression and information—in their individual and collective aspects—in a democratic society.²⁵⁰ Freedom of expression is particularly important in its application to the press; it is the job of the media to transmit information and ideas on matters of public interest, and the public has the right to receive them.²⁵¹ As such, the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe [OSCE] Representative on Freedom of the Media and the OAS Special Rapporteur for Freedom of Expression affirmed in their

²⁴⁸ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 74.

²⁴⁹ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 76.

²⁵⁰ I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 117; I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. para. 149.

²⁵¹ I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. para. 153.

Joint Declaration of 1999 that “[a]n independent and pluralistic media is essential to a free and open society and accountable government.”

2. Responsibility inherent in the practice of journalism

173. In view of its social and political importance, the practice of journalism entails implicit duties and is subject to the responsibilities discussed above. It is important to bear in mind with reference to journalists that the requirements of Article 13.2 of the Convention must be met—particularly those requirements concerning legality, legitimate ends, and the necessity of limitations—and that the very nature of this professional practice is linked directly to the exercise of a right defined and protected by the American Convention.²⁵² In any case, given the importance of the role played by the media in a democratic society, the IACHR’s Declaration of Principles on Freedom of Expression establishes in Principle 6 that “[j]ournalistic activities must be guided by ethical conduct, which should in no case be imposed by the State.”

174. Considering this, it is reasonable to maintain that the debate over the media is necessary and healthy for democracy. In this debate, however, public officials should remember that, as the Court has indicated, questioning the conduct of journalists or media outlets “would not justify the non-compliance with state obligations to respect and guarantee human rights” of all individuals, without discrimination.²⁵³ This subject will be explored in greater detail in the following section.

3. Rights of journalists and State duties to protect the safety and independence of journalists and media outlets

175. Throughout their case law, the Inter-American Commission and the Inter-American Court have recognized a series of rights to which journalists and the communications media are entitled, and which give rise to corresponding obligations for the authorities.

176. First, it has been recognized that freedom of expression grants the directorship of the media, as well as the journalists who work for those media, the right to investigate and disseminate events of public interest,²⁵⁴ and that in a democratic society, the press has the right to inform freely on the activities of the State and to criticize the government, since the public has a corresponding right to be informed of what goes on in the community.²⁵⁵ It has also been recognized that journalists have the right to impart information on matters of legitimate public interest that are available in the foreign press.²⁵⁶ As such, it has been established that the restriction of the right of journalists and the communications media to circulate news, ideas and opinions also

²⁵² I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 80.

²⁵³ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. para. 62; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. para. 74

²⁵⁴ I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. para. 157.

²⁵⁵ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ivcher-Bronstein v. Peru*, cited in I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. para. 143.g).

²⁵⁶ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*, cited in I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 101.5).

affects the public's right to receive information, limiting its freedom to exercise political options and to engage fully in a democratic society.²⁵⁷ In addition, it has been held that the punishment of a journalist for aiding in the dissemination of statements made by another or available in the foreign press is a serious threat to the contribution of the press to the discussion of matters of public interest.²⁵⁸

177. The UN, OAS and OSCE Special Rapporteurs addressed this issue in their Joint Declaration of 2003, in which they stated that they were “[a]ware of the important watchdog role of the media and of the importance to democracy and society as a whole of vibrant, active investigative journalism,” and affirmed consequently (i) that “[m]edia workers who investigate corruption or wrongdoing should not be targeted for legal or other harassment in retaliation for their work,” and (ii) that “[m]edia owners should be encouraged to provide appropriate support to journalists engaged in investigative journalism.”

178. The case law of the inter-American system has also been emphatic on the point that those who practice journalism have the right to the conditions of freedom and independence required to perform fully their critical function of keeping society informed, and consequently, to be able to be responsible.²⁵⁹ Ensuring the protection of the freedom and independence of journalists is one of the conditions that must be met in order for the communications media to be, in practice, true instruments of freedom of expression and not vehicles for its restriction.²⁶⁰ According to the Inter-American Court, “the free circulation of ideas and news is possible only through a plurality of sources of information and respect for the communications media. But, viewed in this light, it is not enough to guarantee the right to establish and manage organs of mass media; it is also necessary that journalists and, in general, all those who dedicate themselves professionally to the mass media are able to work with sufficient protection for the freedom and independence that the occupation requires. It is a matter, then, of an argument based on a legitimate interest of journalists and the public at large, especially because of the possible and known manipulations of information relating to events by some governmental and private communications media.”²⁶¹ It follows that the freedom and independence of journalists is an asset that must be protected and guaranteed.²⁶² The communications media themselves are also entitled to the right to independence and to be free from pressure of any kind. In this regard, Principle 13 of the IACHR Declaration of Principles on Freedom of Expression affirms that “[t]he means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

²⁵⁷ I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. para. 163.

²⁵⁸ I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 134, citing *Eur. Court H.R., Case of Thoma v Luxemburg*, Judgement of March 29, 2001, para. 62.

²⁵⁹ I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 119; I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. para. 150.

²⁶⁰ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 34.

²⁶¹ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 78.

²⁶² I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 79.

179. Journalists also have an especially important right to be protected by the State in circumstances that may threaten their safety, their physical integrity or their lives. The Inter-American Commission has explained that the lack of protection for journalists, whenever there is a real and imminent risk of which the State is aware, could implicate the State in a violation of its international responsibilities pertaining to Article 13 of the American Convention. Effectively, and as previously mentioned, the authorities have the duty of guaranteeing the protection of communicators so they can exercise fully their right to freedom of expression, and obviously to protect their fundamental right to life, personal safety and physical integrity and that of their families, which is equally guaranteed by the American Convention. The Inter-American Court has also indicated that States can be responsible for the actions of third parties when, by action or omission by its agents, they fail to comply with their obligation to guarantee the aforementioned rights. Specifically, the Court has indicated that the State could be responsible for attacks perpetrated by private individuals against the media and journalists when a non-compliance with the duty to guarantee is demonstrated, with attention paid to the fact that “specific circumstances of the case and the concretion of those obligations to guarantee must be analyzed, considering the predictability of a real and immediate risk.”²⁶³ Likewise, and as will be further explored going forward, the Court has indicated that public officials should refrain from making statements that, in a context of social division, increase the risk that journalists and media outlets will suffer attacks by third parties. In this respect, the Court has indicated that: “Within the framework of its obligations to guarantee the rights acknowledged in the American Convention, the State must abstain from acting in such a way that favors, promotes, fosters, or deepens that vulnerability and it must adopt, when appropriate, necessary and reasonable measures to prevent or protect the rights of whoever is in that situation, as well as investigate facts that affect them.”²⁶⁴

180. The situation of attacks against journalists and media workers is so serious that in their Joint Declaration de 2000, the UN, OSCE and OAS Special Rapporteurs included a segment entitled “Censorship by killing,” in which they affirmed that “[a]ttacks such as the murder, kidnapping, harassment of and/or threats to journalists and others exercising their right to freedom of expression, as well as the material destruction of communications facilities, pose a very significant threat to independent and investigative journalism, to freedom of expression and to the free flow of information to the public.” They also addressed this topic in the Joint Declaration of 2006, in which they again recalled that “attacks such as the murder, kidnapping, harassment of and/or threats to journalists and others exercising their right to freedom of expression, as well as the material destruction of communications facilities, pose a very significant threat to independent and investigative journalism, to freedom of expression and to the free flow of information to the public,” and they stated that acts involving the “[i]ntimidation of journalists, particularly murder and physical attacks, limit the freedom of expression not only of journalists but of all citizens, because they produce a chilling effect on the free flow of information, due to the fear they create of reporting on abuses of power, illegal activities and other wrongs against society. States have an obligation to take effective measures to prevent such illegal attempts to limit the right to freedom of expression.”

181. As previously mentioned, the Inter-American Court has indicated that the effective exercise of the right to freedom of expression implies the existence of favorable social conditions

²⁶³ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. para. 110; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. para. 121.

²⁶⁴ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. para. 107; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. para. 118.

and practices that do not inhibit freedom of expression or cause self-censorship for fear of violent or illegitimate retaliation. In this sense, acts of public and/or private violence against the media and journalists because of their editorial position place the victims in a condition of special vulnerability, a condition that cannot go unnoticed by the State. In these cases, the authorities should take every measure to protect those who are vulnerable and should in any case avoid worsening the situation. With respect to the cases of *Ríos et al. v. Venezuela* and *Perozo et al. v. Venezuela*, the Court held that, “The effective exercise of freedom of expression implies the existence of conditions and social practices that favor it. It is possible that this freedom be illegally restricted by regulatory or administrative acts of the State or due to *de facto* conditions that place those who exercise it or try to exercise it in a direct or indirect situation of risk or greater vulnerability due to acts or omissions of state agents or individuals. Within the framework of its obligations to guarantee the rights acknowledged in the Convention, the State must abstain from acting in such a way that favors, promotes, fosters, or deepens that vulnerability.” Likewise, the Court found that the State must “adopt, when appropriate, the measures necessary and reasonable to prevent or protect the rights of whoever is in that situation, as well as investigate facts that affect them.”²⁶⁵

182. The Court has also found that statements made by senior officials against media outlets and journalists because of their editorial perspectives can increase the risk of practicing journalism: “even though it is true that there is an intrinsic risk to journalistic activity, the people who work for a specific social communication firm can see the situations of risk they would normally face exacerbated if that firm is the object of an official discourse that may provoke or suggest actions or be interpreted by public officials or sectors of the society as instructions, instigations, or any form of authorization or support for the commission of acts that may put at risk or violate the life, personal safety, or other rights of people who exercise journalistic tasks or whoever exercises their freedom of expression.”²⁶⁶ Likewise, the Court has indicated that such statements by public officials can implicate State responsibility since “statements of high state officials can be considered not only as an admission of the behavior of the State itself, but also generate obligations for the latter.”²⁶⁷

183. In the cases *Ríos et al. v. Venezuela* and *Perozo et al. v. Venezuela*, as pertains to the protection of journalists, directors, and other media representatives who have been the object of official statements, both the Court and the IACHR held that one measure that would have contributed to the protection of the victims—and that was not used—was a public and emphatic rejection of the attacks that had been carried out against them: “In the context of the facts of the present case, it is possible to consider that the appropriate behavior of high public authorities with regard to acts of aggression against journalists due to their role as communicators in a democratic society, would have been the public manifestation of disapproval of those acts.”²⁶⁸ As previously

²⁶⁵ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. para. 107; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. para. 118.

²⁶⁶ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. para. 143; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. para. 155.

²⁶⁷ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. para. 120; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. para. 131.

²⁶⁸ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. para. 142; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. para. 154.

mentioned, even though to Court understood the exercise of journalism to imply an intrinsic risk, that risk could be exacerbated when made the subject of official speeches.²⁶⁹

184. In the aforementioned cases, the Court found that official comments had increased the vulnerability of the victims, which resulted in an “omission of the state authorities in their duty to prevent the facts, since [the comments] could have been interpreted by individuals and groups of individuals in such a way that they result in acts of violence against the alleged victims, as well as hindrances to their journalistic task.”²⁷⁰ It was also explicit in finding that with the “situation of actual vulnerability in which the alleged victims found themselves when carrying out their journalistic task” well known, the content of some official statements was “not compatible with the state’s obligation to guarantee the rights of those people to personal integrity and the freedom to seek, receive, and impart information, since they could have resulted intimidating for those linked with that communication firm and constituted offenses to the duty to prevent violating situations or situations of risk for the rights of people.”²⁷¹ The Court also held that ordering protective measures was not enough for the Court to consider that the authorities had complied with their duty since it “does not prove the State has effectively protected the beneficiaries of the order in relation to the facts analyzed.”²⁷²

185. In the aforementioned cases, it was never demonstrated that State agents directly affected the physical integrity of the victims. However, the hindering of their work and affecting of physical integrity by private individuals was proven. In the *Ríos* case, the Court found that, “in five of the facts proven it has been verified that people or groups of undetermined individuals caused damage to the physical integrity of and hindered the exercise of the journalistic tasks of” several of the victims and that, “[a]dditionally, in 10 of the facts proven it has been verified that people or group of undetermined individuals hindered the exercise of the journalistic activities”²⁷³ of several more victims. In the case of *Perozo et al.*, the Court verified that, “in five of the proven facts, it has been demonstrated that unknown private individuals or groups caused physical harm and hindered the journalism work of” several journalists and that in “15 of the proven facts, it has been demonstrated that private, unknown individuals or groups hindered journalism work.”²⁷⁴

186. The Court also held in both cases that, although moral damage had not occurred, it had been demonstrated that the victims had suffered “intimidation and hindrances” as well as attacks, threats, and harassments, in the exercise of their journalistic activities,” causing them to be “affected in their professional and personal lives in different ways,” by, for example, causing the

²⁶⁹ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 143; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. para. 155.

²⁷⁰ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 148; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. para. 160.

²⁷¹ I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. para. 161; *see also* I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 149.

²⁷² I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 143; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. para. 155.

²⁷³ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 265. I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. para. 279.

²⁷⁴ I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. para. 279.

“fear they had of performing their journalistic tasks” and necessitating the use of “bulletproof vests and gas masks.” Some were “afraid to go to certain areas or of covering certain events.”²⁷⁵ In the case of Ríos, some victims moved “to a different municipality or state,” while others preferred “to retire, temporarily or definitively, from their tasks,” and still others “stopped exercising journalistic activities on the street.”²⁷⁶

187. After also analyzing the state of the internal investigations launched into these matters by the State, the Court concluded that the “mentioned pronouncements by high public officials” had put those who work in the media outlets involved “and not only its owners, directors, or those who determine their editorial line (...) in a position of greater relative vulnerability regarding the State and specific sectors of society.” Specifically, the reiteration of the content of those pronouncements and speeches during that period “could have contributed to emphasizing an environment of hostility, intolerance, or rejection on the part of sectors of the population toward the alleged victims.”²⁷⁷ The Court also found that the attacks were linked to the victims’ journalism work, given that the situations or events in which the violence occurred “could have had a public interest or the nature or relevance of a news story that could have eventually been broadcast” for which reason “the alleged victims saw their possibilities to seek and receive information limited, restricted, or annulled, since journalistic teams were attacked, intimidated, or threatened by actions carried out by individuals.”²⁷⁸ That being the case, the Court concluded that the facts “were forms of obstruction, hindrance, and intimidation to the exercise of the journalistic tasks of the alleged victims, expressed through attacks or situations that put their personal integrity at risk, which in the context of the mentioned pronouncements made by high public officials and of the omission of state authorities in their duty to offer due diligence in the investigations, constituted failures to comply with the state’s obligation to prevent and investigate the facts.”²⁷⁹

²⁷⁵ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 272; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. para. 286.

²⁷⁶ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 272.

²⁷⁷ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 332; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. para. 360

²⁷⁸ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 333; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. para. 361

²⁷⁹ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 334; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. para. 362. In the case of *Ríos et al. v. Venezuela*, several criminal processes had been launched, but none of them resulted in a conviction of those responsible. The Court found that the processes were characterized by a lack of investigation of some of the facts (paras. 292-304), frequent changes of the prosecutor in charge (paras. 308-311), slowness of the Public Prosecutor in making decisions (paras. 312-318), and a lack of diligence in the medical examination (paras. 319-322). The Court concluded that “in the majority of the investigations started there is an unjustified procedural inactivity” and it found that “in some investigations not all the tasks necessary to verify the existence of the facts were carried out” (para. 331), and as a consequence “the totality of the investigations did not constitute an effective means to guarantee the rights of the alleged victims to humane treatment and to seek, receive, and impart information” (para. 331). In the case of *Perozo et al. v. Venezuela*, also mentioned previously, numerous criminal investigations and proceedings had been initiated before the Ombudsman’s Office. The Court found that these proceedings showed a lack of investigation into some of the facts (paras. 331-321), frequent changes of the prosecuting attorney (paras. 326-330), slowness of the Public Prosecutor in making decisions, (paras. 331-337), lack of due diligence in some of the investigations (paras. 338-341), failure to issue timely orders when the need for new action arose (paras. 342-343), unjustified delays in resolving requests for dismissal (para. 344) and inactivity in the proceedings before the Ombudsman’s Office (paras. 350-357). The Court concluded that the investigations into the attacks on the journalists and the television channel had not been carried out with due diligence: “[T]he Court notes that only 19 out of the 48 facts reported were investigated; that in most of the investigations opened, there is an unwarranted procedural delay and that in some of the investigations, the necessary steps to proceed with the

188. In this sense, the Commission has repeatedly found that in cases of attacks against journalists or media workers the State incurs in international responsibility when it fails to investigate and administer justice, because freedom of expression must be protected in practice by effective judicial guarantees that enable the investigation, punishment and reparation of abuses and crimes against journalists.

189. Principle 9 of the IACHR Declaration of Principles on Freedom of Expression establishes in this sense that “the murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.” According to the Commission, in cases of crimes against journalists “the lack of an exhaustive investigation, that would lead to the punishment of all those responsible for the murder of the journalist, also constitutes a violation of the right to freedom of expression, due to the chilling effect of such impunity on every citizen.”²⁸⁰ “[T]he resignation by a State of its duty to fully investigate the killing of a journalist is especially serious because of its impact on society.”²⁸¹

190. The Inter-American Court has held that investigating the possible infringement of a right like the right to life or humane treatment can be a way to “shelter, protect, or guarantee this right [to freedom of expression]” and that the urgency of the obligation to investigate depends on the “gravity of the crimes committed and the nature of the rights infringed,” being able to even reach in some cases the standard of *jus cogens*.²⁸² The Court has also indicated that the obligation to investigate is derived from the standards of domestic law, which establishes that the obligation to investigate “corresponds to the States Parties to establish, pursuant to the procedures and through the bodies established in its Constitution and its laws, which illegal behaviors will be investigated ex officio, and to regulate the regimen of criminal actions within the domestic procedure, as well as the rules that allow the victims or affected parties to file a complaint or exercise a criminal action and, if this is the case, participate in the investigation and the process.”²⁸³ In any case, criminal law is not always the right measure to protect against violations of the right to freedom of expression. Its suitability depends on the nature of the infringements in each individual case: “the appropriateness of criminal proceedings as the adequate and effective resource to guarantee it will depend on the act or omission that violated said right.”²⁸⁴ In cases in which the

...continuation

confirmation of the materiality of the facts have not been taken. Moreover, in those 19 investigations, as a result of which no responsible person has yet been identified, there have been unwarranted delays in the rendering of certain decisions by the authorities charge of the criminal prosecution, as well as by those that play a judicial role. Therefore, this Tribunal finds that in those cases, the investigations did not constitute an effective means to ensure the right to humane treatment and the right to seek, receive and impart information of the alleged victims” (para 359).

²⁸⁰ IACHR. Report No. 130/99. Case 11.740. Merits. Víctor Manuel Oropeza. Mexico. November 19, 1999. para. 47.

²⁸¹ IACHR. Report No. 5/99. Case 11.739. Merits. Héctor Félix Miranda. Mexico. April 13, 1999. para. 52; IACHR. Report No. 130/99. Case 11.740. Merits. Víctor Manuel Oropeza. Mexico. November 19, 1999. para. 58.

²⁸² I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. para. 283; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. para. 298

²⁸³ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. para. 284; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. para. 299

²⁸⁴ I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. para. 300

violation of the right to freedom of expression is related to the violation of other rights “such as personal freedom, personal integrity, or life,” criminal law “may be an adequate resource to protect that situation.”²⁸⁵

191. Similarly, it has been recognized that attacks against journalists—because their purpose is to silence them—are also violations of society’s right to access information freely.²⁸⁶ It follows that the international responsibility of the State also arises in these cases as a result of the intimidating and inhibiting effect of such lack of protection against aggressions. The murder of a journalist and the State’s failure to investigate and criminally punish the perpetrators has an impact not only on other journalists but also on the rest of society: “this sort of crime has a chilling effect on other journalists, but also on every citizen, as it generates a fear of reporting abuses, harassment and all kinds of illegal actions. The Commission considers that such an effect can only be avoided by swift action by the respective State to punish all those that may be responsible, as is its duty under international law and domestic law.²⁸⁷ Therefore, the [...] State must send a strong message to society that there shall be no tolerance for those who engage in human rights violations of this nature. ... [T]he homicide of the journalist constitutes an aggression against all citizens inclined to denounce arbitrary acts and abuses to society, aggravated by the impunity of one or more of the intellectual perpetrators.”²⁸⁸

192. Likewise, in their Joint Declaration of 1999, the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur for Freedom of Expression affirmed that “[s]tates must ensure an effective, serious and impartial judicial process, based on the rule of law, in order to combat impunity of perpetrators of attacks against freedom of expression.” They also asserted in their Joint Declaration of 2000 that “[s]tates are under an obligation to take adequate measures to end the climate of impunity and such measures should include devoting sufficient resources and attention to preventing attacks on journalists and others exercising their right to freedom of expression, investigating such attacks when they do occur, bringing those responsible to justice and compensating victims.” They addressed this issue again in their Joint Declaration of 2006, declaring that “[s]tates should, in particular, vigorously condemn such attempts when they do occur, investigate them promptly and effectively in order to duly sanction those responsible, and provide compensation to the victims where appropriate. They should also inform the public on a regular basis about these proceedings.”

193. Finally, it has been recognized that journalists and media workers are entitled to the right to the confidentiality of sources. Principle 8 of the IACHR Declaration of Principles on Freedom of expression provides that “[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.”

4. Journalists who cover armed conflict or emergency situations

194. The status of journalists who report on armed conflict or emergency situations has warranted special attention. The Inter-American Commission has recognized that it is part of the field of journalistic activity covered by the right to freedom of expression to visit communities affected by armed conflict or disturbances to public order, document their living conditions, and

²⁸⁵ I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. para. 300

²⁸⁶ IACHR, Report No. 50/99. Case No. 11.739. *Héctor Félix Miranda*. México. April 13, 1999. para. 42. IACHR, Report No. 130/99. Case No. 11.740. *Victor Manuel Oropeza*. México. November 19, 1999. para. 46.

²⁸⁷ IACHR, Report No. 130/99. Case No. 11.740. *Victor Manuel Oropeza*. México. November 19, 1999. para. 58.

²⁸⁸ IACHR, Report No. 130/99. Case No. 11.740. *Victor Manuel Oropeza*. México. November 19, 1999. para. 61.

take down statements and reports of human rights violations committed by the authorities. It has held that any attack or retaliation by the authorities as a consequence of the performance of these activities is a violation of the right to freedom of thought and expression.²⁸⁹

195. Along these lines, the Commission has specified that journalists covering armed conflicts, in spite of the fact that they expose themselves to the risks, cannot thereby lose their civilian status. They continue to be protected by the applicable guarantees under International Humanitarian Law and International Human Rights Law, particularly the guarantees derived from the principle of distinction.²⁹⁰

196. Similarly, it has been recognized that attacks against journalists covering armed conflicts violate both the individual and collective aspects of freedom of expression. In terms of the individual, the curtailment of the exercise of the right to seek, cover and impart information results in the harassment and intimidation of other journalists, and this affects the information transmitted. As for the collective aspect, society is deprived of the right to know about the information obtained by the journalists.²⁹¹ For this reason the Commission has recognized that, given the importance of the work of journalists in informing society by covering situations of armed conflict, the press that operates under such conditions must be entitled to special protections and benefits from the State, even if the conflict involves unlawful armed groups: “[M]aking the work of the press possible in periods of armed conflict, even with irregular armed combatants, requires the greatest protection. It is journalists who are risking their lives to bring the public an independent and professional view of what is really happening in areas of conflict.”²⁹² Consequently, when there is an armed conflict, and when it is known that certain individuals are journalists, the State must grant them the greatest possible protection and the highest degree of guarantees in order for them to perform their function of seeking and transmitting information on the subject.²⁹³

197. For its part, the Inter-American Court has held that in situations of serious domestic tension or disruption of public order, it is not enough for authorities to order measures of protection since this “does not prove the State has effectively protected the beneficiaries of the order in relation to the facts analyzed.” An effective, coherent, and consistent implication of the order is also required. The Court has also indicated that the State’s comment that the journalists “had acted beyond what state authorities could reasonably prevent and do,” or that they “disobeyed instructions,” should be proven by the State.²⁹⁴

5. Conditions inherent in the functioning of the media

198. Freedom of expression demands certain conditions with respect to the functioning of the communications media, so that “such media should, in practice, be true instruments of that freedom and not vehicles for its restriction,”²⁹⁵ as it is the media that serve to put the exercise of

²⁸⁹ IACHR. Report No. 29/96. Case 11.303. Merits. Carlos Ranferí Gómez. Guatemala. October 16, 1996. para. 92.

²⁹⁰ IACHR. Report No. 38/97. Case 10.548. Merits. Hugo Bustíos Saavedra. Peru. October 16, 1997. para. 61.

²⁹¹ IACHR. Report No. 38/97. Case 10.548. Merits. Hugo Bustíos Saavedra. Peru. October 16, 1997. paras. 76-77.

²⁹² IACHR. Report No. 38/97. Case 10.548. Merits. Hugo Bustíos Saavedra. Peru. October 16, 1997. para 73.

²⁹³ IACHR. Report No. 38/97. Case 10.548. Merits. Hugo Bustíos Saavedra. Peru. October 16, 1997. para 75.

²⁹⁴ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. para. 154; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. para. 167.

²⁹⁵ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 34.

this right into practice. "This means that the conditions of its use must conform to the requirements of this freedom."²⁹⁶ These conditions include, among others: (a) the plurality of the media;²⁹⁷ (b) the application of anti-monopoly legislation in this field, so as to prevent media concentration, in whatever form²⁹⁸ -Principle 12 of the IACHR Declaration of Principles on Freedom of Expression establishes in this respect that "[m]onopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people's right to information;"- and (c) the guaranteed protection of the freedom and independence of the journalists who work for the media.²⁹⁹ It has also been recognized that freedom of expression "requires, in principle, that the communication media are potentially open to all without discrimination or, more precisely, that there be no individuals or groups that are excluded from access to such media."³⁰⁰

199. Pluralism and diversity in the communications media are of particular importance in the full and universal exercise of the right to freedom of expression. These rules point to the State's obligation to guarantee the maximum pluralism and diversity in the shaping, function and content of public debate. According to the Inter-American Court, the maximum possibility of information is a requirement of general welfare, and it is the full exercise of freedom of information that ensures such maximum circulation.³⁰¹ Therefore, the State must foster informative pluralism to the greatest degree possible in order to achieve the balanced participation of diverse information in public debate, as well as to protect the human rights of those who confront the power of the media. According to the Court, "[g]iven the importance of freedom of thought and expression in a democratic society and the great responsibility it entails for professionals in the field of social communications, the State must not only minimize restrictions on the dissemination of information, but also extend equity rules, to the greatest possible extent, to the participation in the public debate of different types of information, fostering informative pluralism. Consequently, equity must regulate the flow of information. In these terms is to be explained the protection of the human rights of those who face the power of the media and the attempt to ensure the structural conditions which allow the equitable expression of ideas."³⁰²

²⁹⁶ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 34.

²⁹⁷ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 34.

²⁹⁸ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 34.

²⁹⁹ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 34.

³⁰⁰ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 34.

³⁰¹ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 77.

³⁰² I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs. Judgment of May 3, 2008. Series C No. 177. para. 57*; I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193. para. 113*; I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194. para. 106*; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195. para. 117.*

G. The exercise of freedom of expression by public officials

200. Public officials, like all people, are entitled to the right to freedom of expression in its diverse manifestations. Nevertheless, the exercise of this fundamental freedom acquires certain connotations and specific characteristics that have been recognized under the case law of the inter-American system, particularly in the areas of (a) the special duties they acquire by virtue of their status as state officials; (b) the duty of confidentiality that may apply to certain types of information held by the State; (c) the right and duty of public officials to denounce human rights violations; and (d) the particular situation of members of the Armed Forces.

201. As far as the impact that statements of public officials have on the rights of others, the Inter-American Court has indicated that under certain circumstances, even when official comments do not expressly authorize, instigate, order, instruct, or promote acts of violence against individual citizens, their repetition and content can increase the “relative vulnerability” of these groups and the risk they face.³⁰³

1. General duties of the exercise of freedom of expression by public officials

202. *Duty to make statements in certain cases, in the performance of their legal and constitutional duties, regarding matters of public interest.* As noted by the Inter-American Court, the important democratic function of freedom of expression demands that, in specific cases, public officials make statements on matters of public interest in the performance of their legal duties. In other words, under certain circumstances, the exercise of their freedom of expression is not just a right but a duty.³⁰⁴ In the words of the Court, “[t]he Court has repeatedly insisted on the importance of freedom of expression in any democratic society, particularly in connection with public-interest matters. ... Accordingly, making a statement on public-interest matters is not only legitimate but, at times, it is also a duty of the state authorities.”³⁰⁵

203. *Special duty to reasonably verify the facts on which their statements are based.* When public officials exercise their freedom of expression, whether in compliance with a legal duty or as a simple exercise of their fundamental right to express themselves, “in making such statements the authorities are subject to certain restrictions such as having to verify in a reasonable manner, although not necessarily exhaustively, the truth of the facts on which their opinions are based, and this verification should be performed subject to a higher standard than that used by private parties, given the high level of credibility the authorities enjoy and with a view to keeping citizens from receiving a distorted version of the facts.”³⁰⁶

³⁰³ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 145; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. para. 157

³⁰⁴ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 139; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. para. 151

³⁰⁵ I/A Court H. R., *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of August 5, 2008 Series C No. 182. para. 131.

³⁰⁶ I/A Court H. R., *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of August 5, 2008 Series C No. 182. para. 131. Also see: I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 139; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. para. 151

204. *Duty to ensure that their statements do not amount to human rights violations.* Given the State's obligations to guarantee, respect and promote human rights, it is the duty of public officials to ensure that when they exercise their freedom of expression they are not causing fundamental rights to be ignored. To quote the Inter-American Court, "they should bear in mind that, as public officials, they are in a position of guarantors of the fundamental rights of the individual and, therefore, their statements cannot be such that they disregard said rights."³⁰⁷ As a result, public officials cannot, for example, violate the presumption of innocence by accusing media outlets or journalists of crimes that have not been investigated and judicially determined.

205. *Duty to ensure that their statements do not constitute arbitrary interference—direct or indirect—with the rights of those who contribute to the public discourse through the expression and distribution of their thoughts.* Public officials also have a duty to ensure that their statements are not damaging to the rights of those who contribute to the public discourse through the expression and distribution of their thoughts. This includes journalists as well as media outlets. In this respect, the Inter-American Court has indicated that officials should look to the context in which they express themselves in order to ensure that their expression does not constitute "forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts." This duty is even more important in situations of "greater social conflict, alterations of public order or social or political polarization, precisely because of the set of risks they may imply for certain people or groups at a given time."³⁰⁸

206. *Duty to ensure that their statements do not interfere with the independence and autonomy of judicial authorities.* Finally, public officials are bound by the duty to guarantee that, upon exercising their freedom of expression, they are not interfering with the appropriate functioning of other authorities to the detriment of the rights of individuals, particularly the autonomy and independence of the courts. In the Inter-American Court's view, "public officials, particularly the top Government authorities, need to be especially careful so that their public statements do not amount to a form of interference with or pressure impairing judicial independence and do not induce or invite other authorities to engage in activities that may abridge the independence or affect the judge's freedom of action," given that this would affect the corresponding rights to such independence to which the citizens are entitled.³⁰⁹

207. Two judgments handed down by the Inter-American Court in 2009 are illustrative of the impact of the speech of public officials given the vulnerability of journalists and individuals associated with the media. Both cases had very similar facts and the Court's rulings had almost the same terms. In both cases, the Court recognized that the context in which officials made their speeches and comments was one of "very high political and social polarization and conflict."³¹⁰ Likewise, the Court held that in two incidents, private individuals had attacked television channels'

³⁰⁷ I/A Court H. R., *Case of Apitz-Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of August 5, 2008 Series C No. 182. para. 131.

³⁰⁸ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 139; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. para. 151

³⁰⁹ I/A Court H. R., *Case of Apitz-Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of August 5, 2008 Series C No. 182. para. 131.

³¹⁰ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 121; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. para. 132

facilities and journalists, in most cases while they were working.³¹¹ It also held that several public officials had made statements linking both channels to criminal acts.³¹²

208. The Court held that these statements could be considered official since “the mentioned public officials made use, in exercise of their investiture, of the means provided to them by the State to issue their statements and speeches,” and that it was enough to analyze the case in “the context in which the facts occurred, that the content of those pronouncements was repeated on several occasions during that period.” However, the Court found that these facts had not been authorized as “State policy.”³¹³

209. In both cases, the Court found that even though the official speeches had not authorized, instigated, ordered, instructed, or promoted the violence against the victims, it had put them in a situation of greater vulnerability before the state and some sectors of society.³¹⁴ The Court also held that the impact of these speeches fell on those who worked for the affected media outlets, given that, independent of what they personally thought about the government, the official comments had created a general perception about those media outlets and the journalists who worked for them: “The self-identification of the alleged victims with the editorial line (...) is not a *condition sine qua non* to consider that a group of people, made up by people linked to that social communication firm, faced, in greater or smaller degree, according to the position they occupied, a same situation of vulnerability. In fact, it is not relevant or necessary for all the employees of [a media outlet] to have a political opinion or position in agreement with the editorial line of the communication firm. The mere perception as the ‘opposition,’ ‘coup mongerer,’ ‘terrorist,’ ‘uninformed,’ or ‘destabilizing’ identity, resulting mainly from the content of the mentioned speeches, is enough to consider that group of people, for the mere fact of being identified as employees of that television station and not because of other personal conditions, as submitted to the risk of suffering, to the hands of individuals, consequences that are unfavorable for their rights.”³¹⁵

210. The Court found that it had not been demonstrated that the individuals who assaulted the victims and their offices had official support or were following the instructions of some State body or official.³¹⁶ However, it did find that, given the polarization of the country and the perception of the media held by the government and some sectors of civil society, the

³¹¹ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. paras.129-33; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. paras. 141-45.

³¹² I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 127; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. para. 139.

³¹³ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para.138; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. para. 150.

³¹⁴ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 138; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. para. 157

³¹⁵ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 146; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. para. 158

³¹⁶ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 147; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. para. 159

statements of public officials created,³¹⁷ brought about,³¹⁸ or in any case “contributed to emphasizing or exacerbating situations of hostility, intolerance, or animosity by sectors of the population towards the people linked to that communication firm.”³¹⁹ The “content” of the speeches, the “high investiture” of those who made them, and their “repetition” formed in both cases “the omission of the state authorities of their duty to prevent the facts, since it could have been interpreted by individuals and groups of individuals in such a way that they resulted in acts of violence against the alleged victims, as well as hindrances to their journalistic task.”

211. Finally, given the situation of real vulnerability of the victims—of which the State had knowledge—some of the content of these official speeches was incompatible with the State’s obligation to guarantee the rights of the victims. In the words of the Court: “[I]n the situation of actual vulnerability in which the alleged victims found themselves when carrying out their journalistic task, known by state authorities, some content of the mentioned pronouncements is incompatible with the state’s obligation to guarantee the rights of those people to personal integrity and the freedom to seek, receive, and impart information, since they could have intimidated those linked with that communication firm and constituted offenses to the duty to prevent violating situations or situations of risk for the rights of people.”³²⁰

212. Given the aforementioned, the Court ordered “as a guarantee of non-repetition that the State adopt the measures necessary to avoid illegal restrictions and direct or indirect hindrances on the exercise of the freedom to seek, receive, and impart information of the alleged victims.”³²¹

213. In other cases in which the Office of the Special Rapporteur and the Commission have held that official speeches increase the vulnerability of journalists and media outlets, thereby increasing the risk of suffering effects on their fundamental rights, citing inter-American doctrine and jurisprudence they have indicated that public officials, especially those occupying senior positions with the State, have a duty to respect the circulation of information and opinion, including that which runs contrary to the State’s interests and position. In this sense, it should actively promote the pluralism and tolerance that are the characteristics of a democratic society. This obligation is derived from the obligation to protect the human rights of all individuals, in particular the rights of those who, like journalists or human rights defenders who have been the object of threats or enjoy measures of domestic and international protection, find themselves in situations of extraordinary risk. In these cases, the State must not only diligently exercise its duty to guarantee, but must also avoid increasing the risk to which these individuals are exposed.³²²

³¹⁷ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 148

³¹⁸ I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. para. 160

³¹⁹ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 148; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. para. 160

³²⁰ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 149; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. para. 161

³²¹ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 406.

³²² In this respect, see, for example, press release N° R05/09, in which the Offices of the Special Rapporteur for Freedom of Expression of the UN and the OAS express concern over statements from senior Colombian government officials against a journalist. Geneva – Washington, February 9, 2009. At: <http://www.cidh.oas.org/Relatoria/showarticle.asp?artID=738&IID=1>

2. The duty of confidentiality which may apply to certain information controlled by the State

214. The Inter-American Court has accepted that, under certain circumstances and given the conditions that permit keeping certain State-held information from public knowledge, the employees or officials of an institution have a duty to maintain the confidentiality of certain information to which they have access in the performance of their duties, provided that the content of such information is covered by said duty. In any case, in order for given information to fall within this protection, it is necessary to comply with the requirements examined in the following chapter of this document, in relation to the right of access to information. The Court has also accepted in general terms that, in certain cases, failure to comply with the duty of confidentiality can give rise to administrative, civil or disciplinary liabilities for such officials.³²³

215. Nevertheless, the Court has also specified that such duty of confidentiality does not cover information concerning the institution or its functions, when such information has already been made public.³²⁴

216. In their Joint Declaration of 2002, the UN, OAS and OSCE Special Rapporteurs affirmed that “[j]udges’ right to freedom of expression, and to comment on matters of public concern, should be subject only to such narrow and limited restrictions as are necessary to protect their independence and impartiality.”

3. The right and duty of public officials to denounce human rights violations

217. Freedom of expression covers the right of public officials, including members of the Armed Forces and the Police, to report human rights violations of which they become aware—which also constitutes fulfillment of a legal and constitutional duty by which they are bound. The exercise of this manifestation of freedom of expression, which is vital to the preservation of the rule of law in the hemisphere’s democracies, cannot be obstructed by the authorities or be grounds for subsequent acts of retaliation against the public officials who make such reports. According to the Inter-American Commission, “the exercise of the right of freedom of thought and expression within a democratic society includes the right to not be prosecuted or harassed for one’s opinions or for one’s allegations about or criticisms of public officials. (...) This protection is broader, however, when the statements made by a person deal with alleged violations of human rights. In such a case, not only is a person’s individual right to transmit or disseminate information being violated, but the right of the entire community to receive information is also being undermined.”³²⁵

4. The particular situation of members of the Armed Forces

218. Members of the Armed Forces are also entitled to freedom of expression and are legitimately able to exercise this right, and the limits imposed upon them must be respectful of the conditions established in the American Convention. For example, in the case of *Palamara Iribarne v. Chile*, the Inter-American Commission and Court considered it to be a legitimate exercise of freedom of expression when a retired Chilean Navy officer who was working as a Navy contractor wrote and tried to publish a book entitled *Ethics and Intelligence Services*, which dealt with matters related

³²³ I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 77.

³²⁴ I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 77.

³²⁵ IACHR. Report No. 20/99. Case 11.317. Merits. Rodolfo Robles Espinoza and Sons. Peru. February 23, 1999. para. 148.

generally to military intelligence and the need for it to adhere to certain ethical parameters. The Inter-American Court decided that the prevention of this book's publication (through various measures including the physical seizure of copies of the book and the printers' material, the erasure of its electronic versions, and the prosecution of Mr. Palamara for having tried to publish the book and for having made public statements about the way in which the military criminal justice system had handled his case) amounted to a violation of the freedom of expression protected by Article 13 of the Convention.

219. In light of the particular structure of the Armed Forces and its inherent vertical discipline, the case law has accepted in general terms that "reasonable limits can be placed on the freedom of expression of members of the Armed Services on active duty in a democratic society."³²⁶ Nevertheless, these limitations can be neither excessive nor unnecessary, and they must in every case meet the requirements set forth in article 13.2 of the Convention. Thus, for example, the Inter-American Commission has held with regard to members of the military that the improper use of criminally defined offenses such as the crime of "insulting the armed forces," which may be legitimate under certain circumstances, results in the silencing of complaints of human rights violations, which itself violates freedom of expression in its individual and collective aspects within a democratic society: "[t]he Commission believes that undermining the Armed Forces or insulting a superior are appropriate terms when applied to the crimes for which they were created, in order to maintain a level of discipline suitable to the vertical command structure needed in a military environment, but that they are totally inappropriate when used to cover up allegations of crimes within the Armed Forces."³²⁷ (...) Moreover, the ambiguity and unclear limits of criminal definitions of this kind can undermine the juridical security of human rights (...). Among the members of the Armed Forces, the threat of such consequences fuels a permanent fear of facing an investigation or prosecution for revealing criminal acts committed by superiors.³²⁸ (...) This situation is incompatible with the principles of a democratic society, where the information available about the activities of public officials should be as transparent as possible and accessible to all social groups. Allowing criminal definitions that can be used to curtail freedom of information and the free dissemination of ideas and opinions, particularly in cases involving human rights violations and, consequently, punishable acts, is unquestionably a serious violation of freedom of thought and expression and, above all, of society's right to receive information and to control the exercise of public power."³²⁹

H. Freedom of expression in the electoral context

220. The exercise of freedom of expression in both of its aspects, individual and collective, is especially important during political campaigns and elections. It is a fundamental element of the process of electing the officials who will govern a State because, as the Inter-American Court has explained: (i) it is an essential tool for shaping voter opinion and strengthening the political contest among the various participants and it provides instruments for the analysis of each candidate's platform, thus enabling a greater degree of transparency and oversight of future authorities and their performance; and (ii) it fosters the shaping of the collective will manifested

³²⁶ IACHR. Report No. 20/99. Case 11.317. Merits. Rodolfo Robles Espinoza and Sons. Peru. February 23, 1999. para. 148.

³²⁷ IACHR. Report No. 20/99. Case 11.317. Merits. Rodolfo Robles Espinoza and Sons. Peru. February 23, 1999. para. 151.

³²⁸ IACHR. Report No. 20/99. Case 11.317. Merits. Rodolfo Robles Espinoza and Sons. Peru. February 23, 1999. para. 152.

³²⁹ IACHR. Report No. 20/99. Case 11.317. Merits. Rodolfo Robles Espinoza and Sons. Peru. February 23, 1999. para. 153.

through voting.³³⁰ In electoral contexts, freedom of expression is tied directly to political rights and their exercise, and both types of rights are mutually strengthened.³³¹ It is thus necessary to healthy democratic debate for there to be the greatest possible circulation of ideas, opinions and information regarding the candidates, their parties and their platforms during the period preceding elections, mainly through the communications media, the candidates and other individuals who wish to express themselves. It is necessary for everyone to be able to question and investigate the ability and suitability of candidates, and disagree with and challenge their platforms, ideas and opinions, so that voters can develop their voting criteria.³³² As the Inter-American Commission has emphasized, free speech and political debate are essential for the consolidation of democratic life in societies, and therefore represent a compelling social interest.³³³ In this same context, the Court has highlighted that freedom of expression is also of special importance to political parties and their active members in carrying out their duties to represent voters and their interests.³³⁴

221. The Inter-American Court has also underscored the importance of the role of the communications media during elections. In general terms, it has insisted that the freedom of political controversy is an essential concept in democratic societies; it has categorized freedom of the press as one of the best means for the public to know about and judge the attitudes and ideas of political leaders; and it has held that in the context of an election, newspapers play an essential role as vehicles for the exercise of the social aspect of freedom of expression, as they gather and transmit the candidates' platforms to the voters, which helps voters to have sufficient information and different criteria to make a decision.

222. The special protection granted under the American Convention to speech concerning public officials and candidates to public office acquires a marked connotation during the course of electoral campaigns. As such, the Court has indicated that the limits to the criticism of politicians are broader than those concerning private individuals, since politicians have exposed themselves to the rigorous scrutiny of their words and actions by public opinion and journalists, and therefore must demonstrate a higher degree of tolerance. It has further held that the protection of politicians' right to their reputation, even when they are not acting as private citizens, is a legitimate aim, but that it must be considered in relation to the interest of open debate on public affairs.³³⁵ Consequently, in the context of elections and political parties, limitations on freedom of expression must be subjected to particularly strict scrutiny.³³⁶ For the IACHR, the conditions under which a State can limit expression in the framework of political debate are much stricter and more limited. There is a socially imperative interest that surrounds political debate in democratic societies, which converts it

³³⁰ I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. paras. 88-90.

³³¹ I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 90.

³³² I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 90.

³³³ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 72.b)

³³⁴ I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. paras. 88-90.

³³⁵ I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. paras. 88-90.

³³⁶ I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 103.

into the principle mechanism through which society holds accountable those in charge of matters of public interest.³³⁷

223. The decision of the Inter-American Court in the case of *Canese v. Paraguay* is instructive in this regard. In this case, which was previously discussed, the Court found that the criminal prosecution of a presidential candidate for the harsh statements he made about his opponent during the campaign was unnecessary and excessive. This was because it concerned speech that was subject to a higher level of protection, given the public's interest in knowing about the conduct of public officials or those who aspire to public office, and the essential role of freedom of expression in the consolidation of democracy.

224. The four Special Rapporteurs for Freedom of Expression made statements to the same effect in their joint declaration of 2009. On May 15th, 2009, the four rapporteurs—the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples' Rights) Special Rapporteur on Freedom of Expression and Access to Information—issued a Joint Statement on Media and Elections. In that declaration, the rapporteurs underlined the importance of a robust and open debate, as well as access to information, to elections, and the key role of the media in framing electoral issues and informing the citizenry. But they also stated that only a diverse and independent media, including independent public service broadcasting, could fulfill this role. Among other things, the Declaration calls for: (i) measures to create an environment in which a pluralistic media sector can flourish; (ii) the repeal of laws that unduly restrict freedom of expression and protection against liability for disseminating statements made directly by political parties or candidates; (iii) effective systems to prevent threats and attacks against the media; (iv) rules against discrimination in the allocation of political advertisements; (v) any regulatory powers to be exercised only by independent bodies; and (vi) clear obligations on public broadcasters, including to sufficiently inform the electorate on all relevant elements to participate in the electoral process, to respect strictly rules on impartiality and balance, and to grant all parties and candidates equitable access.³³⁸

I. Pluralism, diversity and freedom of expression

225. States have the obligation to guarantee, protect, and promote the right to freedom of information, pursuant to conditions of equality and non-discrimination, and the right of society to access all types of information and ideas. Within the framework of this obligation, States must prevent public or private monopoly of ownership and control over media outlets, and must promote different groups' access to radio and television frequencies and licenses, whichever the groups' technological means might be.

226. The participation of plural and diverse ideas in the public discourse is not only a legal imperative derived from the principle of non-discrimination and the obligation of inclusion, but also, according to the Court, a guarantee of protection of the rights of those facing the power of the media. In this respect, the Court has said that, "[g]iven the importance of freedom of expression in a democratic society and the responsibility it implies for social communication media firms and for those who professionally exercise these tasks, the State must minimize the restrictions to

³³⁷ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 72.B)

³³⁸ Joint Declaration on Framework for Media and Elections. May 15, 2009. Available at: <http://www.cidh.org/Relatoria/showarticle.asp?artID=745&IID=1>.

information and balance, as much as possible, the participation of the different movements present in the public debate, promoting informative pluralism. The protection of the human rights of whoever faces the power of the media, who must exercise the social task they undertake with responsibility, and the effort to ensure structural conditions that allow an equal expression of ideas, can be explained in these terms."³³⁹

227. Respect for principles of pluralism and diversity includes, on one hand, the obligation to establish structural conditions allowing for competition under equal conditions that involve more and more diverse groups in the communicative process; and, on the other hand, that the freedom to distribute information that could be "unpleasant for the State or a sector of the population" is ensured, in accordance with the "tolerance and spirit of openness" that are characteristic of pluralism.³⁴⁰

228. Accordingly, Principle 12 of the Declaration of Principles states that "Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people's right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals."

229. The Inter-American Court has indicated that the monopoly of media outlets is prohibited, whether by ownership or administration, whichever form it may take. In this regard, the Court stated in Advisory Opinion OC-5/85, that, "It is the mass media that make the exercise of freedom of expression a reality. This means that the conditions of its use must conform to the requirements of this freedom, with the result that there must be, *inter alia*, a plurality of means of communication, the barring of all monopolies thereof, in whatever form, and guarantees for the protection of the freedom and independence of journalists."³⁴¹

230. The Inter-American Court also incated that, "It is equally true that the right to impart information and ideas cannot be invoked to justify the establishment of private or public monopolies of the communications media designed to mold public opinion by giving expression to only one point of view."³⁴²

231. Furthermore, in the same Advisory Opinion, the Court added that, "given the broad scope of the language of the Convention, freedom of expression can also be affected without the direct intervention of the State. This might be the case, for example, when due to the existence of monopolies or oligopolies in the ownership of communications media, there are established in practice 'means tending to impede the communication and circulation of ideas and opinions.'³⁴³

³³⁹ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 106.

³⁴⁰ I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. para. 105; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. para. 116

³⁴¹ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 34.

³⁴² I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 33.

³⁴³ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 56.

232. Based on the aforementioned jurisprudence from the Inter-American Court and on reports from the Special Rapporteurship, the IACHR has reiterated the following: “[i]n the 2000 Annual report, the [Special] Rapporteur observed that one of the fundamental requirements for the right to freedom of expression is the need for a broad plurality of information. In today’s society, mass media such as television, radio and the press have an undeniable influence over people’s views on culture, politics, religion, etc. If these media outlets are controlled by a limited number of individuals, or by just one, a society is created in which a limited number of persons, or just one, control information and—directly or indirectly—the opinions that all other people receive. This lack of plurality of information is a serious obstacle to the functioning of democracy. Democracy needs debate, discussion, and ideas that confront one another. When this debate does not exist or it is weakened because the sources of information are limited, the basic pillar of democracy is attacked.”³⁴⁴

233. The cited Inter-American jurisprudence makes clear the need for requiring States to comply with the obligation to prevent monopolies or oligopolies, *de jure* or *de facto*, in the ownership and control of media outlets.³⁴⁵

234. In regards to community radio, the Special Rapporteurship, in the Chapter on “freedom of expression and poverty” of its 2002 Annual Report, pointed out that:

The growing need for expression felt by majorities and minorities that lack media access, and their claims on the right to communication, to the free expression of ideas, and to the dissemination of information makes it necessary to seek access to goods and services that will ensure basic conditions of dignity, security, subsistence, and development.³⁴⁶

235. Likewise, the IAHR’s Report on Justice and Social Inclusion indicated that:

The Commission and its Office of the Special Rapporteur understand that community radios are positive because they foment the culture and history of the communities, as long as they do so within the legal framework. The Commission recalls that the awarding or renewal of radio licenses should be subject to a clear, fair, and objective procedure that takes into consideration the importance of the media for all sectors of (...) society to participate in the democratic process in an informed manner. Community radios, in particular, are of great importance for the promotion of national culture, the development and the education of the different communities (...). Therefore, the auctions that contemplate only economic criteria or that award concessions without offering equal opportunity for all sectors, are incompatible with democracy and with the right to freedom of expression and information guaranteed in the American Convention on Human Rights and in the Declaration of Principles on Freedom of Expression.³⁴⁷

236. In the 2007 Annual Report, the Special Rapporteurship stated that the norm on community broadcasting must recognize the special characteristics of this medium, and must

³⁴⁴ IACHR, Justicia e Inclusión Social: los Desafíos de la Democracia en Guatemala. OEA/Ser.L/V/II.118. Doc. 5 rev. 1. 29 December 2003. Chapter VII. para. 419. Available at: <http://cidh.org/countryrep/Guatemala2003sp/capitulo7.htm>

³⁴⁵ See also IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2004. OEA/Ser.L/V/II.222. Doc. 5 rev. 23 February 2005. Chapters IV. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=459&IID=1>

³⁴⁶ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2002. OEA/Ser.L/V/II.117. Doc. 1 rev. 1. 7 March 2003. Chapter V. para. 41. Available at: <http://www.cidh.org/RELATORIA/showarticle.asp?artID=138&IID=1>

³⁴⁷ IACHR, Justicia e Inclusión Social: los Desafíos de la Democracia en Guatemala. OEA/Ser.L/V/II.118. Doc. 5 rev. 1. 29 December 2003. Chapter VII. para. 414. Available at: <http://cidh.org/countryrep/Guatemala2003sp/capitulo7.htm>

contain, at a minimum, the following elements: (a) the existence of simple procedures for obtaining licenses; (b) no demand of severe technological requirements that would prevent them, in practice, from even being able to file a request for space with the state; and (c) the possibility of using advertising to finance their operations. All of these elements are included in the *Joint Declaration on Diversity in Broadcasting*, signed on December 2007 by the rapporteurs on freedom of expression of the OAS, United Nations, Africa, and Europe. The Special Rapporteurship also added that: “[a]long the same lines, there is a need for legislation that appropriately defines the concept of community radio and that includes its social purpose, its nature as comprised of non-profit entities, and its operational and financial independence.”³⁴⁸

237. Likewise, in this same report, the Special Rapporteurship recommended that States “[l]egislate in the area of community broadcasting to assign part of the spectrum to community radio stations, and to ensure that democratic criteria be taken into account in assigning these frequencies that guarantee equal opportunity for all individuals in accessing them(.)”³⁴⁹

238. These obligations are founded upon the general principles pursuant to which States must guarantee the recognition and enjoyment of human rights in conditions of equality and non-discrimination. According to the Inter-American Court, applying the principle of equality and non-discrimination affirms that the State has at least two types of obligations, which the jurisprudence describes as follows:

In compliance with this obligation [of non discrimination], States must abstain from carrying out any action that, in any way, directly or indirectly, is aimed at creating situations of *de jure* or *de facto* discrimination. This translates, for example, into the prohibition to enact laws, in the broadest sense, formulate civil, administrative or any other measures, or encourage acts or practices of their officials, in implementation or interpretation of the law that discriminate against a specific group of persons because of their race, gender, color or other reasons.

In addition, States are obliged to take affirmative action to reverse or change discriminatory situations that exist in their societies to the detriment of a specific group of persons. This implies the special obligation to protect that the State must exercise with regard to acts and practices of third parties who, with its tolerance or acquiescence, create, maintain or promote discriminatory situations.³⁵⁰

239. In sum, States must abstain from engaging in actions or favoring practices that may in any way be aimed, directly or indirectly, at creating situations in which certain groups or persons are discriminated against or arbitrarily excluded, *de iure* or *de facto*, from enjoying or exercising the right to freedom of expression. Likewise, States must adopt affirmative measures (legislative, administrative, or of any other nature), in a condition of equality and non-discrimination, to reverse or change existing discriminatory situations that may compromise certain groups’ effective enjoyment and exercise of the right to freedom of expression. Naturally, such obligations must be carried out with full respect for the right of all persons to exercise freedom of expression, pursuant to the terms that have already been clearly defined by inter-American jurisprudence.

³⁴⁸ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2007. OEA/Ser.L/V/II.131. Doc. 34 rev. 1. 8 March 2008. Chapter III. para. 5. Available at: [http://www.cidh.oas.org/annualrep/2007eng/Annual Report 2007.VOL.II%20ENG.pdf](http://www.cidh.oas.org/annualrep/2007eng/Annual%20Report%202007.VOL.II%20ENG.pdf)

³⁴⁹ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2007. OEA/Ser.L/V/II.131. Doc. 34 rev. 1. 8 March 2008. Chapter III. para. 6. Available at: [http://www.cidh.oas.org/annualrep/2007eng/Annual Report 2007.VOL.II%20ENG.pdf](http://www.cidh.oas.org/annualrep/2007eng/Annual%20Report%202007.VOL.II%20ENG.pdf)

³⁵⁰ I/A Court H. R., *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18. paras. 103-104.

CHAPTER IV THE RIGHT OF ACCESS TO INFORMATION¹⁰⁵⁰

A. Introduction

1. The right to access to information is a fundamental right protected by Article 13 of the American Convention. It is a right that is particularly important for the strengthening, functioning, and preservation of democratic systems. Therefore, it has received a great amount of attention, both from OAS member States¹⁰⁵¹ and in international doctrine and jurisprudence.

2. The IACHR's interpretation of Article 13 of the American Convention holds that it includes a positive obligation for the State to allow its citizens access to information under its control.¹⁰⁵² In this sense, the IACHR's Declaration of Principles on Freedom of Expression establishes in Principle 2 that, "Every person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights," and that, "All people should be afforded equal opportunities to receive, seek and impart information;" Principle 3 holds that, "Every person has the right to access to information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it;" and Principle 4 indicates that, "Access to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right."

3. For its part, the Inter-American Court has established that by expressly stipulating the rights to "seek" and "receive" "information," Article 13 of the American Convention protects every person's right to access information under the control of the State, with the exceptions permitted under the strict regime of restrictions established in the Convention.¹⁰⁵³

4. The right of access to information is considered a fundamental tool for citizen control of State affairs and public administration (especially when it comes to controlling corruption);¹⁰⁵⁴ for citizen participation in politics through the informed exercise of political rights; and for the general fulfillment of other human rights, especially for the most vulnerable groups.¹⁰⁵⁵

¹⁰⁵⁰ The right of access to information has been one of the recurrent topics of the annual reports and publications of the Office of the Special Rapporteur since its creation. This chapter is an updated version of the annual reports, especially the Annual Reports of the Office of the Special Rapporteur for Freedom of Expression 2005 (Chapter IV) and 2008 (subsection [f] of Chapter III), and of the Special Study on the Right of Access to Information, produced by the Special Rapporteur for Freedom of Expression in 2007.

¹⁰⁵¹ The General Assembly of the OAS holds that the right of the access to information is "a requisite for the very functioning of democracy." In this sense, all democratic American States "are obliged to respect and promote respect access to public information for all persons and to promote the adoption of any necessary legislative or other types of provisions to ensure its recognition and effective application." General Assembly of the Organization of American States. Resolution AG/RES. 1932 (XXXIII-O/03), Access to Public Information: Strengthening Democracy, June 10, 2003. Also see: AG/RES. 1932 (XXXV-O/03), AG/RES. 2057 (XXXIV-O/04), AG/RES. 2121 (XXXV-O/05), AG/RES. 2252 (XXXV-O/06), AG/RES. 2288 (XXXVII-O/07) and AG/RES. 2418 (XXXVIII-O/08).

¹⁰⁵² I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 58.a)-b).

¹⁰⁵³ I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. paras. 76-78. The broad concept of Article 13 protection is also developed in I/A Court H. R., *Case of López-Álvarez v. Honduras. Merits, Reparations and Costs*. Judgment of February 1, 2006. Series C No. 141. para. 77; and I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 108.

¹⁰⁵⁴ "Free access to information is a measure that, in a representative and participative democratic system, the citizens exercise their political rights; effectively, the full exercise of the right of access to information is necessary for preventing abuses by public officials, promoting transparency in government administration, and allowing solid and informed public debate that ensures the guarantee of effective recourses against government abuse and prevents corruption. Only

5. Effectively, the right of access to information *is a crucial tool for controlling State affairs and public administration, as well as monitoring corruption*. The right of access to information is a fundamental requirement for guaranteeing transparency and good public administration by the government and other State authorities. Effectively, the full exercise of the right of access to information is a guarantee that is indispensable in preventing abuses by public officials, holding public administration accountable and promoting its transparency, as well as preventing corruption and authoritarianism. In a representative and participatory democratic system, free access to information is also a measure that allows the citizenry to exercise adequately their political rights. Of course, political rights presume the existence of broad and vigorous public discourse. For this discourse, it is indispensable to have access to public information that allows for serious evaluation of the progress made and difficulties faced by the authorities in their achievements. Only through access to information under State control is the citizenry able to know if the State is adequately complying with its public functions.¹⁰⁵⁶ Finally, access to information also has a fundamental instrumental function. Only through adequate implementation of this right can people know what exactly their rights are and what mechanisms exist to protect them. In particular, the adequate implementation of the right of access to information in its full scope is an essential condition for the fulfillment of the social rights of excluded or marginalized sectors of society. Indeed, these sectors do not tend to have systematic and reliable alternatives for learning the scope of the rights that the State has recognized and the mechanisms for demanding them and making them effective.

6. On the functions of the right of access to information, in a 1999 Joint Declaration, the Special Rapporteurs for Freedom of Expression of the UN, OSCE, and the OAS stated that, "Implicit in freedom of expression is the public's right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people's participation in government would remain fragmented." Likewise, the 2004 Joint Declaration recognized "the fundamental importance of access to information to democratic participation, to holding governments accountable and to controlling corruption, as well as to personal dignity and business efficiency."

7. This chapter explains the principles that should be followed in designing and implementing a legal framework that guarantees the right of access to information. Likewise, it presents the minimum requirements of the right according to regional doctrine and jurisprudence, and, finally, it presents a series of domestic rulings from countries in the region that, in the Office of the Special Rapporteur's opinion, constitute best practices on the subject of access to information and should therefore be distributed and discussed.

...continuation

through access to State-controlled information in the public interest can citizens question, investigate, and weigh whether the government is adequately complying with its public functions." *Cf. I/A Court H. R., Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. paras. 86-87.

¹⁰⁵⁵ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. para. 147. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

¹⁰⁵⁶ I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. paras. 86-87.

B. Guiding Principles of the Right of Access to Information

8. In order to guarantee the full and effective exercise of the right of access to information, State administration must follow the principles of maximum disclosure and good faith.

1. Principle of maximum disclosure

9. The principle of maximum disclosure has been recognized by the inter-American system as a guiding principle of the right – found in Article 13 of the American Convention – to seek, receive, and impart information. In this sense, the Inter-American Court has explained that, by virtue of Article 13 of the Convention, the right of access to information must be governed by the principle of maximum disclosure.¹⁰⁵⁷ Likewise, the Inter-American Commission has understood that, in keeping with Article 13 of the Convention, the right of access to information must be governed by the principle of maximum disclosure.¹⁰⁵⁸ Similarly, the Inter-American Juridical Committee in Resolution CJI/RES.147 (LXXIII-O/08) on “Principles on the Right of Access to Information,” in Principle 1, has established that: “In principle, all information is accessible. Access to information is a fundamental human right which establishes that everyone can access information from public bodies, subject only to a limited regime of exceptions.”

10. The principle of maximum disclosure calls for a legal regime in which transparency and the right to access are the general rule and only subject to strict and limited exceptions. The following consequences are derived from this principle: (1) the right of access must be subject to a limited regime of exceptions, and these exceptions must be interpreted restrictively, with all their provisions interpreted to favor right of access; (2) denials of information must be reasoned, and in this sense the burden of proving that the requested information cannot be released falls to the State; and (3) the right of access to information should take precedence in the event of doubts or legal vacuums.

a. The right of access to information is the rule and secrecy the exception

11. The right of access to information is not an absolute right; it can be subject to limitations. However, as will be explored in greater detail below, these limitations must comply strictly with the requirements derived from Article 13.2 of the Convention, namely that limitations are of an exceptional nature, legally enshrined, based on a legitimate aim, and necessary and proportional for pursuing that aim.¹⁰⁵⁹ However, the exceptions should not become the general rule; they must take into account that access to information is the rule and secrecy the exception. Likewise, domestic legislation must make clear that confidential documents remain so only as long as their publication could effectively compromise the interests that their secrecy protects. This means that domestic legislation should mandate that information classified as secret or confidential under the limitations allowed under the American Convention must be published after a reasonable period of time.

¹⁰⁵⁷ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case Claude-Reyes et al. v. Chile*, cited in I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 58.c)

¹⁰⁵⁸ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case Claude-Reyes et al. v. Chile*, cited in I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 58.c)

¹⁰⁵⁹ In this particular sense, Principle 4 of the Declaration of Principles holds that “Access to information [...] allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”

12. As far as its scope, the Inter-American Court has emphasized in its jurisprudence that this principle “establishes the presumption that all information is accessible, subject to a limited system of exceptions,”¹⁰⁶⁰ which “must have been established by law,”¹⁰⁶¹ serve an objective allowed under the American Convention,¹⁰⁶² and be “necessary in a democratic society, which in turn requires that they be intended to satisfy a compelling public interest.”¹⁰⁶³

b. Burden of proof on the State when limits on the right of access to information are established

13. The Inter-American Court’s jurisprudence has established that the State has the burden of proof of demonstrating that limits to access to information are compatible with inter-American norms on freedom of expression;¹⁰⁶⁴ the Inter-American Judicial Committee affirmed this point in its resolution “Principles on the Right of Access to Information,” stating that “The burden of proof in justifying any denial of access to information lies with the body from which the information was requested.” This allows for the creation of legal certainty in the exercise of the right of access to information. Since the information is under the control of the State, discretionary and arbitrary acts of the State must be avoided in establishing restrictions of the right.¹⁰⁶⁵

c. Preeminence of the right of access to information in the event of conflicting statutes or lack of regulation

14. As the Office of the Special Rapporteur has broadly recognized within the rapporteurships of freedom of expression, in cases of discrepancies or conflicting statutes, the law of access to information must prevail over all other legislation.¹⁰⁶⁶ This has been recognized as an

¹⁰⁶⁰ I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 92. In the same sense, the Offices of the Special Rapporteurs on Freedom of Expression of the UN, OAS, and OSCE in the Joint Declaration 2004 explained that this principle “establishes a presumption that all information is accessible subject only to a narrow system of exceptions.”

¹⁰⁶¹ I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 89.

¹⁰⁶² I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 90.

¹⁰⁶³ I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 91. Also see, I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 85; I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 96; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. paras. 121 and 123; and I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 46. Similarly, the Inter-American Juridical Committee in its Resolution CJI/RES.147 (LXXIII-O/08) on “Principles on the Right of Access to Information” in Point 1 establish that, “In principle, all information is accessible. Access to information is a fundamental human right which establishes that everyone can access information from public bodies, subject only to a limited regime of exceptions in keeping with a democratic society and proportionate to the interest that justifies them. States should ensure full respect for the right to access to information through adopting appropriate legislation and putting in place the necessary implementation measures.”

¹⁰⁶⁴ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case Claude-Reyes et al. v. Chile*, cited in I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 58.c)

¹⁰⁶⁵ I/A Court H.R., *Case of Claude Reyes et al. v. Chile. Merits, Reparations, and Costs*. Judgment of September 19, 2006. Series C No. 151, para. 98.

¹⁰⁶⁶ UN, OAS, and OSCE Special Rapporteurs on Freedom of Expression, Joint Declaration 2004.

indispensable prerequisite for the proper functioning of democracy.¹⁰⁶⁷ This requirement helps encourage the States to comply effectively with the obligation to establish a law on access to public information and interpret the law favorably toward that right.¹⁰⁶⁸

2. Principle of Good Faith

15. To guarantee the effective exercise of the right of access to information, it is crucial that those bound to guarantee this right act in good faith; that is, that they ensure the strict application of the right, provide the necessary measures of assistance to petitioners, promote a culture of transparency, contribute to making public administration more transparent, and act with due diligence, professionalism, and institutional loyalty. They must take the actions necessary to serve the general interest and not betray the people's confidence in State administration.

C. Content and scope of the right of access to information

1. Every person has the right of access to information

16. The right of access to information is a universal human right. Consequently, and as established in Article 13 of the American Convention, all persons have the right to request access to information.

17. The Inter-American Court has specified on this point that it is not necessary to prove a direct interest or a personal stake in order to obtain information in the State's possession, except in cases where there is a legitimate restriction permitted by the Convention, under the terms explained further below.¹⁰⁶⁹

18. In addition, any person who accesses information under the control of the State has, in turn, the right to disclose that information so that it circulates publicly and the public can know about it, access it and evaluate it. The right of access to information thus shares the individual and social dimensions of freedom of expression, and the State must guarantee both simultaneously.¹⁰⁷⁰

2. Subjects with obligations under the right of access to information

19. The right of access to information generates obligations at all levels of government, including for public authorities in all branches of government, as well as for autonomous bodies. This right also affects those who carry out public functions, provide public services, or manage public funds in the name of the State. Regarding the latter group, the right to access of information obligates them to turn over information exclusively on the handling of public funds, the provision of services in their care, and the performance of public functions.

¹⁰⁶⁷ Resolution AG/RES. 1932 (XXXIII-O/03) June 10, 2003 on "Access to Public Information: Strengthening Democracy"; Resolution AG/RES. 2057 (XXXIV-O/04) June 8, 2004 on "Access to Public Information: Strengthening Democracy"; Resolution AG/RES. 2121 (XXXV-O/05) June 7, 2005 on "Access to Public Information: Strengthening Democracy"; and AG/RES. 2252 (XXXVI-O/06) June 6, 2006 on "Access to Public Information: Strengthening Democracy."

¹⁰⁶⁸ Cf. IACHR. Arguments before the Inter-American Court of Human Rights in the case *Claude-Reyes et al. v. Chile*, cited in I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 58.d).

¹⁰⁶⁹ I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 77.

¹⁰⁷⁰ I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 77.

20. As such, reiterating the existing case law, the Resolution of the Inter-American Juridical Committee on "Principles on the Right of Access to Information"¹⁰⁷¹ states, in Principle 2, that "[t]he right of access to information applies to all public bodies, including the executive, legislative and judicial branches at all levels of government, constitutional and statutory bodies, bodies which are owned or controlled by government, and organizations which operate with public funds or which perform public functions."

3. Object of the right

21. The right of access to information covers information that is in the care of, possession of, or being administered by the State; the information that the State produces, or the information that it is obliged to produce; the information that is under the control of those who administer public services and funds and pertains to those specific services or funds; and the information that the State collects and that it is obligated to collect in the performance of its functions.

22. In that sense, the resolution on the "Principles on the Right to Access to Information" of the Inter-American Juridical Committee states that the right to access to information includes "all significant information, defined broadly to include everything which is held or recorded in any format or medium".

4. State obligations in the right of access to information

23. The right of access to information held by the State generates several obligations under the American Convention for the authorities of the various branches of government, to wit:

a. Obligation to respond in a timely, complete, and accessible manner to requests

24. The State has an obligation to provide a substantive response to requests for information. Indeed, by protecting the right of individuals to access information held by the State, Article 13 of the American Convention establishes a positive obligation for the State to provide the requested information in a timely, complete, and accessible manner. Otherwise, the State must offer, within a reasonable time period, its legitimate reasons for impeding access.¹⁰⁷² In this sense, as will be explored in greater depth in the next section, inter-American doctrine has specified that in the event of exceptions, they "must have been established by law to ensure that they are not at the discretion of public authorities."¹⁰⁷³

¹⁰⁷¹ Inter-American Juridical Committee. Resolution 147, of the 73rd Ordinary Period of Sessions: Principles on the Right of Access to Information. August 7, 2008, operative paragraph 2.

¹⁰⁷² I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 77; IACHR. Arguments before the Inter-American Court of Human Rights in the case *Claude-Reyes et al. v. Chile*, cited in I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 58.a)-b).

¹⁰⁷³ I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 89.

25. The State's obligation to supply requested information includes the following:

b. Obligation to offer a legal recourse that satisfies the right of access to information

26. The full satisfaction of the right of access to information requires States to include in their legal systems an effective and adequate legal recourse that can be used by all individuals to request the information they need. In order to guarantee the true universality of the right to access, this recourse must include several characteristics: a) it must be a simple recourse that is easy for everyone to access and only demands basic requirements, like a reasonable method of identifying the requested information or providing the personal details necessary for the administration to turn over the requested information to the petitioner; b) it must be free or have a cost low enough so as not to discourage requests for information; c) it must establish tight but reasonable deadlines for authorities to turn over the requested information; d) it must allow requests to be made orally in the event that they cannot be made in writing – for example, if the petitioner does not know the language or does not know how to write, or in cases of extreme urgency; e) it must establish an obligation for administrators to advise the petitioner on how to formulate the request, including advising the petitioner on the authority competent to reply to the request, up to and including filing the request for the petitioner and keeping the petitioner informed of its progress; and f) it must establish an obligation to the effect that in the event that a request is denied, it must be reasoned and there must be a possibility of appealing the denial before a higher or autonomous body, as well as later challenging the denial in court.

27. With regard to the obligation of creating a special mechanism to make the right to access enforceable, the Inter-American Court has held that the State must “guarantee (...) the effectiveness of an appropriate administrative procedure for processing and deciding requests for information, which establishes time limits for making a decision and providing information, and which is administered by duly trained officials.”¹⁰⁷⁴

28. As stated by the UN, OAS and OSCE Special Rapporteurs on Freedom of Expression in their Joint Declaration of 2004, “[a]ccess to information is a citizens’ right. As a result, the procedures for accessing information should be simple, rapid and free or low-cost.” In the words of the Inter-American Juridical Committee, in its “Principles on the Right of Access to Information,” “[c]lear, fair, non-discriminatory and simple rules should be put in place regarding the processing of requests for information. These should include clear and reasonable timelines, provision for assistance to be given to those requesting information, free or low-cost access, and does not exceed the cost of copying and sending the information, and a requirement that where access is refused reasons, including specific grounds for the refusal, be provided in a timely fashion.”

c. Obligation to provide an adequate and effective legal remedy for reviewing denials of requests for information

29. States should enshrine the right to administrative review and subsequent judicial review of administrative decisions through a recourse that is simple, effective, quick, and non-onerous, that allows the challenging of decisions of public officials that deny the right of access to specific information or simply neglect to answer the request.¹⁰⁷⁵ Together with that, the remedy should also: a) review the merits of the controversy to determine whether the right of access was

¹⁰⁷⁴ I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 163.

¹⁰⁷⁵ I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 137.

inhibited, and b) in the affirmative case, order the corresponding government body to turn over the information. In these cases, the recourses should be simple and quick, since the expeditious delivery of the information is indispensable for the fulfillment of the functions this right presupposes.¹⁰⁷⁶

30. The Inter-American Court has established that a legal remedy is compatible with the requirements of the Convention as long as it is adequate and effective.¹⁰⁷⁷ That is to say, it must be adequate to protect the right that has been infringed upon¹⁰⁷⁸ and able to produce the sought-after result.¹⁰⁷⁹ The absence of an effective remedy will be considered a transgression of the American Convention.¹⁰⁸⁰

31. Also, the Court has established that the guarantee of an effective legal remedy for violations of fundamental rights “is one of the basic mainstays, not only of the American Convention, but also of the rule of law in a democratic society in the sense set forth in the Convention.”¹⁰⁸¹

d. Obligation of active transparency

32. The right of access to information imposes on the State the obligation to provide the public with the maximum quantity of information proactively, at least in terms of a) the structure, function, and operating and investment budget of the state; b) the information needed for the exercise of other rights – for example, those pertaining to the requirements and procedures surrounding pensions, health, basic government services, etc.; c) the availability of services, benefits, subsidies, or contracts of any kind; and d) the procedure for filing complaints or requests, if it exists. This information should be understandable, available in approachable language and up to date. Also, given that significant segments of the population do not have access to new technologies yet many of their rights can depend on obtaining information on how to realize them, in these circumstances the State must find efficient ways to fulfill its obligation of active transparency.

33. In this respect, the UN, OAS and OSCE Special Rapporteurs on Freedom of Expression specified in their Joint Declaration of 2004 that “[p]ublic authorities should be required to publish pro-actively, even in the absence of a request, a range of information of public interest;” and that “[s]ystems should be put in place to increase, over time, the amount of information subject to such routine disclosure.”

¹⁰⁷⁶ I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. paras. 116-139.

¹⁰⁷⁷ I/A Court H. R., *Case of the Serrano-Cruz Sisters v. El Salvador. Preliminary Objections*. Judgment of November 23, 2004. Series C No. 118. para. 134.

¹⁰⁷⁸ I/A Court H.R., *Case of Velásquez-Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4. para. 64.

¹⁰⁷⁹ I/A Court H.R., *Case of Velásquez-Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4. para. 66.

¹⁰⁸⁰ I/A Court H.R., *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9. Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 23.

¹⁰⁸¹ I/A Court H. R., *Case of the Serrano-Cruz Sisters v. El Salvador. Preliminary Objections*. Judgment of November 23, 2004. Series C No. 118. para. 75; I/A Court H. R., *Case of Tibi v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 7, 2004. Series C No. 114. para. 131; and I/A Court H.R., *Case of the 19 Tradesmen v. Colombia. Preliminary Objection*. Judgment of June 12, 2002. Series C No. 93. para. 193.

34. The scope of this obligation is also defined in the resolution of the Inter-American Juridical Committee on “Principles on the Right of Access to Information,” which establishes that “[p]ublic bodies should disseminate information about their functions and activities – including, but not limited to, their policies, opportunities for consultation, activities which affect members of the public, their budget, subsidies, benefits and contracts – on a routine and proactive basis, even in the absence of a specific request, and in a manner which ensures that the information is accessible and understandable.” In the same sense mentioned above, this obligation includes the duty to refrain from interfering with the right of access to information of all kinds, which extends to the circulation of information that may or may not have the personal approval of those persons who represent State authority at a given time.

e. Obligation to produce or gather information

35. The State has the obligation to produce or gather the information it needs to fulfill its duties, pursuant to international, constitutional, or legal norms.

36. To this effect, in its report on Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights,¹⁰⁸² the IACHR noted that “[t]he obligation of the State to adopt positive means to protect the exercise of social rights has important effects, for example, in regards to the type of statistical information that the State must produce. The production of information that is properly categorized so as to determine what sectors are disadvantaged or relegated in the exercise of their rights, from this perspective, is not only a way to guarantee the effectiveness of a public policy, but is also an indispensable obligation that allows the State to fulfill its duty to provide such sectors with special and prioritized attention. As an example, the desegregation of data by sex, race, or ethnicity is an indispensable tool for illustrating problems of inequality.”¹⁰⁸³

37. In this same report, the IACHR reiterates that “the Committee on Economic, Social, and Cultural Rights has determined that it is an obligation of the State to produce information databases from which it would be possible to validate indicators [of progress] and, in general, the access to many of the guarantees covered by each social right. This obligation is, thus, fundamental for the enforceability of these rights.”¹⁰⁸⁴ Finally, the IACHR¹⁰⁸⁵ pointed out that in international legislation, clear and explicit obligations exist regarding the production of information related to the exercise of the rights of sectors that are excluded or historically discriminated against.¹⁰⁸⁶

¹⁰⁸² OAS/Ser.L/V/II.132, Doc. 14, July 19, 2008.

¹⁰⁸³ IACHR, Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights. OEA/Ser.L/V/II.132. Doc. 14 rev. 1. 19 July 2008. para. 58

¹⁰⁸⁴ IACHR, Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights. OEA/Ser.L/V/II.132. Doc. 14 rev. 1. 19 July 2008. para. 78.

¹⁰⁸⁵ IACHR, Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights. OEA/Ser.L/V/II.132. Doc. 14 rev. 1. 19 July 2008. para. 81. Available at: <https://www.cidh.oas.org/countryrep/IndicadoresDESCO8eng/Indicadoresindice.eng.htm>

¹⁰⁸⁶ The *Inter-American Convention in the Prevention, Punishment, and Eradication of Violence Against Women* (Belém do Pará) establishes the State’s obligation “to ensure research and the gathering of statistics and other relevant information relating to the causes, consequences and frequency of violence against women, in order to assess the effectiveness of measures to prevent, punish and eradicate violence against women and to formulate and implement the necessary changes”.

f. Obligation to create a culture of transparency

38. The State has an obligation to promote within a reasonable time period a true culture of transparency. This means systematic campaigns to inform the general public of the existence of the right of access to information and ways of exercising that right. In this respect, the Inter-American Juridical Committee finds in its resolution on "Principles on the Right of Access to Information" that, "Measures should be taken to promote, to implement and to enforce the right to access to information, including (...) implementing public awareness-raising programmes."¹⁰⁸⁷

g. Obligation of adequate implementation

39. The State has a duty to adequately implement access laws. This implies at least three actions:

40. First, the State has a duty to design a plan that allows for the real and effective satisfaction of the right of access to information within a reasonable time period. This obligation implies a duty to budget the necessary funds to meet, progressively, the demand that the right of access to information will generate.

41. Second, the State must adopt laws, policies, and practices to preserve and administer information adequately. The Offices of the Special Rapporteurs for Freedom of Expression of the UN, OAS, and the OSCE declared in their Joint Statement in 2004 that "[p]ublic authorities should be required to meet minimum record management standards" and "[s]ystems should be put in place to promote higher standards over time."

42. Third, States must adopt a systematic policy for training public officials who will work in satisfying the right of access to information in all of its facets, as well as "training [of] public entities, authorities and agents responsible for responding to requests for access to State-held information on the laws and regulations governing this right."¹⁰⁸⁸ This obligation also means the training of public officials on the laws and policies on the creation and maintenance of information archives that the State is obligated to safeguard, administer, and produce or gather. In this sense, the Inter-American Court has referred to the States' obligation to "train (...) public entities, authorities and agents responsible for responding to requests for access to State-held information on the laws and regulations governing this right."¹⁰⁸⁹

h. Obligation to adjust domestic legislation to the demands of the right of access to information

43. Finally, and in conjunction with the preceding, the State has an obligation to adjust its domestic legal code to international standards on access to information, including by: a) implementing an adequate legal framework; b) removing legal or administrative obstacles that impede access to information; c) promoting the right of access within all of the State's entities and authorities, through the adoption and enforcement of rules and procedures and through the training of public officials on the custody, administration, filing and provision of information; and (d) in general terms, adopting public policy that is favorable to the full exercise of this right.

¹⁰⁸⁷ Inter-American Juridical Committee. Resolution 147 of the 73rd Ordinary Period of Sessions: Principles on the right to access to information. August 7, 2008. Principle 10.

¹⁰⁸⁸ I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 165.

¹⁰⁸⁹ I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 165.

44. As the Inter-American Court has explained, the State must adopt the measures necessary to guarantee the rights protected under the Convention. This includes both repealing laws and practices that violate these rights and issuing laws and practices that effectively protect these guarantees.¹⁰⁹⁰ Likewise, the Court has established that States should have a legal framework that adequately protects the right to information. They should guarantee the effectiveness of an adequate administrative procedure for processing and resolving requests for information, with clear deadlines for turning over information. The procedure should be under the supervision of appropriately trained officials.¹⁰⁹¹

5. Limitations to the right of access to information

a. Admissibility and conditions of limitations

45. As an element of freedom of expression protected by the American Convention, the right of access to information is not an absolute right. Rather, it may be subject to limitations that remove certain types of information from public access. Nevertheless, such limitations must be in strict accordance with the requirements derived from Article 13.2 of the Convention—that is, the conditions of exceptional nature, legal establishment, legitimate objectives, and necessity and proportionality. In this precise sense, Principle 4 of the IACHR Statement of Principles on Freedom of Expression states that “[a]ccess to information (...) only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”

46. It is incumbent upon the State to demonstrate, when it restricts access to information under its control, that it has complied with the requirements set forth in the Convention. The Inter-American Juridical Committee addressed this point in its Resolution on the “Principles on the Right of Access to Information,” stating that “[t]he burden of proof in justifying any denial of access to information lies with the body from which the information was requested.”

47. The Inter-American Court has held that the establishment of restrictions to the right of access to information held by the State through the practice of the authorities and without meeting the requirements of the American Convention (a) creates fertile ground for the discretionary and arbitrary action of the State in the classification of information as secret, reserved or confidential; (b) gives rise to legal uncertainty with respect to the exercise of such right; and (c) gives rise to legal uncertainty as to the scope of the State’s powers to restrict the right.¹⁰⁹²

b. Exceptional nature of limitations

48. Bearing in mind the principle of maximum disclosure, the law must guarantee the effective and broadest possible access to public information, and any exceptions must not become the general rule in practice. Also, the exceptions regime should be interpreted restrictively and all doubts should be resolved in favor of transparency and access.

¹⁰⁹⁰ I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 163.

¹⁰⁹¹ I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 163.

¹⁰⁹² I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 98.

c. Legal establishment of exceptions

49. First, limitations to the right to seek, receive and impart information must be prescribed by law expressly and in advance, to ensure that they are not set at the government's discretion. Their establishment must be sufficiently clear and specific so as to not grant an excessive degree of discretion to the public officials who decide whether or not to disclose the information.¹⁰⁹³

50. In the opinion of the Inter-American Court, such laws must have been enacted "for reasons of general interest" in accordance with the common good as an element of public order in a democratic State. The definition of the Inter-American Court in Advisory Opinion 6/86 is applicable in this respect, according to which the term "laws" does not just refer to any legal norm, but rather to general normative acts that are enacted by the democratically elected legislative body provided for in the constitution, according to the procedures established in the constitution, and tied to the general welfare.¹⁰⁹⁴

51. Also relevant here is Principle 6 of the Resolution of the Inter-American Juridical Committee regarding the "Principles on the Right of Access to Information," which states that "[e]xceptions to the right to access should be established by law, be clear and narrow."

d. Legitimate aim under the American Convention

52. The laws that set limitations on the right of access to information under the State's control must correspond expressly to an objective that is permissible under Article 13.2 of the American Convention, that is: to ensure respect for the rights or reputations of others, and to protect national security, public order, or public health or morals.¹⁰⁹⁵ The scope of these concepts must be clearly and precisely defined and coincide with their meaning in a democratic society.

e. Necessity and proportionality of limitations

53. The limitations imposed upon the right of access to information— like any limitation imposed on any aspect of the right to freedom of thought and expression – must be necessary in a democratic society to satisfy a compelling public interest. Among several options for accomplishing this objective, the one least restrictive to the right must be chosen, and the restriction must: (i) be conducive to the attainment of the objective; (ii) be proportionate to the interest that justifies it; and (iii) interfere to the least extent possible with the effective exercise of the right. With specific regard to the requirement of proportionality, the Inter-American Commission has asserted that any restriction to access to information held by the State, in order to be compatible with the

¹⁰⁹³ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Claude-Reyes et al. v. Chile*, cited in I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 58.f).

¹⁰⁹⁴ I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 89.

¹⁰⁹⁵ I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 90.

Convention, must overcome a three-part proportionality test: (a) it must be related to a legitimate aim that justifies it; (b) it must be demonstrated that the disclosure of the information effectively threatens to cause substantial harm to this legitimate aim; and (c) it must be demonstrated that the harm to the objective is greater than the public's interest in having the information.

54. Finally, the exceptions regime should set forth a reasonable time period. Once that time period expires, the information must be made available to the public. In this sense, material can only be kept confidential while there is a certain and objective risk that, were the information revealed, one of the interests that Article 13.2 of the Convention orders protected would be disproportionately affected.

f. Duty to justify clearly the denial of petitions for access to information under the control of the State

55. When there is in fact a reason allowed by the Convention for the State to limit access to information in its possession, the person who requests the access must receive a reasoned response that provides the specific reasons for which access is denied.¹⁰⁹⁶ According to the Inter-American Commission, if the State denies access to information, it must provide sufficient explanation of the legal standards and the reasons supporting such decision, demonstrating that the decision was not discretionary or arbitrary, so that individuals may determine whether the denial meets the requirements set forth in the Convention.¹⁰⁹⁷ Similarly, the Inter-American Court has specified that the unfounded failure to provide access to information, without a clear explanation of the reasons and rules on which the denial is based, also constitutes a violation of the right to due process protected by Article 8.1 of the Convention, in that decisions adopted by the authorities that may affect human rights must be duly justified; otherwise, they would be arbitrary decisions.¹⁰⁹⁸

g. Confidential or secret information

56. In their Joint Declaration of 2004, the UN, OAS and OSCE Special Rapporteurs summarized the requirements that limits to the right to access to information must meet, and addressed in greater depth some issues concerning "restricted" or "secret" information and the laws establishing those classifications, as well as the public officials legally required to maintain its confidentiality. The Special Rapporteurs established, in general terms: (i) that "[t]he right of access should be subject to a narrow, carefully tailored system of exceptions to protect overriding public and private interests, including privacy," that "[e]xceptions should apply only where there is a risk of substantial harm to the protected interest and where that harm is greater than the overall public interest in having access to the information," and that "[t]he burden should be on the public authority seeking to deny access to show that the information falls within the scope of the system of exceptions;" (ii) that "those requesting information should have the possibility to appeal any refusals to disclose to an independent body with full powers to investigate and resolve such complaints;" and (iii) that "[n]ational authorities should take active steps to address the culture of secrecy that still prevails in many countries within the public sector," which "should include

¹⁰⁹⁶ I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 77.

¹⁰⁹⁷ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Claude Reyes et al. v. Chile*, cited in I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 58.c)-d).

¹⁰⁹⁸ I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 120.

provision for sanctions for those who willfully obstruct access to information,” and that “[s]teps should also be taken to promote broad public awareness of the access to information law.”

57. In this same Joint Declaration of 2004, the Special Rapporteurs examined in greater detail the issue of confidential or restricted information and laws regulating secrecy, declaring: (i) that “[u]rgent steps should be taken to review and, as necessary, repeal or amend, legislation restricting access to information to bring it into line with international standards in this area, including as reflected in this Joint Declaration;” (ii) that “[p]ublic authorities and their staff bear sole responsibility for protecting the confidentiality of legitimately secret information under their control,” that “[o]ther individuals, including journalists and civil society representatives, should never be subject to liability for publishing or further disseminating this information, regardless of whether or not it has been leaked to them, unless they committed fraud or another crime to obtain the information,” and that “[c]riminal law provisions that do not restrict liability for the dissemination of State secrets to those who are officially entitled to handle those secrets should be repealed or amended;” (iii) that “[c]ertain information may legitimately be secret on grounds of national security or protection of other overriding interests,” but that “secrecy laws should define national security precisely and indicate clearly the criteria which should be used in determining whether or not information can be declared secret, so as to prevent abuse of the label ‘secret’ for purposes of preventing disclosure of information which is in the public interest,” for which “[s]ecrecy laws should set out clearly which officials are entitled to classify documents as secret and should also set overall limits on the length of time documents may remain secret,” and likewise that “[s]uch laws should be subject to public debate;” and (iv) finally, that “[w]histleblowers are individuals releasing confidential or secret information although they are under an official or other obligation to maintain confidentiality or secrecy,” with regard to whom it was declared that “[w]histleblowers releasing information on violations of the law, on wrongdoing by public bodies, on a serious threat to health, safety or the environment, or on a breach of human rights or humanitarian law should be protected against legal, administrative or employment-related sanctions if they act in ‘good faith.’”

58. In this same fashion, in the Joint Declaration of 2006, the Special Rapporteurs affirm that “[j]ournalists should not be held liable for publishing classified or confidential information where they have not themselves committed a wrong in obtaining it. It is up to public authorities to protect the legitimately confidential information they hold.”

59. The Inter-American Court of Human Rights ruled specifically on the issue of “secret” or “confidential” information in another area concerning public access to information, namely, the provision of information on serious human rights violations to the judicial and administrative authorities in charge of investigating such cases and administering justice on behalf of the victims. In the *Case of Myrna Mack Chang v. Guatemala*,¹⁰⁹⁹ it was proven before the Court that the Ministry of National Defense had refused to provide certain documents relating to the operation and the structure of the Presidential General Staff after repeated requests from the Attorney General’s Office and federal judges in the investigations of an extrajudicial execution. The refusal invoked state secrecy pursuant to article 30 of the Guatemalan Constitution. In the opinion of the Inter-American Court, “in cases of human rights violations, the State authorities cannot resort to mechanisms such as official secret or confidentiality of the information, or reasons of public interest or national security, to refuse to supply the information required by the judicial or administrative authorities in charge of the ongoing investigation or proceeding.” In this respect, the Court adopted the considerations of the Inter-American Commission on Human Rights, which had argued before the Court that “[i]n the framework of a criminal proceeding, especially when it involves the investigation and prosecution of illegal actions attributable to the security forces of the State, there

¹⁰⁹⁹ I/A Court H. R., *Case of Myrna Mack-Chang v. Guatemala. Merits, Reparations and Costs*. Judgment of November 25, 2003. Series C No. 101. paras. 180-182.

is a possible conflict of interests between the need to protect official secret, on the one hand, and the obligations of the State to protect individual persons from the illegal acts committed by their public agents and to investigate, try, and punish those responsible for said acts, on the other hand. (...) [P]ublic authorities cannot shield themselves behind the protective cloak of official secret to avoid or obstruct the investigation of illegal acts ascribed to the members of its own bodies. In cases of human rights violations, when the judicial bodies are attempting to elucidate the facts and to try and to punish those responsible for said violations, resorting to official secret with respect to submission of the information required by the judiciary may be considered an attempt to privilege the 'clandestinity of the Executive branch' and to perpetuate impunity. Likewise, when a punishable fact is being investigated, the decision to define the information as secret and to refuse to submit it can never depend exclusively on a State body whose members are deemed responsible for committing the illegal act. (...) Thus, what is incompatible with the rule of law and effective judicial protection 'is not that there are secrets, but rather that these secrets are outside legal control, that is to say, that the authority has areas in which it is not responsible because they are not juridically regulated and are therefore outside any control system.'" In this context, the Inter-American Court considered that the refusal of the Ministry of National Defense to provide the documents requested by the judges and the Attorney General's Office, alleging state secrecy, amounted to the obstruction of justice.

h. Personal information and the right of access to information

60. One of the limits on the right of access to information is the protection of personal data, which belongs only to the person it concerns and whose disclosure could affect a legitimate right of this person, like the right to privacy. As a consequence, in principle only the person whom it concerns may have access to information of a personal nature. Effectively, and in keeping with the IACHR's Declaration of Principles on Freedom of Expression, "Every person has the right to access to information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it."

61. Access to personal information comes from *habeas data* and not the right of access to information. However, as long as there is no law on personal information, the person whom the data concerns may, in the absence of any other recourse, access the information through the mechanisms set forth in the access law. Consequently, in the hypothetical situation mentioned, the administrators of databases and registries would be obliged to turn over said information, but only to those with legal standing to request it.

62. Regarding personal information – or *habeas data* – in its Report on Terrorism and Human Rights,¹¹⁰⁰ the IACHR stated that, in addition to the general right to access information held by the State, "Every person has the right to access to information about himself or herself, whether this is in the possession of a government or private entity." The report continues that "this right includes the right to modify, remove, or correct such information due to its sensitive, erroneous, biased, or discriminatory nature."¹¹⁰¹ Later in the same report, the IACHR indicated that "The right to access to and control over personal information is essential in many areas of life, since the lack of legal mechanisms for the correction, updating or removal of information can have a direct impact

¹¹⁰⁰ IACHR. Report on Terrorism and Human Rights. OAS/Ser.L/V/II.116. October 22, 2002. Chapter III, Section E. Available at: <http://www.cidh.oas.org/Terrorism/Eng/toc.htm>

¹¹⁰¹ IACHR. Report on Terrorism and Human Rights. OAS/Ser.L/V/II.116. October 22, 2002. Chapter III, Section E para. 289. Available at: <http://www.cidh.oas.org/Terrorism/Eng/toc.htm>

on the right to privacy, honor, personal identity, property, and accountability in information gathering.”¹¹⁰²

D. Specific Applications of the Right of Access to Information

63. The satisfaction of the right of access to information is, in many instances, a necessary precondition for guaranteeing the exercise of other rights. In this sense, this section explores the specific applications of this right in subjects addressed by the Commission and the Inter-American Court, specifically: (1) restriction of access to official sources of information in the form of public acts or events; (2) creation and preservation of police archives; (3) the right to “informed” consultation of indigenous peoples; and (4) access to information and creation of historic archives on gross violations of human rights.

1. Restriction of access to official sources of information in the form of public events or acts

64. The alleged violation of the right of access to information through disproportionate restrictions placed on journalists or communicators to hinder their access to public acts or events was the object of specific statements by the Inter-American Court in the *Ríos et al.* and *Perozo et al.* cases.

65. In these cases, the Court indicated that, “With respect to the accreditations or authorizations necessary for the media to participate in official events, which imply a possible restriction to the exercise of the freedom to seek, receive and impart information and any kind of ideas, it is essential to prove that their application is legal and legitimate and necessary and proportionate to the goal in question in a democratic society. The relevant criteria for the accreditation scheme should be specific, fair and reasonable, and their application should be transparent. It corresponds to the State to show that it has complied with the above requirements when establishing restrictions to the access to the information it holds.”¹¹⁰³

2. Access to information and indigenous peoples’ right to consultation

66. As explained previously, according to the Inter-American Commission on Human Rights, the right of access to information “comprises the positive obligation of the State to provide its citizens with access to the information in its possession, and the corresponding right of individuals to access the information held by the State.”¹¹⁰⁴

¹¹⁰² IACHR. Report on Terrorism and Human Rights. OAS/Ser.L/V/II.116. October 22, 2002. Chapter III, Section E para. 289. Available at: <http://www.cidh.oas.org/Terrorism/Eng/toc.htm>

¹¹⁰³ I/A Court H. R., Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151. para. 93; I/A Court H. R., Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194. para. 375; I/A Court H. R., Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195. para. 346.

¹¹⁰⁴ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf> Likewise, Article 4 of the IACHR’s Declaration of Principles on Freedom of Expression (2000) establishes that “Access to information [...] is a fundamental right of every individual,” and also that “States have the obligation to guarantee the full exercise of this right.” See also IACHR, Office of the Special Rapporteur for Freedom of Expression. Estudio Especial sobre el Derecho de Acceso a la Información. August, 2007. Available at: <http://www.cidh.oas.org/relatoria/section/Estudio%20Especial%20sobre%20el%20derecho%20de%20Acceso%20a%20la%20Informacion.pdf> ; IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2005. OEA/Ser.L/V/II.124. Doc. 7. 27 February 2006. Chapter IV. Available at:

67. The right of access to information cannot be reduced to the duty of turning over information requested by a particular person. The right also includes the obligation to make public administration transparent¹¹⁰⁵ and to provide, *ex officio*, the information needed by the public (the general citizenry or a particular group) for the exercise of other rights. Effectively, when the exercise of the fundamental rights of people depend on those people having relevant public knowledge, the State must provide it in a manner that is *timely, accessible, and complete*. In this sense, the Commission has established that the right of access to information is a key instrument for the exercise of other human rights, “particularly by the most vulnerable individuals.”¹¹⁰⁶

68. The timely, sufficient, and clear provision of information to Indigenous Peoples on outside interventions that can affect their territory is an indispensable condition for adequately guaranteeing the exercise of their right to collective property over their territories. Likewise, the close relationship that indigenous peoples have with their territory means that the right of access to information about possible exogenous interventions on indigenous territory that could have a serious impact on the community’s habitat can become a mechanism that is necessary for ensuring other rights like the right to the health of group members and even their right to exist as a community. Finally, the right of access to information on exogenous interference on indigenous land is an indispensable condition for guaranteeing control over political decisions that can compromise the collective rights of a People, as well as fundamental rights that would also be affected.¹¹⁰⁷

69. On this topic, the Commission has indicated that one of the central elements for the protection of indigenous property rights is that States establish effective and previously-informed consultations on actions and decisions that could affect their traditional territories. Member States

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<http://www.cidh.oas.org/relatoria/showarticle.asp?artID=662&IID=1>; IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2003. OEA/Ser.L/V/II.118. Doc. 70 rev. 2. 29 December 2003. Chapter IV. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=139&IID=1>; IACHR, Report on Terrorism and Human Rights. OEA/Ser.L/V/II.116. Doc. 5 rev. 1 corr. 22 October 2002. paras. 281-288. Available at: <http://www.cidh.oas.org/Terrorism/Eng/toc.htm>; IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2001. OEA/Ser.L/V/II.114. Doc. 5 rev. 1. 16 April 2002. Chapter III. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=137&IID=1>

¹¹⁰⁵ I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 77. In this respect, the UN, OSCE and OAS Special Rapporteurs on Freedom of Expression, in their Joint Declaration, established that “Public authorities should be required to publish pro-actively, even in the absence of a request, a range of information of public interest” (Joint Declaration on Access of Information and Secrecy Legislation, December 6, 2004, available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=319&IID=1>), which is particularly relevant when the information is necessary for the exercise of other fundamental rights. The scope of this obligation is also spelled out by the Inter-American Juridical Committee in its Resolution CJI/RES.147 (LXXIII-O/08) on “Principles on the Right of Access to Information,” Rio de Janeiro, Brazil, August 7, 2008, available at: http://www.oas.org/cji/eng/CJI-RES_147_LXXIII-O-08_eng.pdf, in which it is established that “Public bodies should disseminate information about their functions and activities – including, but not limited to, their policies, opportunities for consultation, activities which affect members of the public, their budget, and subsidies, benefits and contracts – on a routine and proactive basis, even in the absence of a specific request, and in a manner which ensures that the information is accessible and understandable” (id., Principle 4).

¹¹⁰⁶ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. para. 147. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf> Likewise, Article 9 of the Inter-American Democratic Charter provides that “the promotion and protection of human rights of indigenous peoples [...] contribute to strengthening democracy and citizen participation.”

¹¹⁰⁷ IACHR. Report No. 40/04. Case 12.053. Merits. Maya Indigenous Communities of the Toledo District. Belize. October 12, 2004. para. 142.

have the obligation to guarantee that every decision is based on a process of previously-informed consent of the Indigenous People as a whole.¹¹⁰⁸

70. The Inter-American Court has indicated that Indigenous Peoples' exercise of the right to collective property requires "the State to both accept and disseminate information, and entails constant communication between the parties. [...] [that] must be in good faith, through culturally appropriate procedures and [have] the objective of reaching an agreement."¹¹⁰⁹

71. According to a systematic interpretation of the jurisprudence and instruments of the inter-American system for the protection of human rights, the right of access to information as a condition for the exercise of the rights derived from the collective property of Indigenous Peoples and as a condition for an adequate prior consultation in those cases in which that right is enforceable includes Indigenous Peoples' right to have the State provide *accessible, sufficient, and timely* information on two aspects: (1) the nature and the impact of the outside intervention on goods or resources that are the People's property; and (2) the consultation process to be carried out and the reasons justifying it. Only in this way can it be ensured that the information submitted by the State will allow the communities to form a genuinely free and informed opinion in the decision-making process on the exploration and exploitation of natural resources in their territories.¹¹¹⁰

72. The information provided by the State in the prior consultation process should be clear and accessible. This means that the information must be truly understandable, which includes the condition (among others) that its dissemination be carried out in clear language and, where

¹¹⁰⁸ IACHR. Report No. 40/04. Case 12.053. Merits. Maya Indigenous Communities of the Toledo District. Belize. October 12, 2004. para. 142.

¹¹⁰⁹ I/A Court H. R., *Case of the Saramaka People v. Suriname. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of November 28, 2007 Series C No. 172. paras. 133-134. Emphasis added.

¹¹¹⁰ I/A Court H. R., *Case of the Saramaka People v. Suriname. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of November 28, 2007 Series C No. 172. paras. 133-137; I/A Court H. R., *Case of Yatama v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 23, 2005. Series C No. 127. para. 225; IACHR. Report No. 75/02. Case 11.140. Mary and Carrie Dann. United States. December 27, 2002. para. 140; IACHR. Report No. 40/04. Case 12.053. Merits. Maya Indigenous Communities of the Toledo District. Belize. October 12, 2004. para. 142; IACHR, *Access to Justice and Social Inclusion: the road towards strengthening Democracy in Bolivia*. OEA/Ser.L/V/II. Doc. 34. 28 June 2007. paras. 246 and 248. Available at: http://cidh.org/countryrep/Bolivia2007eng/Bolivia07indice_eng.htm; IACHR. Draft American Declaration on the Rights of Indigenous Peoples. Article XVIII 5-6. In this sense, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people has indicated: "Any development projects or long-term strategy affecting indigenous areas must involve the indigenous communities as stakeholders, beneficiaries and full participants, whenever possible, in the design, execution and evaluation stages. The free, informed and prior consent, as well as the right to self-determination of indigenous communities and peoples, must be considered as a necessary precondition for such strategies and projects. Governments should be prepared to work closely with indigenous peoples and organizations to seek consensus on development strategies and projects, and set up adequate institutional mechanisms to handle these issues". *United Nations Economic and Social Council*. Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, *submitted according Resolution 2002/65 of the Human Rights Commission, E/CN.4/2003/90, paras. 66, 68-69 and 73-77*. See also, *International Labor Organization*. Convention No 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989), *Articles 6, 7 and 15; Committee on the Elimination of Racial Discrimination*. Consideration of Reports submitted by States Parties Under Article 9 of the Convention. Concluding Observations concerning Ecuador, *CERD/C/62/CO/2 (2003), para. 16; International Labor Organization*. Convention No 169 concerning Indigenous and Tribal Peoples: A Manual (2003), *pp. 15-20; United Nations Economic and Social Council*. Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples (2005). *E/C.19/2005/3, pp. 13-14; United Nations General Assembly. 61/295, United Nations Declaration of the Rights of Indigenous Peoples. A/RES/61/295, September 13, 2007, Article 27; International Labor Organization*. United Nations Development Group. Guidelines on Indigenous Peoples' Issues. *February, 2008, p. 18; Colombian Constitutional Court*. Sentencia SU 039/97 (February 3, 1997), Sentencia C-169/01 (February 14, 2001), Sentencia C-891/02 (October 22, 2002), Sentencia SU-383/03 (May 13, 2005), Sentencia C-030/08 (January 23, 2008); and Sentencia C-175 de 2009 (March 18, 2009); and *Resolution 2002/65 of the Human Rights Commission, E/CN.4/2003/90., op. cit. paras. 66-69 and 74-77*.

necessary, distributed with the help of a translator or in a language or dialect that allows the members of the indigenous communities involved to understand it fully.¹¹¹¹ The provided information also must be sufficient. That is to say, it must be suitable and complete enough that those who receive it can form non-manipulated consent to the proposed project or activity.¹¹¹² The condition of timeliness means that information must be presented sufficiently in advance of any authorization or beginning of negotiations, taking into account the consultation process and the time periods required for the indigenous community in question to make decisions.¹¹¹³

73. Also, the consultation framework should provide for a moment in which communities have access to the reasons for which their arguments were rejected (if that were the case). The framework should also include the State's duty to provide clear, sufficient, and timely information on the compensation proposals to be adopted in the event of a need to repay damage suffered. It is the duty of the State – and not the indigenous peoples – to demonstrate effectively that both dimensions of the right to prior consultation were effectively guaranteed.

¹¹¹¹ The ILO has indicated in this context that the “process of consultation must be specific to the circumstances and the special characteristics of the given group or community. Thus, a meeting with village elders conducted in a language they are not familiar with, e.g. the national language, English, Spanish etc, and with no interpretation, would not be a true consultation.” See International Labor Organization. *Convention No 169 concerning Indigenous and Tribal Peoples: A Manual (2003)*, p. 16. The United Nations has indicated that the “information should be accurate and in a form that is accessible and understandable, including in a language that the indigenous peoples will fully understand,” and that “consent to any agreement should be interpreted as indigenous peoples have reasonably understood it.” United Nations Economic and Social Council. *Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples (2005)*. E/C.19/2005/3, pp. 12-13. See also, I/A Court H.R., *Case of the Saramaka People. v. Suriname*. paras 133-37; and IACHR, Access to Justice and Social Inclusion: the road towards strengthening Democracy in Bolivia. OEA/Ser.L/V/II. Doc. 34. 28 June 2007. paras. 246 and 248. Available at: <http://cidh.org/countryrep/Bolivia2007eng/Bolivia07indice.eng.htm>

¹¹¹² The *Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples*, convened by the United Nations, held that there should not be “coercion, intimidation or manipulation” in the release of information. United Nations Economic and Social Council. *Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples (2005)*. E/C.19/2005/3, p. 12. Also, Article 6.2 of ILO's Convention 169 provides that “the consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.” Likewise, the Constitutional Court of Colombia has indicated that the right to prior consultation mandates that, “The people have full knowledge on projects designed to explore for or exploit natural resources in the territory they occupy or that belongs to them, as well as the mechanisms, procedures, and activities necessary to carry out the exploration or exploitation.” Colombia Constitutional Court. *Sentencia SU 039/97 February 3, 1997*. See also I/A Court H.R., *Case of the Saramaka People. v. Suriname*. paras 133-37; and IACHR, Access to Justice and Social Inclusion: the road towards strengthening Democracy in Bolivia. OEA/Ser.L/V/II. Doc. 34. 28 June 2007. paras. 246 and 248. Available at: <http://cidh.org/countryrep/Bolivia2007eng/Bolivia07indice.eng.htm>

¹¹¹³ The ILO has indicated that FPIC should be sought sufficiently in advance of commencement or authorization of activities, taking into account indigenous peoples' own decision-making processes, in phases of assessment, planning, implementation, monitoring, evaluation and closure of a project.” International Labor Organization. *Convention No 169 concerning Indigenous and Tribal Peoples: A Manual (2003)*, p. 14. See also I/A Court H.R., *Case of the Saramaka People. v. Suriname*. paras 133-37; IACHR, Access to Justice and Social Inclusion: the road towards strengthening Democracy in Bolivia. OEA/Ser.L/V/II. Doc. 34. 28 June 2007. paras. 246 and 248. Available at: <http://cidh.org/countryrep/Bolivia2007eng/Bolivia07indice.eng.htm>; and United Nations Economic and Social Council. *Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples (2005)*. E/C.19/2005/3, p. 13. Likewise in *Sentencia C-175 de 2009 (March 18, 2009)*, the Colombian Constitutional Court held that regarding the condition of timeliness, “what is at stake is that the participation of African-American communities include the ability to materially influence the content of the measure.”

3. Access to information and the creation and preservation of police archives

74. As mentioned in previous paragraphs, the right of access to information entails an obligation for the State to produce and preserve certain information. On this point, the IACHR has understood that the State has the obligation to produce and preserve archives or registries of police detentions. Effectively, the duty to produce and preserve archives on police detentions is essential for fulfilling the right of access to information of detained individuals and their families. Indeed, as pertains to detentions, it is crucial for the State to keep records of all detained individuals, with complete personal details of the person arrested, the circumstances of the arrest – including time, manner, and place of detention – and other legal formalities. This information must be registered, guarded, and not manipulated since it is a mechanism of exceptional importance for controlling the administration of matters as sensitive as the imprisonment of a person and possible subsequent violations of human rights. Altering or destroying this kind of information is usually accompanied by State silence on the whereabouts of a person arrested by its agents. It generates fertile ground for impunity and for the propagation of the worst kind of crimes.

75. In this respect, the non-existence, manipulation, or destruction of archives or police records can constitute not only a hindrance to the adequate fulfillment of justice in many cases, but also cause a violation of the right to access public information.

4. Access to information and the creation of historic archives on gross violations of human rights

76. The Inter-American Court has established that, “every individual, including family members of the victims of serious violations of human rights, has the right to know the truth. Therefore, the relatives of the victims [the victims] and society as a whole must be informed of everything that happened regarding the violations.”¹¹¹⁴

77. In this sense, the right of access to information imposes on States the duty to preserve and facilitate access to State archives when they exist; and to create them and preserve them when they have not been compiled or organized as such. In the event of gross violations of human rights, the information these archives can bring together has an undeniable value and is indispensable not only for pushing investigations forward but also for preventing these deviant actions from being repeated.¹¹¹⁵

78. This practice is already reflected in some countries in the region that have created “memory archives” charged with compiling, analyzing, classifying, and distributing documents, testimonies, and other kinds of information linked to violations of human rights in the recent past.¹¹¹⁶

¹¹¹⁴ I/A Court H. R., *Case of Gómez-Palomino v. Peru. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 136, para. 78.

¹¹¹⁵ On completing his recent visit to Guatemala, Commissioner Victor Abramovich commented on the importance of archives on violations of human rights. Specifically, he noted “the hard work that went into the systemization, preservation and opening of the archives” and highlighted the “great importance of these archives, especially because they contributed to the reopening of some criminal trials for crimes against humanity that were found (to date) to be inactive.” After mentioning that the topic of official documents had been brought up in an interview with Guatemala’s defense minister, he commented, “The IACHR hopes that the State’s distinct instances grant full and total access to all of the archives and documents about human rights violations related to the internal armed conflict.” Press Release 37/09 (“IACHR Conducted Visit to Guatemala”), June 12, 2009. Available at: <http://www.cidh.oas.org/Comunicados/English/2009/37-09eng.htm>.

¹¹¹⁶ See, among others, Decree (*Decreto*) 1259/2003 of the executive power of Argentina, which created the “National Memory Archive” (published in the official State newspaper on December 17, 2003). Article 1 of the provision establishes that the archive’s function is to “collect, analyze, categorize, copy, digitize, and archive information, testimony, and documents on the violation of human rights and fundamental freedoms in which the responsibility of the Argentine State

a. Duty to allow access to files containing information related to violations of human rights

79. For the reasons explained in the first part of this chapter, access is the rule and only in exceptional circumstances can certain limits be put in place—limits which, in turn, must comply with the requirements derived from Article 13.2 of the Convention.¹¹¹⁷ All limitations should be prescribed expressly by law, have a legitimate aim, and be necessary and proportionate in a democratic society.

80. In this sense, it is clear that in accordance with the scope of the right of access to information recognized by the inter-American system, States have the obligation to guarantee individuals the right of access to State archives that hold information on gross violations of human rights.¹¹¹⁸

81. It is important to take into account that the right of access to information allows access to *processed data* (in the form of statistics, an indicator, or any other data) as well as to *raw data*, which is data collected by the administration but not yet processed or categorized.¹¹¹⁹ This right also implies the possibility of accessing physical places where the information is held, which makes it possible to learn the categorization criteria of the office in question. In such a way, the right to information as a tool for guaranteeing the right to justice in cases of gross violations of human rights includes the right to access statistics on these facts or the raw data used to compile these official statistics, or the duty to produce statistics if they have not yet been produced.

82. The State's obligation to provide information on these matters also includes the duty to collect information that is essential for public administration and to organize the information it receives, creating archiving systems and registries that allow the past to be known.¹¹²⁰ This subject will be addressed in the next section.

b. Duty to create and preserve archives on gross violations of human rights

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is implicated, as well as on the social and institutional response to these violations." The reasoning of the decree indicates that, "The duties of the State to promote, respect and guarantee human rights should be represented, including as pertains to the rights to truth and justice, as well as the paying of reparations, rehabilitation of victims, and assurance of the benefits of a democratic State for current and future generations."

¹¹¹⁷ In this sense, Principle 4 of IACHR's Declaration of Principles on Freedom of Expression provides that "access to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies." See Also I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. paras. 77, 89-90, 98, 120 and 137. In its 2008 Annual Report the Office of the Special Rapporteur for Freedom of Expression expanded on this point. *cf.* IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. paras. 166-176. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

¹¹¹⁸ I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 77.

¹¹¹⁹ Newer cases have challenged the impracticality of the administration processing data according to the needs of petitioners. Access to raw data allows others (researchers, private individuals or special public commissions, judicial officials, etc.) to process the data, removing the responsibility from the relevant agency. This method replaces the State's requirement to produce or process non-obligatory information.

¹¹²⁰ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. paras. 162-165. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

83. As a part of the right to information and its character as a tool necessary for guaranteeing knowledge of serious violations of human rights, the States also have the duty to create and preserve public archives designed to collect and organize information on gross violations of human rights that took place in their countries. The collection of this information, the creation of archives and their preservation are precisely State obligations derived from the right of access to information as an instrument to guarantee the rights of victims of gross violations of human rights.

84. As established in Principle 3 of the United Nations' Updated Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, the State has the duty to preserve archives and other evidence related to violations of human rights and humanitarian law in order to foster knowledge of the violations. These measures are intended to preserve the collective memory of what happened.¹¹²¹ For its part, Resolution AG/RES. 2267 (XXXVII-O/07) of the OAS General Assembly established that "States, within the framework of their own internal legal systems, should preserve records and other evidence concerning gross violations of human rights and serious violations of international humanitarian law, in order to facilitate knowledge of such violations, investigate allegations, and provide victims with access to an effective remedy in accordance with international law, in order to prevent these violations from occurring again in the future, among other reasons."¹¹²²

85. Also, the States have "the duty to gather information relative to violations of human rights from the following sources: (a) national governmental agencies, particularly those that played significant roles in relation to human rights violations; (b) local agencies, such as police stations, that were involved in human rights violations; (c) State agencies, including the office of the prosecutor and the judiciary, that are involved in the protection of human rights; and (d) materials collected by truth commissions and other investigative bodies."¹¹²³

86. These State archives also play a fundamental role in the framework of judicial investigations. The use of these archives will depend on, among other factors, the establishment of an obligation for public bodies (including the military, security, and intelligence bodies, among other departments and divisions) to attend to urgent and special judicial requests and facilitate access to all variety of documentation, reports, or files requested.

87. In particular, it is essential to guarantee that departments that have been more involved in gross violations of human rights establish databases and independent units – with unrestricted access to the documentation – for releasing information. These units should be in charge of searching for, certifying, and analyzing of all the documentation found therein and linked with violations of human rights; carrying out the corresponding investigations; and submitting the results to the relevant authorities, both those in charge of the criminal trial and those in charge of the memory archive.

¹¹²¹ United Nations, Commission on Human Rights, Updated Principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1, adopted on February 8, 2005. Principle 3 ("The duty to preserve memory"). See also Principle 5 ("Guarantees to give effect to the right to know"), and Principle 4 ("The victims' right to know").

¹¹²² Commission on Human Rights of the United Nations. Principles for the protection and promotion of human rights through action to combat impunity. E/CN.4/2005/102/Add.1, adopted on February 8, 2005, Principle 3 ("The duty to preserve memory").

¹¹²³ AG/RES. 2267 (XXXVII-O/07), "Right to the Truth", adopted at the fourth plenary session, held on June 5, 2007.

c. Duty to turn over information linked to gross violations of human rights

88. The obligation to investigate and inform, imposed on the States by Article 1.1 of the American Convention, is not fulfilled by the mere fact of facilitating family members' access to documentation under State control. The State has an obligation to launch an investigation to corroborate the facts, whether or not they are found in official documents, with the goal of clearing up the truth of what happened and informing families of the victims as well as the public in general. This is a positive and proactive obligation that depends on obtaining and processing information that allows for full understanding of the facts that are not today duly documented.

89. For this reason, the Commission has at various times established the States' duty to create investigative commissions dedicated to finding and categorizing information on violations of human rights as an obligation under the American Convention. The IACHR has specified that the forming of these commissions should be determined by the domestic legislation of each country; they must be provided with the necessary resources; and they must actively collaborate with justice.¹¹²⁴

E. National jurisprudence and access to information best practices in domestic law

90. The fundamental right of access to information has had a higher regional profile in recent years. Effectively, despite the fact that the majority of State constitutions in the region expressly or implicitly recognize the right to access, at the beginning of the 21st century only five had passed laws on transparency and access. However, during this past decade, 11 other countries also passed these kinds of laws.¹¹²⁵

91. The Office of the Special Rapporteur is preparing a study on the various legal frameworks that exist today. However, independently of the different statutory frameworks, there have been some legal rulings that have also notably advanced the standards applied in each of the States. The study of this jurisprudence is of particular interest because it reports on how the various judges and courts have been able to apply the principle of maximum disclosure. The following paragraphs are a review of some of the most important rulings on the subject.

92. For some countries, it is enough to simply point out that there have autonomous bodies in charge of ensuring due respect for the right of access to information. These include Mexico's Federal Institute for Access to Public Information (*Instituto Federal de Acceso a la Información Pública*) and Chile's recently created Council for Transparency (*Consejo para la Transparencia*). These entities have made a large number of very valuable decisions that in themselves could provide enough material for an independent study. However, this chapter

¹¹²⁴ IACHR, Annual Report 1985-1986. OEA/Ser.L/V/II.68. Doc. 8 rev. 1. 26 September 1986. para. 193.

¹¹²⁵ The countries in the region that have access to information legislation are: Antigua and Barbuda, Belize, Canada, Colombia, Chile, Ecuador, the United States, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Peru, the Dominican Republic, Trinidad and Tobago, and Uruguay. Argentina has a law on the right of access to public environmental information and a decree that applies to the federal Executive Power. Also, Bolivia has a decree in place on access to information in the area of executive branch administration. Cf. Ackerman, John M.; Sandoval E. Irma. *Leyes de Acceso a la Información en el Mundo*. Instituto Federal de Acceso a la Información Pública. Fourth edition. México, D.F. July, 2008. Available at: <http://www.ifai.org.mx/Publicaciones/publicaciones>; Mendel, Toby. *El Derecho a la Información en América Latina. Comparación jurídica*. United Nations Educational, Scientific and Cultural Organization. Quito, Ecuador. 2009. Available at: <http://unesdoc.unesco.org/images/0018/001832/183273s.pdf>; Open Society Justice Initiative. *Amicus Curiae Submission in the Case of Defensoría del Pueblo v. Municipalidad de San Lorenzo. A Submission from the Open Society Justice Initiative to the Supreme Court of Paraguay*. December, 2009; Argentina. Law 25.831 Régimen de Libre Acceso a la Información Pública Ambiental. Available at: <http://www.icaa.gov.ar/Documentos/Ges Ambiental/LEY 25831.pdf>; Bolivia. *Decreto Supremo N° 28168*. Available at: <http://www.abi.bo/#>.

emphasizes court rulings given that in the majority of the region's States, judges are directly responsible for resolving conflicts on the right to access. In this sense, learning what their colleagues are ruling can be an important instrument for a better interpretation of the law.

93. Finally, it is relevant to note that the Office of the Special Rapporteur finds the study of comparative law to be enormously important. Through this study, it is possible to enrich regional doctrine and jurisprudence. Although it is true that one of the main objectives of regional human rights protection bodies is to achieve the domestic application of inter-American standards, another objective is to see those standards elevated through local development in each of the States. Favorable interpretations of guarantees by civil society and State bodies have allowed the regional system to improve and strengthen its doctrine and jurisprudence. In this sense, and as this report addresses in a different chapter, mutual recognition among regional and national human rights protection bodies allows for a virtuous circle in which the beneficiaries are the people living in our territory and to whom we owe our work.

94. The following paragraphs review some of the most important decisions on access to information that the Office of the Special Rapporteur had available. The decisions were ordered according to the central issue addressed. However, it is important to note that most of the rulings cited refer to more than one issue, and therefore it is worth examining them in detail.

1. Jurisprudence on the right of access to information as a fundamental autonomous right

95. Several of the region's courts have concluded that the right of access to information is a fundamental autonomous right, deserving of the highest constitutional protection.

96. In this sense, Argentina's Supreme Court of Justice (*Corte Suprema de Justicia*) in a February 11, 2004¹¹²⁶ decision held that, "The principle of publicity of government action is inherent in the republican system established by the National Constitution, for which reason compliance with that principle is for public authorities an unavoidable requirement. [...] This allows citizens their right to access State information in order to exercise control over the authorities [...] and foster administrative transparency."¹¹²⁷

97. The same court found -in a decision dated April 3, 2001¹¹²⁸- that "the American Convention on Human Rights offers standards that are inexcusably worth considering for judging cases on the exercise of freedom of expression, [a right that] includes the freedom to seek, receive, and distribute information and ideas of all kinds."¹¹²⁹ The right of access to information contained in the American Convention is recognized as a fundamental right due to the fact that "Article 75, Subparagraph 22 [...] granted treaties the same authority as the Constitution [...] [Treaties] must be understood to be complementary to the rights and guarantees [...] recognized [in the

¹¹²⁶ Supreme Court of Justice of Argentina, *Expediente*. 315/2004-Adm.Gral, Buenos Aires, Argentina, February 11, 2004. Available at: <http://www.villaverde.com.ar/archivos/File/investigacion/Amicus%20Curiae/ac-1-2004-csjn.pdf>

¹¹²⁷ Supreme Court of Justice of Argentina, *Expediente*. 315/2004-Adm.Gral, Buenos Aires, Argentina, February 11, 2004, para. 1 Available at: <http://www.villaverde.com.ar/archivos/File/investigacion/Amicus%20Curiae/ac-1-2004-csjn.pdf>

¹¹²⁸ Supreme Court of Justice of Argentina. S. 622. XXXIII. S., V. c/ M., D. A. s/ medidas. April 3, 2001. Available at: http://www.csjn.gov.ar/cfal/fallos/cfal3/ver_fallos.jsp

¹¹²⁹ Supreme Court of Justice of Argentina. S. 622. XXXIII. S., V. c/ M., D. A. s/ medidas. April 3, 2001. p. 3. Available at: http://www.csjn.gov.ar/cfal/fallos/cfal3/ver_fallos.jsp

Constitution]”¹¹³⁰ and “must be interpreted in harmony, to find an environment of reciprocal communication in which individual rights and guarantees can reach their greatest depth.”¹¹³¹

98. Following that same idea, Mexico’s Eighth Associate Administrative Court of the First Associate Circuit held that the right of access to information is a fundamental and universal human right that must be subject to a restricted system of exceptions and whose process must be simple, fast, and free or low cost.¹¹³²

99. Also, the Constitutional Chamber of the Supreme Court of Costa Rica (*Sala Constitucional de la Corte Suprema de Costa Rica*) held in a ruling dated April 2, 2002 that “The right to information [...] is an inalienable and indispensable human right [...]. This right [...] has precedence, as it guarantees a constitutional concern: the formation and existence of free public opinion, a guarantee which, because it is a prior and necessary condition for the exercise of other rights inherent for the functioning of a democratic system, becomes [...] one of the pillars of a free and democratic society.”¹¹³³

100. Likewise, the Constitutional Court (*Tribunal Constitucional*) of Chile held in its August 9, 2007¹¹³⁴ ruling that the right to public information is recognized at the constitutional level “because the right to access information in the power of State bodies is part of freedom of expression [...] [which is] enshrined in Article 19 No. 12 of the Constitution,”¹¹³⁵ as well as because “Article 8 of the Political Constitution¹¹³⁶ [...] enshrined the principles of the probity, publicity and transparency of State conduct.” In this way, “the right of access to public information is recognized in the Constitution – although not explicitly – as an essential mechanism for full validity of the democratic regime” and “the publicity of the actions of [State] bodies guaranteed [...] by the right of access to public information gives basic support to the appropriate exercise and defense of the fundamental rights of those who [...] could be harmed as a result of actions or omissions of said bodies.”¹¹³⁷ In this way, “the right of access to public information is recognized in the Constitution

¹¹³⁰ National Supreme Court of Justice. S. 622. XXXIII. S., V. c/ M., D. A. s/ medidas. April 3, 2001. p. 17. Available at: http://www.csjn.gov.ar/cfal/fallos/cfal3/ver_fallos.jsp

¹¹³¹ Supreme Court of Justice of Argentina. S. 622. XXXIII. S., V. c/ M., D. A. s/ medidas. April 3, 2001. p. 5. Available at: http://www.csjn.gov.ar/cfal/fallos/cfal3/ver_fallos.jsp

¹¹³² Mexico’s Eighth Associate Administrative Court of the First Circuit, *Amparo en revisión* 133/2007. Aeropuerto de Guadalajara, S.A. de C.V., May 31, 2007. *Novena Época, Semanario Judicial de la Federación y su Gaceta XXVI. Tesis: I.8o.A.131 A.* Available at: <http://www.scjn.gob.mx/ActividadJur/Jurisprudencia/Paginas/IndexJurisprudencia.aspx>

¹¹³³ Supreme Court of Justice of Costa Rica. Archive 02-000808-0007-CO. Ruling 2002-03074. San José, Costa Rica, April 2, 2002. *Considerando* III and IV. Available at: http://www.iidh.ed.cr/comunidades/libertadexpresion/docs/le_otroscr/3074-02%20sala%20constitucional.htm

¹¹³⁴ Constitutional Tribunal of Chile. Rol 634-2006. Ruling August 9, 2007, pp. 28-31. Available at: <http://www.tribunalconstitucional.cl/index.php/sentencias/download/pdf/86>

¹¹³⁵ Political Constitution of Chile. “Article 19.- The Constitution ensures to all individuals: 12) The freedom to issue opinions and to offer information, without prior censorship, in any way and by any method, notwithstanding the responsibility for crimes and abuses committed in the exercise of these freedoms in keeping with the law, which must be passed with an absolute majority (*ley de quórum calificado*).” Available at: <http://www.leychile.cl/Navegar?idNorma=242302> ; Constitutional Tribunal of Chile. Rol 634-2006. Ruling August 9, 2007. Ninth *Considerando*. 9. p. 28. Available at: <http://www.tribunalconstitucional.cl/index.php/sentencias/download/pdf/86> .

¹¹³⁶ Political Constitution of Chile. “Article 8.- The exercise of public functions obligates public officials to comply with the principle of probity in all their actions. The actions and resolutions of State bodies are public, as are reasons and procedures it adopts. However, only a law passed by absolute majority can qualify as these as confidential or classified, and only when their publicity would affect the due completion of said body’s functions, the rights of individuals, national security, or national interest.” Available at: <http://www.leychile.cl/Navegar?idNorma=242302>. New language introduced by the August 26 constitutional reform by Law N° 20.050.

¹¹³⁷ Constitutional Tribunal of Chile. Rol 634-2006. Judgment of August 9, 2007. Ninth *Considerando*. 9. p. 30. Available at: <http://www.tribunalconstitucional.cl/index.php/sentencias/download/pdf/86>.

– although not explicitly – as an essential mechanism for the full maturation of a democratic regime” and “the publicity of actions of [State] bodies, guaranteed [...] by the right of access to public information, constitutes basic support for the adequate exercise and defense of the fundamental rights of people that [...] can be injured by the action or inaction of those bodies.”

101. The Full Chamber of the Constitutional Court (*Sala Plena de la Corte Constitucional*) of Colombia, in a ruling dated June 27, 2007, held that the right to access of information¹¹³⁸ is a “fundamental right [...] [with] clear and rigorous requirements for its limitation [...] to be constitutionally admissible.”¹¹³⁹

2. Jurisprudence on the universal nature of access to information

102. The Constitutional Court of Colombia has reiterated that, “all persons [have] the right to inform and receive information that is true and impartial, [...] a precaution that constituent assembly introduced in order to guarantee the adequate development of the individual in the context of a democratic State.”¹¹⁴⁰

103. For its part, the Eighth Collegiate Tribunal of administrative competence of the First Circuit of Mexico has also addressed the universal reach of this right by observing that, “[t]he joint declaration adopted on December 6, 2004 by the United Nations special rapporteur for freedom of opinion and expression, the UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe Representative on Freedom of the Media and the Organization of American States Special Rapporteur on Freedom of Expression—applicable by virtue of article 6 of the Federal Transparency and Access to Public Governmental Information Law—establishes [...] as a basic principle [...] regarding [...] access to information [...] 1. The right to access to information is a fundamental human right; meanwhile, a systematic analysis of the Federal Transparency and Access to Public Governmental Information Law yields the conclusion that the right to access to information is universal.”¹¹⁴¹

104. Meanwhile, the Constitutional Chamber of the Supreme Court of Justice of Costa Rica has indicated that, “the active subject of [this] right [...] is any person [...], which reveals that the aim of the constituent assembly was to reduce administrative secrecy to its minimum expression and expand administrative publicity and transparency.”¹¹⁴²

3. Jurisprudence on the principle of maximum disclosure

¹¹³⁸ Political Constitution of Colombia. “Article 74.- All individuals have the right to access public documents, except for in those cases established by law. Professional secrecy is inviolable.” Available at: <http://web.presidencia.gov.co/constitucion/index.pdf>.

¹¹³⁹ Full Chamber of the Constitutional Court of Colombia. *Sentencia* C-491/07. Bogotá, Colombia. June 27, 2007. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/C-491-07.htm>

¹¹⁴⁰ Appeals Chamber of the Constitutional Court of Colombia. Judgment T-437/04. File T-832492. May 6, 2004. Legal argument 6. Available at: <http://www.corteconstitucional.gov.co/relatoria/2004/T-437-04.htm>.

¹¹⁴¹ Octavo Tribunal Colegiado en Materia Administrativa del Primer Circuito. Amparo en Revisión 133/2007. Aeropuerto de Guadalajara, S.A. de C.V. May 31, 2007. Available at: <http://www.scjn.gob.mx/ActividadJur/Jurisprudencia/Paginas/IndexJurisprudencia.aspx>.

¹¹⁴² Constitutional Chamber of the Supreme Court of Justice of Costa Rica. Exp. 05-001007-0007-CO, Res. 2005-04005, San José, Costa Rica. April 15, 2005. Considering IV. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ¶m2=1&nValor1=1&nValor2=307334&strTipM=T&IResultado=2&strLib=LIB.

a. Jurisprudence on the principle of maximum disclosure as the central tenet of access to information

105. The Full Chamber of the Constitutional Court of Colombia highlighted in its ruling *Sentencia* C-491/07 (dated June 27, 2007) the close relationship between the principle of maximum disclosure and the function of the right of access to information in a democratic society.

106. In this sense, the Colombian Court established that, "According to the Constitution, the most important guarantee of an appropriately functioning constitutional regime is the full publicity and transparency of public administration. Decisions or actions of public servants that they do not want exposed are usually ones that cannot be justified. And the secret and unjustifiable use of State power is repulsive to the rule of law and appropriate functioning of a democratic society. Effectively, the transparency and publicity of public information are two conditions that are necessary for obligating the agencies of the State to publicly explain the decisions they make, as well as their use of power and public resources; they are the most significant guarantee in the struggle against corruption and in subjecting public servants to the purposes and procedures they are bound to by law; they are the foundation on which true citizen control of public administration and the satisfaction of related political rights is based. In this sense, [...] access to information and official documents constitutes a condition that allows for the existence and exercise of mechanisms of criticism and oversight of government actions that, under the framework of the Constitution and the law, the political opposition can legitimately exercise. Finally [...] the right of access to public information is tool that is crucial for the satisfaction of victims of arbitrary actions' right to truth, as well as society's right to historic memory."¹¹⁴³

107. For this reason, according to the tribunal, as a general rule, "in keeping with the provisions of Article 74 of the Constitution, Article 13 of the [Inter-American] Convention on Human Rights, and Article 19 of the International Covenant on Civil and Political Rights, individuals have a fundamental right to access State information. In this sense, wherever there is no express legal exception, the fundamental right of access to information prevails. In this respect, the [Inter-American] Court has indicated that, 'In sum, in a democratic society, the general rule is to permit citizen access to all public documents. Public authorities have a constitutional duty to turn over clear, complete, timely, true, and up to date information on any State activity to anyone who requests it.'¹¹⁴⁴

108. Following the jurisprudence of the Inter-American Court, the Colombian Court held that the principle "of maximum disclosure" must imply at least two consequences: "The provisions that limit the right of access to information must be interpreted restrictively and all limits must be adequately reasoned."¹¹⁴⁵ Likewise, the Constitutional Court of Colombia has indicated that, "The public servant has a clear obligation to justify a decision to deny access to a public document, and the justification must meet the requirements established in the Constitution and by law [...]. In particular, it should expressly cite the provision on which the denial was based. This way, the matter can be submitted to disciplinary, administrative, or even judicial controls."¹¹⁴⁶

¹¹⁴³ Full Chamber of the Constitutional Court of Colombia. *Sentencia* C-491/07. Bogotá, Colombia. June 27, 2007. p. 1 Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/C-491-07.htm>

¹¹⁴⁴ Full Chamber of the Constitutional Court of Colombia. *Sentencia* C-491/07. Bogotá, Colombia. June 27, 2007. *Fundamento jurídico* 11. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/C-491-07.htm>

¹¹⁴⁵ Cf. *Sentencia* T-074, 1997. "The demand for justification is also found in the legal norms on the topic." Full Chamber of the Constitutional Court of Colombia. *Sentencia* C-491, 2007. Bogotá, Colombia. June 27, 2007. *Fundamento jurídico* 11. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/C-491-07.htm>

¹¹⁴⁶ Cf. *Sentencia* T-074, 1997. "The demand for justification is also found in the legal norms on the topic." Full Chamber of the Constitutional Court of Colombia. *Sentencia* C-491, 2007. In its *Claude Reyes* ruling, the Inter-American
Continued...

109. Likewise, the Constitutional Chamber of the Supreme Court of Justice of Costa Rica has used the principle of maximum disclosure as a basis for rulings indicating that, "In the framework of a State governed by the rule of law and social rights, every public body and entity that forms part of the administration must be subject to the constitutional principles implicit in transparency and publicity, which should be the rule in every administrative action or function. Organizations under Public Law – public entities – are called upon to be true glass houses in whose interior all administrators can be scrutinized and supervised under the light of day. [...]. Under this regime, secrecy or the classifying of administrative information as confidential are the exception and only justifiable under qualifying circumstances when protecting constitutionally relevant values or interests."¹¹⁴⁷

110. The Dominican Republic courts also highlighted the significance of this principle in several rulings. It has indicated that, "It is necessary to specify that democratic States must follow the principles of publicity and transparency in their public administration. In this way, individuals can exercise democratic control, which legitimizes the actions of those making a living from the *res publica*."¹¹⁴⁸

111. Finally, the First Chamber of the Constitutional Court of Peru made statements on August 18, 2009, on the "culture of transparency," indicating that it is "inherent to our State governed by the rule law and social rights. This obligates the Administration to turn over requested information without requiring justification for the solicitation thereof."¹¹⁴⁹

112. According to this court, "This paradigmatic turn is based on the already mentioned principle of publicity, according to which it is understood that all information under the control of the State or the control of legal entities that provide public services or administrative functions through a concession, delegation, or authorization, is in principle public."¹¹⁵⁰

113. On a different topic, to promote the effectiveness of the right of access to information, the court pointed to a necessary element in "the punishment of public officials and servants who in any way obstruct the fulfillment of the right of access to public information. These sanctions are not only necessary but inherent to the defense and protection of fundamental rights, as they help achieve the objective of the effective fulfillment of these rights. Sanctions for conduct

...continuation

Court established the obligation to justify in the following language: "In this case, the State's administrative authority responsible for making a decision on the request for information did not adopt a duly justified written decision, which would have provided information regarding the reasons and norms on which he based his decision not to disclose part of the information in this specific case and established whether this restriction was compatible with the parameters embodied in the Convention. Hence, this decision was arbitrary and did not comply with the guarantee that it should be duly justified protected by Article 8(1) of the Convention." Cf. I/A Court H. R., *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. para. 122.

¹¹⁴⁷ Constitutional Chamber of the Supreme Court of Justice, writ of amparo, exp. 04-012878-CO, Res. 2005-03673, Costa Rica, April 6, 2005. *Considerando* III.- I Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ¶m2=1&nValor1=1&nValor2=302552&strTipM=T&IResultado=3&strLib=LIB

¹¹⁴⁸ Administrative and Tax Tribunal, Exp. No.030-07-00078, *Sentencia* No. 024-2007, Santo Domingo, Dominican Republic, April 27, 2007. p. 21. Available at: http://www.suprema.gov.do/novedades/sentencias/2007/luis_lora.pdf

¹¹⁴⁹ First Chamber of the Constitutional Court, Exp. N.º 04912-2008-PHD/TC. Lima, Peru, August 18, 2009. *Fundamento* 5. Available at: <http://www.tc.gob.pe/jurisprudencia/2009/04912-2008-HD.html>.

¹¹⁵⁰ First Chamber of the Constitutional Court, Exp. N.º 04912-2008-PHD/TC. Lima, Peru, August 18, 2009. *Fundamento* 5. Available at: <http://www.tc.gob.pe/jurisprudencia/2009/04912-2008-HD.html>.

contrary to fundamental rights also seek to discourage that conduct, as well as encourage the rest of society to view the sanctions as normal, and socially and legally accepted.”¹¹⁵¹

114. After analyzing the merits of the matter and due to the authority’s lack of response to the petitioner on the matter, in keeping with the principle of maximum disclosure, the court found that the right of access to information had been affected and ruled, among other things, to start the procedure for administrative sanctions against the officials who failed in their duty to adequately reply to the request for information.

b. Jurisprudence on the application of the principle of maximum disclosure in ordering access to information on public advertising

115. In its September 11, 2009 ruling on a Motion of Habeas Data,¹¹⁵² the Governmental Justice of the Peace of Uruguay, after recalling the principle of maximum disclosure and the importance of publicity in public administration and its impact on citizen participation, held that funds outlaid by a public body on official advertising were not excepted from the right of access to information. For the judge, information on public advertising is public by nature, since it forms part of the information produced by the public entity and whose distribution benefits public service and the democratic control of government.

116. The case resulting in this ruling was on a request for information made by a journalist of the Departmental Council (*Junta Departamental*) of Soriano, Uruguay, on the distribution of official advertising during different periods.¹¹⁵³ On August 11, 2009, the president of the council denied the request for access to the information, arguing that the petitioner was a representative of a press organization, which in keeping with Section b), Paragraph 1) of Article 10 of Law 18.381, constitutes an exception to the right of access. According to this provision, information that can be useful to a competitor is not distributed to press organizations. The petitioner reiterated in his arguments before the judge that the information requested included the amount of funds outlaid by a public entity, and that revealing the amount spent on public advertising would not give any advantage to a competitor.

117. In his ruling, the Uruguayan judge held that the “right of access to public information is related to certain principles. To wit: The principle of transparent administrative management allows for a clear view of the actions of the Administration in its use of public funds, [and the] principle of the publicity of administrative action is a consequence of the republican manner of governing and living under the rule of law.”¹¹⁵⁴ According to the judge, “a restriction of the publicity

¹¹⁵¹ First Chamber of the Constitutional Court, Exp. N.º 04912-2008-PHD/TC. Lima, Peru, August 18, 2009. *Fundamento* 10. Available at: <http://www.tc.gob.pe/jurisprudencia/2009/04912-2008-HD.html>.

¹¹⁵² Uruguay Judiciary. Judgment No. 48. Writ of *habeas data*. 381-545/2009. Mercedes, Uruguay. September 11, 2009. Available at: http://www.poderjudicial.gub.uy/servlet/page?_pageid=56&_dad=portal30&_schema=PORTAL30&_type=site&_fsiteid=34&_fid=1&_fnavbarid=1&_fnavbarsiteid=34&_fedit=0&_fmode=2&_fdisplaymode=1&_fcalledfrom=1&_fdisplayurl=.

¹¹⁵³ On August 5, 2009, the petitioner, as a natural person, requested from the Departmental Council of Soriano access to information of the names and amounts in Uruguayan pesos paid to media outlets, programs or journalists during specified periods in which the Council had hired publicity. Also, the petitioner requested to be informed if the publication of the Council’s press releases in each period had been paid and, if so, he asked for detailed information of the monthly amount in Uruguayan pesos and to which media outlet had it been paid or continued to be paid.

¹¹⁵⁴ Uruguay Judiciary. Judgment No. 48. Writ of *habeas data*. 381-545/2009. Mercedes, Uruguay. September 11, 2009. *Considerando* 3. Available at: http://www.poderjudicial.gub.uy/servlet/page?_pageid=56&_dad=portal30&_schema=PORTAL30&_type=site&_fsiteid=34&_fid=1&_fnavbarid=1&_fnavbarsiteid=34&_fedit=0&_fmode=2&_fdisplaymode=1&_fcalledfrom=1&_fdisplayurl=.

of administrative management should be reasoned well enough to supercede the generic reasoning that advises publicity. [...] That is, in a system such as ours, the principle solution is always publicity, while restriction is the exception.”¹¹⁵⁵

118. Finally, the judge indicated that “the right to access public information is also related with the principle of participation, meaning that the inhabitants should be informed and consulted on matters that concern them.”¹¹⁵⁶

119. Taking into account the principles he mentioned, the judge found that “spending on official advertising is not information submitted to the Council but rather produced by the Council and is therefore public information from the moment in which it is placed in the body’s five-year budget.”¹¹⁵⁷ Also, in keeping with Article 5 of Law 18381, information on the budget, the budget’s execution, the results of any corresponding audits, as well as concessions, tenders, permits, or authorizations granted with specification of the recipients, as well as all public body statistical information of general interest “is not only non-confidential but public by nature.”¹¹⁵⁸

120. In keeping with the fact that the information requested was produced and held by a public body, and in guaranteeing the “principle of maximum publicity” as well as complying with the parallel obligations of publicity and transparency, the judge ruled that the Departmental Council of Soriano, Uruguay must turn over to the petitioner the requested information within a period of 10 days from the notification of the judgment.

c. Jurisprudence on the right of access to information with regard to private companies contracted by the State or providers of public services

121. On June 22, 1984, the U.S. District Court for the District of Columbia heard a lawsuit on access to information, filed by a union against the Department of Housing and Urban Development (HUD). The union was seeking the names, salaries, and positions of eight employees of the company Knorz Inc., a subcontractor on a construction project financed with HUD funds.

122. The union requested the information to protect its members’ salaries and benefits from the possibility of unfair competition: the union suspected that Knorz Inc., which was a company that had not been unionized, paid salaries below the amount established by law for work on contracts financed by the government.

¹¹⁵⁵ Uruguay Judiciary. Judgment No. 48. Writ of *habeas data*. 381-545/2009. Mercedes, Uruguay. September 11, 2009. *Considerando* 3. Available at: http://www.poderjudicial.gub.uy/servlet/page?_pageid=56&_dad=portal30&_schema=PORTAL30&_type=site&_fsiteid=34&_fid=1&_fnavbarid=1&_fnavbarsiteid=34&_fedit=0&_fmode=2&_fdisplaymode=1&_fcalledfrom=1&_fdisplayurl=.

¹¹⁵⁶ Uruguay Judiciary. Judgment No. 48. Writ of *habeas data*. 381-545/2009. Mercedes, Uruguay. September 11, 2009. *Considerando* 3. Available at: http://www.poderjudicial.gub.uy/servlet/page?_pageid=56&_dad=portal30&_schema=PORTAL30&_type=site&_fsiteid=34&_fid=1&_fnavbarid=1&_fnavbarsiteid=34&_fedit=0&_fmode=2&_fdisplaymode=1&_fcalledfrom=1&_fdisplayurl=.

¹¹⁵⁷ Uruguay Judiciary. Judgment No. 48. Writ of *habeas data*. 381-545/2009. Mercedes, Uruguay. September 11, 2009. *Considerando* 7. Available at: http://www.poderjudicial.gub.uy/servlet/page?_pageid=56&_dad=portal30&_schema=PORTAL30&_type=site&_fsiteid=34&_fid=1&_fnavbarid=1&_fnavbarsiteid=34&_fedit=0&_fmode=2&_fdisplaymode=1&_fcalledfrom=1&_fdisplayurl=.

¹¹⁵⁸ Uruguay Judiciary. Judgment No. 48. Writ of *habeas data*. 381-545/2009. Mercedes, Uruguay. September 11, 2009. *Fundamento* 7. Available at: http://www.poderjudicial.gub.uy/servlet/page?_pageid=56&_dad=portal30&_schema=PORTAL30&_type=site&_fsiteid=34&_fid=1&_fnavbarid=1&_fnavbarsiteid=34&_fedit=0&_fmode=2&_fdisplaymode=1&_fcalledfrom=1&_fdisplayurl=.

123. HUD answered the request with a list of employees with the names, social security numbers, and salaries blacked out, since it considered that revealing that information would violate the exemption provided for in Section 522(b)(6) of the Freedom of Information Act (hereinafter "FOIA"). That section establishes that requests for information can be denied when the information requested includes "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."¹¹⁵⁹ According to HUD general counsel, the union had no legitimate interest in the information.

124. In a preliminary hearing, it became clear that the union wanted to know the names of the employees. During that hearing, the HUD attorneys argued that revealing that information would embarrass and be detrimental to the employees in two ways. First, it would expose them to possible hostility, since their identities as non-union laborers would be revealed in a community with strong pro-union feelings. Second, the revelation of the names would allow the union to learn their salaries, information which is covered under workers' privacy.

125. The district judge rejected both arguments through a broad interpretation of the goals of FOIA. Following the Supreme Court's resolution in the *Department of the Air Force v. Rose* case, the court found that "the dominant objective of FOIA is disclosure, and FOIA exemptions are accordingly constructed narrowly."¹¹⁶⁰ Applying the *Rose case* standard, the judge examined a) whether the requested information came from personnel files or medical records and b) whether the revelation of the information would imply a clear and unjustified invasion of personal privacy.

126. As point a) had already been determined in the sense that the information would come from personnel files, the question to analyze was whether the second condition of the *Rose* standard was met. According to the district judge, HUD had not been able to demonstrate that the revelation of this information would clearly violate the employees' privacy.

127. First, the judge found that revealing the salaries of federal employees was not comparable to the kind of "embarrassing" information protected by Exemption 6 of the FOIA. As for the revelation of the names of the employees, the judge found that the alleged harassment to which they could be subject was only speculation that did not nullify the clear public interest involved. The Court added that "[t]he strong public interest in assuring compliance with the law tilts the balance in favor of disclosure."¹¹⁶¹

128. In this sense, the judge emphasized the union's interest in independently learning the unfair practices of the companies that pay salaries beneath that provided for by law. The judge held that investigations by authorities supervising the labor market do not affect the union's right to try to satisfy on its own the public interest in labor law compliance.

129. The ruling was appealed to the District of Columbia Court of Appeals, but on April 26, 1985, that court upheld the ruling of the lower court. The appeals court highlighted that one of the main objectives of FOIA was to allow citizens to exercise control over the workings of the government. In this sense, it found that, "it is a prime function of the Freedom of Information Act to enable the public to survey the operations of its government."¹¹⁶²

¹¹⁵⁹ FOIA Act 1966, Section 522(b)(6).

¹¹⁶⁰ *International Brotherhood of Electrical Workers, Local 41 v. United States Department of Housing and Urban Development*, 593 F.Supp. 542, 544 (1984).

¹¹⁶¹ *International Brotherhood of Electrical Workers, Local 41 v. United States Department of Housing and Urban Development*, 593 F.Supp. 542, 545 (1984).

¹¹⁶² *International Brotherhood of Electrical Workers, Local 41 v. United States Department of Housing and Urban Development*, 763 F.2d 435, 436 (1985).

130. For its part, the Constitutional Tribunal of Peru coincided with the standards mentioned in the previous paragraph when it held in a September 30, 2008¹¹⁶³ judgment that the obligation to provide information of general interest bound not only bodies of the State but also legal entities that, governed mainly by private law, provide public services.

131. The case that resulted in this decision began on January 4, 2008, when a private individual requested information from an aviation company on the varieties of complaints it had received on the public services it offers. The request sought details on which had complaints had been resolved and which had not over the last two years.

132. The company decided to declare that the *habeas data* motion was inadmissible, arguing that although the company was a legal entity offering a public service, “it does not carry out an administrative function, and therefore is only obligated to turn information over to third parties when it relates to: i) the characteristics of its public services, meaning (among others) the routes, frequency, and timetable of its flights; and ii) its fees, all of which are found fully described and detailed on its Web page.”¹¹⁶⁴

133. Once lower court recourses had been exhausted, the Constitutional Court made a noteworthy use of the standards of the Inter-American system by using the primary inter-American jurisprudence on the scope of the right of access to information – recognized in Article 13 of the American Convention – in its reasoning.

134. In applying this jurisprudence, the court found that “air transport, due to its regular nature and purpose of satisfying particular social needs, has an impact on the general interest and must therefore be considered a public service. Because of this, information closely linked to this service must be turned over to any citizen who requests it. Actions to the contrary will be considered detrimental to the fundamental right of access to information.”¹¹⁶⁵

135. In addition to the general interest in the public service, the court indicated that the requested information was preexisting, being information “that is in the possession of the solicitee, contained in its written documents, digital files, or any other format.” For the tribunal, these reasons were enough to find that the entity was obliged to turn over the requested information, even though the company was a legal entity regulated principally under private law.

136. Effectively, the tribunal found that, “In general terms, this right comes from the authority held by all individuals to request and access information that is held mainly by State entities. As far as access to information held by non-state entities – that is, legal entities governed under private law – not all the information they hold is exempt. According to the kind of work they do, it is possible that they might hold some information that is of a public nature and therefore may be demanded and attained by the general public. In this context, legal entities that can be asked for this kind of information are those that offer public services or carry out administrative functions despite being under a private legal regime.”

¹¹⁶³ First Chamber of Constitutional Tribunal, Case 4339-2008-PHD-TC, Lima Peru, September 30, 2008. Available at: <http://www.tc.gob.pe/jurisprudencia/2009/04339-2008-HD.html>.

¹¹⁶⁴ First Chamber of Constitutional Tribunal, Case 4339-2008-PHD-TC, Lima Peru, September 30, 2008. Antecedente 2. Available at: <http://www.tc.gob.pe/jurisprudencia/2009/04339-2008-HD.html>.

¹¹⁶⁵ First Chamber of Constitutional Tribunal, Case 4339-2008-PHD-TC, Lima Peru, September 30, 2008. Merits 11. Available at: <http://www.tc.gob.pe/jurisprudencia/2009/04339-2008-HD.html>.

137. As a consequence, the Constitutional Tribunal of Peru found that the petitioner had had his or her right to access to public information infringed upon and that the company must provide the requested information pending payment of fees for its release.

138. The criteria that makes obligations derived from the right of access apply not only to the State but also to those who carry out public functions or manage public resources has also been reiterated by the Supreme Court of Justice of Costa Rica, which held that, “[M]otions of amparo filed against private subjects [...] are admissible when filed against actions or omissions of entities governed under Private Law when those entities act or should act to fulfill public functions or charges, or they find themselves by law or by fact, holding power over which the common judicial remedies are clearly insufficient or too slow to guarantee fundamental rights or liberties.”¹¹⁶⁶

d. Jurisprudence on the definition of a public document

139. In carrying out an analysis of the “right of access to public documents” in its Judgment (*Sentencia*) T-473/92, the Colombian Constitutional Court indicated that the expressions “public document” and “public information” should not be exclusively limited to what the State has produced or generated, but rather should include all documentation that the State administers or archives, excepting those withheld in keeping with explicit provisions of the law. According to the court, under the right of access to information, “the nature of the subject or entity that produced the document[s] and the way in which they were produced are not as important as the objective fact of whether [they] contain information that should be withheld in keeping with an explicit provision of the law”¹¹⁶⁷ in determining whether a document should be made public. For the Colombian court, “this right of mankind to inform and be informed [...] is a guarantee of the conscious exercise of the political right to participate in the *res publica*.”¹¹⁶⁸

140. Taking the aforementioned reasoning as a foundation, the tribunal ruled that the requested document was of a public nature. Consequently, the relevant authority was obligated to turn over the requested information within 48 hours of the notification of the decision.

e. Jurisprudence on the obligation to narrowly construe the exceptions to the general principle of maximum disclosure

141. In the case of *Department of the Air Force v. Rose*, on April 21, 1976, the Supreme Court of the United States heard the claim of a group of law students against U.S. military academies. The students sought access to archives of hearings on possible violations of the United States Air Force Academy’s Honor Code by cadets.

142. The Air Force denied the request, citing two exemptions found in the 1996 Freedom of Information Act (FOIA); Section 522(b)(2) establishes that requests for access to information on issues “related solely to the internal personnel rules and practices of an agency”¹¹⁶⁹ are not viable,

¹¹⁶⁶ Constitutional Chamber of the Supreme Court of Justice, Exp. 03-010830-0007-CO. Res: 2004,09705, San José, Costa Rica, August 31, 2004. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=RST¶m2=1¶m3=FECHA¶m4=D ESC&tem1=Mauricio%20Herrera%20Ulloa%20Banex

¹¹⁶⁷ First Chamber of Review of the Constitutional Court of Colombia, T-473/92, Bogotá, Colombia, July 14, 1992. *Consideración A*). Available at: <http://www.corteconstitucional.gov.co/>

¹¹⁶⁸ First Chamber of Review of the Constitutional Court of Colombia, T-473/92, Bogotá, Colombia, July 14, 1992. *Consideración A*). Available at: <http://www.corteconstitucional.gov.co/>

¹¹⁶⁹ FOIA Act 1966, Section 522(b)(2).

while Section 522(b)(6) establishes that requests for “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy”¹¹⁷⁰ can be denied.

143. The U.S. District Court for the Southern District of New York, which initially heard the case, found in a summary judgment that the documents requested by the students were covered by the exemption set forth in Section 522(b)(2), though not the one in Section 522(b)(6), given that making these documents public with the names blacked out or without sensitive information would not subject any cadet to public identification, for which reason no one’s privacy would be violated.

144. The Second Circuit Court of Appeals overturned the ruling of the lower court on two grounds. The court found that Section 522(b)(2) did not protect the requested documents, but also found that the district judge had erred in finding that the publication of the documents with information partially eliminated could in itself satisfy the legitimate privacy interests of the cadets involved in the hearings. The court held that it was necessary to analyze the case in more detail, and it ordered an inspection of the documents in chambers.

145. The Supreme Court upheld the ruling, highlighting the necessity of strictly interpreting the FOIA exemptions to the principle of maximum disclosure through “a general philosophy of full agency disclosure (...) unless information is exempted under clearly delineated statutory language.”¹¹⁷¹ The court emphasized that the law’s objective is “to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.”¹¹⁷² According to the court, no content of the law should be read to “authorize withholding of information or limit the availability of records to the public, except as specifically stated.”¹¹⁷³

146. Regarding the exemption provided for in Section 522(b)(2) on internal institutional proceedings, the court found it inapplicable to matters “subject to such a genuine and significant public interest.”¹¹⁷⁴ According to the court, the exemption is not intended to force government entities to keep records of matters in which the public could not reasonably have an interest. But if there is a genuine public interest, government agencies cannot deny access to information by citing the “internal” nature of the information.

147. Regarding the exemption provided for in Section 522(b)(6), the court understood that the mere fact that the information was located in “personnel” archives did not allow the agency to deny non-confidential information. The court found that Congress’ intent in creating exemptions was to strike a balance of “the individual’s right of privacy against the preservation of the basic purpose of the Freedom of Information Act.”

148. The court therefore upheld the decision of the lower court and ordered that the information be released for inspection in the trial judge’s chambers.

¹¹⁷⁰ FOIA Act 1966, Section 522(b)(6).

¹¹⁷¹ Department of the Air Force v. Rose, 425 U.S. 352, 360-361 (1976), “a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language.” The court’s Web page is: <http://www.supremecourtus.gov/>. The full decision can be found at: <http://supreme.justia.com/us/425/352>.

¹¹⁷² Department of the Air Force v. Rose, 425 U.S. 352, 361 (1976).

¹¹⁷³ Department of the Air Force v. Rose, 425 U.S. 352, 361 (1976).

¹¹⁷⁴ Department of the Air Force v. Rose, 425 U.S. 352, 369 (1976).

f. Jurisprudence on the right to access information regarding salaries and income derived from public sources

149. On October 29, 2003, the Supreme Court of Canada handed down a ruling in the case *Information Commissioner v. Canada*. The case was on a request for information on the positions and postings of five Royal Canadian Mounted Police (RCMP), made by a citizen under the Canadian Access to Information Act.¹¹⁷⁵

150. The RCMP submitted partial information, limiting itself to reporting the current posting of its four active members and the last posting of the retired police officer involved in the request for access. The RCMP argued that the information on previous postings was “personal” information that was outside the reach of the access law in keeping with that established in the 1985 Privacy Act.¹¹⁷⁶

151. The Information Commissioner of Canada (an independent ombudsman appointed by Parliament) found that the information was not covered by the exemption of personal information and recommended it be turned over. However, the RCMP rejected the recommendation, for which reason the Information Commissioner of Canada requested the case be reviewed in court.

152. The Trial Division of the Federal Court of Canada ruled in favor of the RCMP, finding that it was only necessary to turn over information on current police employees, and on the last posting in the case of the retired officer. The Appeals Court rejected this interpretation and found that the law does not contain a temporal limitation on the access to information on State employees. However, the judges ruled that a request for information of this kind should be specific in relation to time, scope, and location, and cannot be used to “fish for” information with general requests.

153. The Supreme Court, meanwhile, rejected both restrictions on the right to access. First, the Court adopted a broad standard of review according to which a decision of the government to turn over or deny access to information must be reviewed by independent government bodies. In this respect, the court found that it was important to take into account the general purpose of the law, which is to “provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public.”¹¹⁷⁷

154. In applying this broad standard of review, the court found that the requested information was personal information, a concept that in the court’s opinion included individuals’ work history. However, the requested information was not protected by exemption, since Section 3(j) of the Privacy Act provided that it would be possible to access “information about an individual who is or was an officer or employee of a government institution that relates to the position or functions of the individual.”¹¹⁷⁸

¹¹⁷⁵ Access to Information Act 1985, R.S.C. 1985, c. A-1.

¹¹⁷⁶ Privacy Act 1985, R.S.C. 1985, c P-21.

¹¹⁷⁷ *Information Commissioner of Canada v. Commissioner of the Royal Canadian Mounted Police*, 1 S.C.R. 66 (2003), para. 17. Available at: <http://scc.lexum.umontreal.ca/en/2003/2003scc8/2003scc8.html>.

¹¹⁷⁸ Privacy Act 1985, R.S.C. 1985, c P-21., Section 3 (j) (which holds that) “for the purposes of sections 7, 8 and 26 and section 19 of the *Access to Information Act*, exception 3 does not include (...) (j) information about an individual who is or was an officer or employee of a government institution related to the position or functions of the individual....”

155. The court struck down the restrictive interpretations of the lower court judge and the Court of Appeals.

156. According to the Supreme Court, the Access Act “makes this information equally available to each member of the public because it is thought that the availability of such information, as a general matter, is necessary to ensure the accountability of the state and to promote the capacity of the citizenry to participate in decision-making processes.”¹¹⁷⁹

4. Jurisprudence on the obligation to respond in a timely, thorough and accessible manner

a. Jurisprudence on the obligation to provide a simple, quick and free administrative procedure for access to information

157. With regard to the obligation to have an administrative procedure for access to information, the Associate Courts of Mexico have held that in keeping with “the December 6, 2004, joint declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, the representative of the Organization for Security and Co-operation in Europe on Freedom of the Media, and the Organization of American States’ Special Rapporteur for Freedom of Expression [...] it is announced that as a basic principle of access to information, the process for accessing public information must be simple, quick, and free or of low cost.”¹¹⁸⁰

b. Jurisprudence on the obligation to provide an adequate and effective judicial recourse

158. In addition to incorporating international standards on the right to an adequate and effective recourse for the protection of the right of access to information, the April 27, 2007 *amparo* ruling of the Tax and Administrative Court of the Dominican Republic has characterized this right as pertaining to a autonomous recourse. According to the tribunal, the exercise of a recourse designed to guarantee the right of access cannot depend on the exhaustion of other legal remedies. For this recourse to work, it must be enough that the matter at hand involves the infringement of or certain threat to the right of access to information.

159. The case concerns a request for access to information made by a journalist to the State Secretariat for Public Works. The request sought copies of the plans approved for the construction of several projects in the Santo Domingo subway, as well as several geophysical and geotechnical surveys related to the projects. The request was denied on the grounds that the requested information was covered by a legal exemption – provided for in Subparagraph e), Article 17 of Law No. 200-04 – given that the public knowledge of the project could endanger the safety of its users, and as a consequence be detrimental to the national interest.

160. In its defense brief, the authority responsible for supplying the information made a request (among several) that the Tax and Administrative Court be declared not competent to hear the writ of *amparo* intended to protect the right of access to information in view of the fact that the appellant did not exhaust all administrative remedies before filing the writ.

¹¹⁷⁹ *Information Commissioner of Canada v. Commissioner of the Royal Canadian Mounted Police*, 1 S.C.R. 66 (2003), para. 32.

¹¹⁸⁰ Fifteenth Associate Administrative Court of the First Circuit, *Amparo en revisión* (denial) 85/2009. Jaime Alvarado López. March 11, 2009. Unanimous vote. Reporting: Armando Cortés Galván. Secretary: Gabriel Regis López. *Novena Época, Semanario Judicial de la Federación y su Gaceta XXIX, Tesis I.15o.A.118 A, Tesis Aislada*, Abril de 2009. Available at: <http://www.scjn.gob.mx/ActividadJur/Jurisprudencia/Paginas/IndexJurisprudencia.aspx>

161. The petitioner replied to these objections during the hearing, indicating that when the law on free access to public information provides for a writ of amparo, it is referring to a recourse that prevents the defenselessness of citizens against the power of the State and provides for this basic right – which protects other fundamental rights - within the Dominican legal system.

162. To resolve the procedural question at hand, the court applied the criteria established by the jurisprudence of the inter-American system for examining the State’s obligation to provide an adequate and effective recourse that protects the right of access to information provided for in Article 13 of the American Convention.

163. The tribunal examined the Inter-American Court of Human Rights’ interpretation of Article 25 of the American Convention, which states, “Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.”¹¹⁸¹

164. The judges argued that Article 25 of the American Convention was applicable to the right of access to information contained in Article 8, Subparagraph 10 of the National Constitution and Article 13 of the Convention. The tribunal ruled that the recourse was enshrined in Law No. 437-06 as “an autonomous recourse that does not require the exhaustion of administrative remedies nor any other for admissibility; rather, it is sufficient that a fundamental right has been infringed up or that there is a possibility that such an infringement is imminent.”¹¹⁸²

165. Considering that this recourse does not require the exhaustion of other remedies, the tribunal called it “an action autonomous of all other procedures.” According to the tribunal, “for an amparo judge to admit the recourse, a fundamental right must have been violated, or there must be a possibility of that happening.” In the instant case, the court found that there was “a violation of a fundamental right, that right being the right of access to public information enshrined in the Constitution of the Dominican Republic, international treaties and law.”¹¹⁸³

166. In light of the obligations contained in Article 8 of the Constitution of the Republic, Article 13 of the American Convention, and Article 19 of the Universal Declaration on Human Rights, as well as the Law on Free Access to State Public Information, the court ruled that the recourse filed by the petitioner was admissible. Once the merits of the controversy were analyzed, the recourse would have the effect of protecting the petitioner’s right of access to information.

¹¹⁸¹ Tax and Administrative Tribunal of the Dominican Republic, *Sentencia* No. _024-2007. Exp. No.030-07-00078, Santo Domingo, Dominican Republic. p. 21. Available at: http://www.suprema.gov.do/novedades/sentencias/2007/luis_lora.pdf.

¹¹⁸² Tax and Administrative Tribunal of the Dominican Republic, *Sentencia* No. _024-2007. Exp. No.030-07-00078, Santo Domingo, Dominican Republic. p. 22. Available at: http://www.suprema.gov.do/novedades/sentencias/2007/luis_lora.pdf.

¹¹⁸³ Tax and Administrative Tribunal of the Dominican Republic, *Sentencia* No. _024-2007. Exp. No.030-07-00078, Santo Domingo, Dominican Republic. p. 26. Available at: http://www.suprema.gov.do/novedades/sentencias/2007/luis_lora.pdf.

c. Jurisprudence on the obligation to inform petitioners on the source, location, and format in which previously publicized information can be accessed

167. A ruling handed down on April 3, 2007,¹¹⁸⁴ by the Supreme Court of Justice of Panama reiterated that, in the event that requested information has already been publicized, the authority who receives the request for information has the obligation to indicate the source, location and format in which the requested information can be accessed.

168. The facts of the case that resulted in this ruling involved a private individual's request for information from the director of Panama's Social Security Administration (*Caja del Seguro Social*). The request sought information on whether Panamanian law allowed or prohibited a woman from registering her husband so that he can receive social security hospital and medical services.¹¹⁸⁵ The legal and constitutional deadlines expired, and the request was not answered by the relevant authority.

169. When the case was brought before the court, the relevant authority filed in its defense a performance report that confined its comments to arguing that the requested information was "of a general character, and therefore found in Article 138 of Law 51 of 2005 (Institution Act)" and also "in the public knowledge," for which reason no specific response was offered to the petitioner.

170. The Tribunal held that the relevant authority had not acted in keeping with the rules that regulate access to public information, considering that at no time did it provide the petitioner with the requested information and that at trial it had only justified its failure to provide information through the aforementioned report.

171. The tribunal held that "in the event that the information is already available to the public in printed forms such as books, public archives, and electronic formats accessible through the Internet, among others, it will inform the petitioner of the source, the location, and the format in which the previously published information can be accessed."¹¹⁸⁶ Likewise, the court indicated that even when the requested information appeared in law and was public and of general knowledge, the relevant authority had the duty to give a precise response within the legal time limit.

172. The Supreme Court of Justice of Panama granted the motion and ordered the public entity being sued to submit the requested information to the petitioner within 10 days.

d. Jurisprudence on due diligence and administrative assistance with regard to the right of access to information

¹¹⁸⁴ Supreme Court of Justice of Panama, *Expediente* 1154-06 Panama City, Panama, April 3, 2007. Available at: <http://bd.organojudicial.gob.pa/registro.html>.

¹¹⁸⁵ On October 30, 2006, the appellant in the *habeas data* filing requested that the aforementioned public entity indicate whether there was any provision prohibiting or limiting a woman from registering her husband as a dependent to receive the corresponding hospital and medical services. In the event that there was a provision addressing the situation, the appellant requested the date of the provision; otherwise, the appellant wished to be informed of the proper administrative process to follow in registering her husband.

¹¹⁸⁶ Supreme Court of Justice of Panama, *Expediente* 1154-06 Panama City, Panama, April 3, 2007. Decision of the full court. Available at: <http://bd.organojudicial.gob.pa/registro.html>.

173. In a ruling dated January 28, 2005,¹¹⁸⁷ the Constitutional Chamber of the Supreme Court of Costa Rica made an important connection between the “principle of informality to the benefit of the person administered” and the right of access to public information. In its ruling, the court held that any request for information from an entity that does not have the information but belongs to the same public body as the one that does have the information has the obligation to immediately transfer the request to the relevant entity for its resolution.

174. The incident that resulted in this ruling was a request for access to information, filed with two different branches of the same entity on two different occasions during the same month. In both cases, officials explained to the appellant that it was impossible to fully answer every point of the request¹¹⁸⁸ because part of the requested information was not in their power. They explained that the appellant must request it from other offices of the same public entity.

175. The court carried out an extensive analysis of the principles that must be observed for the guarantee of the right of access to information. In doing so, and in broad agreement with the standards established in inter-American human rights instruments and jurisprudence, the court expounded on the principles of transparency and administrative publicity, the provisions of the right of access to administrative information, and the bearers of the right and those responsible to respond, as well as matters deserving of protection and the limitations derived.

176. In ruling on the case, the tribunal’s judgment explained the provisions of the “principle of informality to the benefit of the person administered” and its connection to public administration’s obligation to comply with its obligations derived from the right of access to information.

177. According to the court, “The principle of informality to the benefit of the person administered with regard to administrative procedures is deeply rooted in the Constitution, based both on the *indubio pro actione* doctrine and in the right to access public administration’s own self-regulatory mechanisms [...]. Moreover, [...] inter-administrative coordination mandates that, given the person administered’s lack of knowledge of the complex and recondite structure of the administrative organization, any request or petition filed with a branch of the same entity or public body be immediately forwarded by that entity or body to the one competent to hear and resolve the request. In this way, the constitutional principles of efficacy, efficiency, simplicity and celerity in the compliance of administrative functions are fulfilled.”¹¹⁸⁹

¹¹⁸⁷ Constitutional Chamber of the Supreme Court of Costa Rica, Exp: 04-010480-0007-CO Res: 2005-00774 San José, Costa Rica, January 28, 2005. Available at:

http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&nValor1=1&nValor2=365503&strTipM=T&strDirSel=directo

¹¹⁸⁸ The information requested by the appellant included the following: a) the resolution reached by the Board of Directors in the case of the investigation of an individual, with the names of the directors who were present and those who voted in favor and against the recommendation of the entity directing the proceedings; b) the date of tender for the contracting of an attorney to carry out the investigation; c) in the event that the attorney had been contracted directly, the name of the other attorneys who were invited to participate in the tender and their bids; d) the bid of the attorney who was contracted; e) whether this attorney currently worked or had worked for JAPDEVA as an external advisor; f) whether this attorney has or had any relationship or professional connection with the head of JAPDEVA’s legal department.

¹¹⁸⁹ Constitutional Chamber of the Supreme Court of Costa Rica, Exp: 04-010480-0007-CO Res: 2005-00774 San José, Costa Rica, January 28, 2005. Available at:

http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&nValor1=1&nValor2=365503&strTipM=T&strDirSel=directo.

178. Consequently, the court found that there was an obligation to forward the request to the relevant branch within the same public entity in “the cases [in which] the issue is simple non-competence (within the same entity or public body), which must not be placed on the shoulders of the person administered, who does not know the internal distribution of the competencies among the different offices that make up an entity or body and does not have the duty to find that out.”¹¹⁹⁰

179. The tribunal concluded that “according to the principle of informality in public administration previously cited, the appellant’s arguments are correct [...], considering that [the authority from which information was requested] was obligated to attend the request for information filed by the appellant and forward it to the correct departments.”¹¹⁹¹

180. With regard to the issue raised on this point, the Constitutional Chamber ruled to “therefore grant the writ of amparo on this matter, for having infringed upon the constitutional principle of administrative coordination with respect to the fundamental right of access to administrative information in detriment to the appellant,”¹¹⁹² thereby obligating the authority in question to immediately turn over the requested information.

e. Jurisprudence on assent by default (*afirmativa ficta*)

181. According to a decision made by the Federal Institute of Access to Information (*Instituto Federal de Acceso a la Información Pública*), dated August 19, 2009,¹¹⁹³ when a person files a request for access to information and does not receive a reply by the deadline set forth by domestic law, the authority responsible is obligated (in principle) to turn over the requested information.

182. This case involves a private individual who filed a request for access to information with an entity known as “FONATUR” Operadora Portuaria, S.A. de CV., seeking a variety of information on the buildings on FONATUR property that had emergency stairways on the exterior. The petitioner did not receive an answer from FONATUR.

183. Upon receiving the request for verification for lack of response, the Federal Institute of Access to Information ordered FONATUR to report whether it had responded to the request in the appropriate time and fashion. However, as of the date of judgment in the case, the Institute had not received a written response.

¹¹⁹⁰ Constitutional Chamber of the Supreme Court of Costa Rica, Exp: 04-010480-0007-CO Res: 2005-00774. *Considerando* IV. San José, Costa Rica, January 28, 2005. Available at:

http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&nValor1=1&nValor2=365503&strTipM=T&strDirSel=directo.

¹¹⁹¹ Constitutional Chamber of the Supreme Court of Costa Rica, Exp: 04-010480-0007-CO Res: 2005-00774 *Considerando* V. San José, Costa Rica, January 28, 2005. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&nValor1=1&nValor2=365503&strTipM=T&strDirSel=directo.

¹¹⁹² Constitutional Chamber of the Supreme Court of Costa Rica, Exp: 04-010480-0007-CO Res: 2005-00774. *Considerando* V. San José, Costa Rica, January 28, 2005. Available at:

http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&nValor1=1&nValor2=365503&strTipM=T&strDirSel=directo.

¹¹⁹³ Federal Institute for Access to Public Information. *Expediente*: 279/09, Mexico, Distrito Federal, August 19, 2009. Available at: <http://www.ifai.org.mx/resoluciones/2009/3279.pdf>.

184. The Institute found that the failure to respond to a request for access by the deadline established by law “will be understood as assent” and ruled that the State entity was obligated to turn over the requested information in a period of no more than 10 working days, “paying all the costs generated by the preproduction of the informative material, unless this institute determines that the documents in question are classified or confidential.”¹¹⁹⁴

5. Jurisprudence on the right of access to information of personal information

a. Jurisprudence on access to information and personal rights

185. In a case in which U.S. federal judges had refused to turn over information on their personal assets, the Fifth Circuit Court of Appeals found that the public interest in a government subject to ethical limitations took substantial precedence over any private interest potentially affected by the revelation of that information.¹¹⁹⁵ In this sense, the Court restrictively construed the exemption for privacy and found that, because judges have taken on public responsibilities, their expectations of privacy are less than that of other people.¹¹⁹⁶

186. For its part, the Superior Federal Court of Brazil ruled on the same issue in a case that involved a lawsuit brought by a state employees union against the decision of the mayor of Sao Paulo to publish on the Internet the names, positions, and salaries of the 147,000 employees of that mayoralty and the 15,000 city contract workers. After weighing the rights involved, the court found that the principle of maximum disclosure of public information should prevail over the private interests involved. The court noted the importance of the Internet for controlling public funds and found that hindering the release of information on the monthly compensation of public servants would have “negative effects for the consistent exercise of official and citizen control over public funds.”¹¹⁹⁷

¹¹⁹⁴ Federal Institute for Access to Public Information. *Expediente*: 279/09, Mexico, Distrito Federal, August 19, 2009. Available at: <http://www.ifai.org.mx/resoluciones/2009/3279.pdf>.

¹¹⁹⁵ *Duplantier v. United States*, Fifth District Court of Appeals, 606 F.2d 654, paragraph 54 (1979). The Web page of the court is <http://www.ca5.uscourts.gov>. An analysis of this ruling in the context of the right of access to information can be found in the *amicus curiae* brief filed by the Open Society Justice Initiative in the case of *Defensoría del Pueblo c. Municipalidad de San Lorenzo*, heard by the Supreme Court of Paraguay.

¹¹⁹⁶ *Duplantier v. United States*, Fifth District Court of Appeals, 606 F.2d 654, paragraph 54 (1979).

¹¹⁹⁷ Superior Federal Tribunal, Ruling dated July 8, 2009. The Web page of the court is: <http://www.stf.jus.br>. The full ruling is available at: <http://right2info.org/resources/publications/Brazil%20S.Ct%20salarios%20SP%20Jul%202009.pdf>. An analysis of this ruling in the context of the right of access to information can be found in the *amicus curiae* brief filed by the Open Society Justice Initiative in the case of *Defensoría del Pueblo c. Municipalidad de San Lorenzo*, heard by the Supreme Court of Paraguay.

b. Jurisprudence on the obligation to submit a denial of documents for reasons of national security to judicial review in chambers and at the discretion of the magistrate

187. On August 24, 1978, the District of Columbia Court of Appeals ruled in a *per curiam* opinion on a request that two American citizens made of the Central Intelligence Agency (CIA) for “a copy of any file you may have on me.”¹¹⁹⁸ The CIA rejected the request and argued that the documents fell into several categories of exemption under the 1966 Freedom of Information Act (FOIA), Section 5 U.S.C. § 552 (b), for which reason it requested a dismissal.

188. The district court granted the motion and declined to inspect the documents in the judge’s chambers. According to the court, the sworn statement of a CIA operations director was enough reason to reject the request for review made by the plaintiffs. Specifically, the court declined to conduct an in camera inspection of the documents and adduced that in regards to documents and reports specifically excluded from public access by statute, in-chamber reviews rarely happened and are almost never “necessary or appropriate.” The District of Columbia Court of Appeals rejected this interpretation.

189. First, the Appeals Court began by noting that the purpose of FOIA was “to increase the American people’s access to information.” Second, the Court reviewed FOIA’s legislative evolution, which has amplified access under the act rather than restricted it.

190. Specifically, the court highlighted a 1974 modification that held that denials of requests for access should be reviewed by a court *in novo*, which would review the relevant documents in judges’ chambers.¹¹⁹⁹ The court found that because of this modification, the inspection of documents in chambers is necessary and appropriate under many circumstances. In addition, it held that although the government’s sworn statements indicated that the documents clearly fell under legal exemption, the burden to prove this statement fell to the government.

191. In this sense, Congress’ intention to provide for an objective and independent judicial review on matters of national security is clear. Congress trusted in the magistrates’ ability to analyze these matters in chambers and without risking the country’s security. In matters of this kind, judges must pay close attention to the government’s arguments; however the inspection of the documents in chambers is subject “to the discretion of the court, both in matters of national security as well as in any other kind.”

192. According to the court, “A judge has discretion to order in camera inspection on the basis of an uneasiness, on a doubt he wants satisfied before he takes responsibility for a de novo determination. Government officials who would not stoop to misrepresentation may reflect an inherent tendency to resist disclosure, and judges may take this natural inclination into account.”

193. In this case, the judges ruled that the arguments made by the CIA to deny the requested documents did not clearly demonstrate that the documents were covered by exemptions to FOIA’s principle of maximum disclosure. As a result of this and of the broad interpretation of in camera inspections procedure, the Appeals Court ordered that the case be returned to the lower court for a new ruling in accordance with the aforementioned criteria.

¹¹⁹⁸ Ray v. Turner, 585 F.2d 1187, 190 U.S. App. D.C. 290, 292 (1978), “a copy of any file you may have on me.” The court’s Web page is: <http://www.cadc.uscourts.gov/internet/home.nsf>. The full decision is available at: <http://openjurist.org/587/f2d/1187/ray-v-turner>.

¹¹⁹⁹ According to Section 5 U.S.C. § 552(a)(4)(B).

c. Jurisprudence on access to information on “uncollectable” tax debts

194. The Office of the Special Rapporteur has held that the right of access to information contained in Article 13 of the American Convention is not an absolute right, but rather is subject to limits that must adhere strictly to the requirements derived from Article 13.2 of the Convention – that is, conditions that are of an exceptional nature, legally enshrined, based on a legitimate aim, and necessary and proportional for pursuing that aim.

195. These rules for the establishment of limits to the right of access to information under Article 13.2 must be followed by domestic courts in order to guarantee the exercise of this right in accordance with inter-American law. On this point, the October 21, 2005 ruling of the Constitutional Chamber of the Supreme Court of Justice of Costa Rica on the right of access to tax information is relevant.¹²⁰⁰

196. On June 1, 2005, the appellant requested – from the General Director of Taxation (*Director General de Tributación*) – information on the individuals and companies declared by the Tax Administration as owning “uncollectible” debts in the years 2002, 2003, and 2004. The appellant requested information on the date of the declaration, the amount of money declared uncollectible, the reasoning for the declaration, the kind of taxes declared uncollectible, the justification for the declaration, the legal basis for the declaration, and the name and national identification number of those whose debts were declared uncollectible. In a June 14, 2003, response to the request, the director informed the appellant that there was a legal obstacle that blocked him from turning over the information – specifically, the information was of a confidential nature. This decision was repeated in the ruling on the writ of reconsideration that the appellant filed. Consequently, the appellant filed a writ of amparo before the Supreme Court of Justice for the violation of his access to public information.

197. In his arguments, the appellant claimed that, “despite requesting information on the companies and individuals declared uncollectible by the General Direction of Direct Taxation, this authority declined to supply the information, considering it confidential. This is a violation of the provisions in Subparagraph 30 of the Political Constitution. In reality, this is information related to the activity of this institution.”¹²⁰¹

198. For his part, the General Director of Direct Taxation indicated that, “The tax administration does not have the authority to turn over information to third parties that contains economic content that would allow one to determine the financial situation of taxpayers.”¹²⁰²

199. The court used tools of interpretation that closely coincide with the jurisprudential standards of the inter-American system to determine which of the parties was in the right. In this

¹²⁰⁰ Constitutional Chamber of the Supreme Court of Costa Rica, *Sentencia*: 14519, *Expediente*:05-011831-0007-CO, October 21, 2005. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ¶m2=17%20&nValor1=1&nValor2=327472&strTipM=T&Resultado=163&strTem=ReTem.

¹²⁰¹ Constitutional Chamber of the Supreme Court of Costa Rica, *Sentencia*: 14519, *Expediente*:05-011831-0007-CO, October 21, 2005. *Considerando* III. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ¶m2=17%20&nValor1=1&nValor2=327472&strTipM=T&Resultado=163&strTem=ReTem.

¹²⁰² Constitutional Chamber of the Supreme Court of Costa Rica, *Sentencia*: 14519, *Expediente*:05-011831-0007-CO, October 21, 2005. *Resultando* 2. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ¶m2=17%20&nValor1=1&nValor2=327472&strTipM=T&Resultado=163&strTem=ReTem.

sense, the Court studied whether the exception was prescribed previously by law, corresponded to an objective allowed by the American Convention, and was necessary in a democratic society.

200. Regarding the legal establishment of the supposed confidentiality limit (contained in Article 117 of the Code of Tax Rules and Procedures) cited by the director, the court found that in any case, the director “is making an erroneous interpretation of the confidentiality declared in this subparagraph. Although it is clear that the statements presented by private personages cannot be divulged because of the kind of information they contain, the same is not true when a debt has already been declared uncollectible, since there is evidence of a public interest in determining the way in which the administration managed a case like this.”¹²⁰³

201. According to the court, the aim presumptively pursued through the use of confidentiality “does not justify [...] declining to turn over information on accounts declared uncollectible, because only through this information are private individuals able to exercise adequate oversight of public finances, determining whether the Tax Administration took the necessary measures to confront the problems of defaults.”¹²⁰⁴ As pertains to the general interest surrounding knowledge of the activities of public authorities in the area of taxation, “It is clear that the lack of compliance with taxation responsibilities is a detriment to the Public Treasury, for which reason it is in the public interest of everyone to learn about unpaid debts, as long as this is the only way to determine if the administration has acted with due diligence in collecting public resources.”¹²⁰⁵ Finally, the court indicated that, “As for the obligation of transparency that should characterize public administration [...] the administration cannot deny access to information that is in the public interest when that information may reveal an improper use of funds that belong to all Costa Ricans, as is the case here.”¹²⁰⁶

202. As a consequence, since there was in reality no limit on the right to access, the tribunal ruled “that in the instant case there was an evident violation of the provisions of Article 30 of the Political Constitution, considering that the information requested by the appellant is evidently in the public interest”¹²⁰⁷ and not subject to any recognized exception under the laws or constitution of the State. The Court therefore ordered that the requested information be turned over to the appellant within a non-extendable deadline of eight days from the date of the notification of the ruling.

¹²⁰³ Constitutional Chamber of the Supreme Court of Costa Rica, *Sentencia*: 14519, *Expediente*:05-011831-0007-CO, October 21, 2005. *Considerando* V. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ¶m2=17%20&nValor1=1&nValor2=327472&strTipM=T&Resultado=163&strTem=ReTem.

¹²⁰⁴ Constitutional Chamber of the Supreme Court of Costa Rica, *Sentencia*: 14519, *Expediente*:05-011831-0007-CO, October 21, 2005. *Considerando* V. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ¶m2=17%20&nValor1=1&nValor2=327472&strTipM=T&Resultado=163&strTem=ReTem.

¹²⁰⁵ Constitutional Chamber of the Supreme Court of Costa Rica, *Sentencia*: 14519, *Expediente*:05-011831-0007-CO, October 21, 2005. *Considerando* V. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ¶m2=17%20&nValor1=1&nValor2=327472&strTipM=T&Resultado=163&strTem=ReTem.

¹²⁰⁶ Constitutional Chamber of the Supreme Court of Costa Rica, *Sentencia*: 14519, *Expediente*:05-011831-0007-CO, October 21, 2005. *Considerando* V. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ¶m2=17%20&nValor1=1&nValor2=327472&strTipM=T&Resultado=163&strTem=ReTem.

¹²⁰⁷ Constitutional Chamber of the Supreme Court of Costa Rica, *Sentencia*: 14519, *Expediente*:05-011831-0007-CO, October 21, 2005. *Considerando* V. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ¶m2=17%20&nValor1=1&nValor2=327472&strTipM=T&Resultado=163&strTem=ReTem.

d Jurisprudence on access to personal information of uninformed third parties and the scope of the State's obligations in the face of an especially onerous request for information

203. On August 14, 2009, Chile's Council for Transparency handed down a decision that is particularly relevant in its reiteration and incorporation of several criteria that, in keeping with domestic legislation, must be observed in the exercise of the right of access to information.¹²⁰⁸

204. According to the Council: (1) All information under the control of the State is public; (2) Strict scrutiny must be applied in the instant case to determine if turning over the "full names of private individuals" in response to a request for access could affect their rights to privacy, honor, and image; and (3) given the principles of facilitation and divisibility, if the fulfillment of a request is excessively burdensome to the operation of the entity in question, a review should be done to examine how to submit as much information as possible.

205. On April 30, 2009, a private individual requested all the claims and complaints on police activities received from citizens during 2008. The request sought the inclusion in each claim of – among other things – "the complete name of the person who filed the claim or complaint."¹²⁰⁹

206. On May 26, 2009, the Undersecretariat of the *Carabineros* police turned over the complaints requested without including complete names.

207. Three arguments were made to justify the denial of the full names of the claimants: (1) In the opinion of the Undersecretariat, the claims and complaints filed by private individuals could not in any way be considered "administrative acts, resolutions, proceedings, and documents" governed by the principles of transparency and publicity because those principles only obligate the authorities to turn over the content of acts, resolutions, records, files, contracts, and agreements, as well as all information prepared with public money; (2) the submission of the full names of the persons who filed the complaints could affect their private lives; and (3) on the possibility of verifying whether the people who filed the complaints would allow their names to be released, providing them with notification would have affected the functions of the Undersecretariat and unduly distracted its officials from the normal completion of their regular work.

208. Each of the aforementioned arguments was challenged by the petitioner, who maintained that he had the right of access. For this reason, he filed an amparo against the Undersecretariat of the *Carabineros* police with the Transparency Council on June 12, 2009.

209. In resolving the case, the Council first examined whether the complaints were public and open to the light of the transparency law; second, it determined whether the full names of the people who had filed their complaints during 2008 should also be made public; third, it ruled on the duty – contained in the transparency law – of informing each individual who filed a complaint of their right to deny permission for making their name public, allowing the authority to prepare a list of the names of those who give permission to make their names public. As previously mentioned in

¹²⁰⁸ Transparency Council, *Amparo* A91-09, ruling of August 14, 2009. Available at: http://www.consejotransparencia.cl/prontus_consejo/site/artic/20090706/asocfile/20090706202514/a91_09_decision_fondo.pdf.

¹²⁰⁹ The request sought information on the complaints filed with the Undersecretariat of the *Carabineros* [police], including the following details: a) The full name of the person who filed the claim or complaint; b) The reason for filing the claim or complaint; c) Whether the complaint was filed by letter, telephone, e-mail, or other method; d) Whether the complaint was forwarded to the General Direction of *Carabineros* and by which method – letter, e-mail, or telephone; and e) The recommendations for each complaint filed with the General Directorate of *Carabineros*.

this chapter, in applying the principle of relevance, the Council found that the complaints or claims in question were public information and subject to the transparency law.

210. In relation to the question of whether the full names of those who filed the complaints were also public, the Council found that, “The name of a private individual is personal information that is owned by each individual and a part of their personalities. As this is private information, it is protected [...] and can only be turned over or made public with consent, unless it has been obtained from a source accessible to the public. In this case, and as the examples of complaints submitted by the Undersecretariat of *Carbineros* in its briefs indicate (such as one from an official who was denied reinstatement because of his sexual orientation), connecting the name of the individual filing the complaint with the complaint or claim could certainly affect the rights of those whose names are released, including the right to a private life or privacy and the right to honor or image. Therefore, this Council recognizes that the release or submission of the names of all the individuals who filed complaints or claims – names requested by the petitioner – could inhibit the future filing of complaints or claims with the Undersecretariat of the *Carbineros*, especially on sensitive issues like the ones indicated [...].”¹²¹⁰

211. Given the request’s relevance to public control of this State entity, the Council ruled on the obligation to notify those who filed complaints about the request and to learn their wishes regarding the publicity of their names, a task that, in the opinion of the Undersecretariat, would unduly distract its officials from the standard completion of their regular work.

212. Effectively, according to the Council, the relevant authority had a duty to the effect “that when documents or records that contain information that can affect the rights of third parties are requested, the relevant body must inform the aforementioned third parties (in this case, those who filed the complaints) of this fact so that they can exercise their right to challenge the revelation of the requested information. Only when challenges are produced will the information be retained. The petitioner can then file an amparo with this Council to appeal the petition.”¹²¹¹

213. Regarding the ability of the Undersecretariat to expedite the notification of all the individuals who filed complaints, the Council found that applying the procedure for informing those who filed complaints of their right to oppose the release of their names “presumes an excessive use of the time of the officials who work for the Undersecretariat of the *Carabineros*, causing undue distraction and, in doing so, affecting the due completion of institutional functions.”¹²¹²

214. However, in the Council’s opinion, and in a reiteration of the public interest involved in the request for access, it was necessary “to know who has access to complaints filed before a public authority and what the effects of those complaints are” in order that “society can control the exercise of public administration.” This justified “on the basis of the principles of facilitation and divisibility [...] a revision of whether there is a way to turn over at least part of the information.”¹²¹³

¹²¹⁰ Transparency Council, Amparo A91-09, ruling of August 14, 2009. *Considerando* 6. Available at: http://www.consejotransparencia.cl/prontus_consejo/site/artic/20090706/asocfile/20090706202514/a91_09_decision_fondo.pdf.

¹²¹¹ Transparency Council, Amparo A91-09, ruling of August 14, 2009. *Considerando* 7. Available at: http://www.consejotransparencia.cl/prontus_consejo/site/artic/20090706/asocfile/20090706202514/a91_09_decision_fondo.pdf.

¹²¹² Transparency Council, Amparo A91-09, ruling of August 14, 2009. *Considerando* 9. Available at: http://www.consejotransparencia.cl/prontus_consejo/site/artic/20090706/asocfile/20090706202514/a91_09_decision_fondo.pdf.

¹²¹³ Transparency Council, Amparo A91-09, ruling of August 14, 2009. *Considerando* 10. Available at: http://www.consejotransparencia.cl/prontus_consejo/site/artic/20090706/asocfile/20090706202514/a91_09_decision_fondo.pdf.

215. The Council found that under these principles, the public authority must strictly scrutinize the claims and complaints in order to: 1) determine which claims and complaints refer to alleged police procedures that were carried out poorly and which refer to other administrative questions not related to police actions or inquiries, only taking into account those that fit into the former category; 2) distinguish whether the complaint or claim comes from a public entity or a private individual, revealing the names in the case of the former but not in the case of the latter, maintaining the obligation to notify private individuals of their right to challenge the release of their names in the response to the request for access to information.

e. Jurisprudence on the right of access to archives and public records containing information on the petitioner

216. A ruling on a writ of amparo by the Constitutional Chamber of the Supreme Court of Justice of Venezuela dated August 7, 2007¹²¹⁴ established that the right of access to the content of public records or archives containing information on the petitioner must not be limited to requests filed within the framework of an administrative procedure, since the guarantee of this right requires that information be turned over when the individual affected requires it.

217. The case refers to the challenge of a ruling by the Second Administrative Court, which had denied a student access to his academic records, located in the archives of the Universidad Central de Venezuela.

218. The *a quo* judge ruled that there had been no violation of the right to access under Article 143 of the National Constitution,¹²¹⁵ considering that “for a violation of the right to access to a file with information on the petitioner to have taken place, the denial must have been given in the framework of an administrative procedure in which the plaintiff has an interest with respect to the final Administrative ruling. This was not demonstrated in the instant case.”¹²¹⁶

219. In its ruling, the Venezuelan Constitutional Chamber found “that the *a quo* court incorrectly interpreted the provision and reached conclusions that cannot be derived from Article 143 of the Constitution” because “it is not evident [...] that for a violation there *must* be an *administrative procedure established*.”¹²¹⁷ For the Tribunal, the existence of an administrative procedure is subordinate to the violation of a right to information, and would be equivalent to the imposition of an unfounded limitation on the constitutional right.

220. In the opinion of the Constitutional Chamber, “Constitutional provisions should not be interpreted restrictively, but rather broadly, especially when constitutional rights like the right to information are at stake. This right, as indicated in the provision’s heading, belongs to all citizens,

¹²¹⁴ Constitutional Chamber of the Supreme Court of Venezuela, Exp. 00-2672, Caracas, Venezuela, August 7, 2007. Available at: <http://www.tsj.gov.ve/decisiones/scon/Agosto/1710-070807-07-0334.htm>.

¹²¹⁵ The article in question reads as follows: “Article 143. All citizens have the right to be informed in a timely and truthful fashion by the Public Administration of the status of legal proceedings in which they have a direct interest, as well as to know the final rulings adopted. Likewise, they have access to administrative archives and records, notwithstanding the acceptable limits allowed in a democratic society on topics related to domestic and foreign security, criminal investigations, and privacy. This is in keeping with the law that regulates the classification of documents containing confidential or secret material. Censorship of public officials who give information on matters under their responsibility is not allowed.”

¹²¹⁶ Constitutional Chamber of the Supreme Court of Justice of Venezuela, Exp. 00-2672, Caracas, Venezuela, August 7, 2007. *Apartado* IV. Available at: <http://www.tsj.gov.ve/decisiones/scon/Agosto/1710-070807-07-0334.htm>.

¹²¹⁷ Constitutional Chamber of the Supreme Court of Justice of Venezuela, Exp. 00-2672, Caracas, Venezuela, August 7, 2007. *Apartado* VI. Available at: <http://www.tsj.gov.ve/decisiones/scon/Agosto/1710-070807-07-0334.htm>.

without distinction of the legal relationship that might exist between the petitioner and the Administration."¹²¹⁸

221. The Tribunal therefore overruled the decision of the *a quo* judge, considering that the student who requested access to his academic records "has a right according to which the Office of Academic Control (*Oficina de Control de Estudios*) should turn over information on his academic development during the time that he was associated with the university. It should allow him to review his file and even take notes on its content, as well as copy it if he needs to."¹²¹⁹

6. Jurisprudence regarding restrictions on access to information

a. Jurisprudence on the general regime of limits to the right of access to information

222. As has been previously explained in this report, limits to the right of access to information must have a legitimate purpose that is in keeping with the provisions of Article 13.2 of the Convention. Also, they must be prescribed clearly and precisely by law, interpreted restrictively, and subject to broad and strict judicial control, just to name a few of the characteristics that make restrictions on this right acceptable in the eyes of the inter-American system. In light of this, it would be useful to examine the region's jurisprudence on this topic.

223. For example, the Constitutional Court of Colombia has developed and incorporated into its jurisprudence several criteria on limitations of the right of access to information. These limitations are highly compatible with the standards that the Office of the Special Rapporteur has promoted to the regions' States.

224. In a case on the supposed unconstitutionality of a law that regulates hidden spending, the Colombian court stated the principles used to determine the limits of the right of access. Effectively, this court found that, "A restriction of the right of access to public information – or the establishment of a legal exemption that holds back certain information – is only legitimate when: i) the restriction is authorized by law or the Constitution; ii) the provision that establishes the limit is clear and precise enough in its terminology that it does not provide opportunity for arbitrary or disproportionate actions of public officials; iii) public officials who chose to take refuge in the exemption give written justification of their decision, including citation of the legal or constitutional provision that authorizes it; iv) the law establishes a temporal limit on the exemption; v) adequate systems for watching over the information are in place; vi) administrative and judicial controls of the exempted actions or decisions are in place; vii) the exemption applies to the content of public documents but not to their existence; viii) the exemption applies to public servants, but does not block journalists who access the information from publishing it; ix) the exemption is strictly subject to principles of reasonability and proportionality; and x) judicial action or recourses are in place to challenge the decision to exempt particular information."¹²²⁰

b. Jurisprudence on the necessity of setting limits by law

¹²¹⁸ Constitutional Chamber of the Supreme Court of Justice of Venezuela, Exp. 00-2672, Caracas, Venezuela, August 7, 2007. *Apartado VI*. Available at: <http://www.tsj.gov.ve/decisiones/scon/Agosto/1710-070807-07-0334.htm>.

¹²¹⁹ Constitutional Chamber of the Supreme Court of Justice of Venezuela, Exp. 00-2672, Caracas, Venezuela, August 7, 2007. *Apartado VI*. Available at: <http://www.tsj.gov.ve/decisiones/scon/Agosto/1710-070807-07-0334.htm>.

¹²²⁰ Full Chamber of the Constitutional Court, *Sentencia C-491/07, Expediente D-6583*, Bogotá, Colombia, July 27, 2007. *Fundamento jurídico 12*. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/C-491-07.htm>.

225. Regarding the obligation to enact exemptions to the right of access through an act of the legislature, the Colombian court has said that, “No other branch of government has the authority to impose limits on this fundamental right. Doing so would be stepping outside its authority and contradicting the provisions of the Constitution.”¹²²¹

226. The court ratified this principle in a case in which Air Force authorities denied a citizen access to certain information because the information was confidential in accordance with Air Force rules contained in an administrative edict. The court found that it “is evident that the confidentiality of the administrative investigations into aerial accidents that the [Air Force] cites as grounds for the denial of documents to the petitioners does not originate in the law but rather in an edict from the Administration, handed down in the exercise of its regulatory function, as is the Aeronautics Regulations Manual (*Manual de Reglamentos Aeronáuticos*), passed by resolution [...] of the head of the Administrative Department of Civil Aeronautics (*Departamento Administrativo de la Aeronáutica Civil*). By the same token, being as it is that this case does not concern an exemption in the strict sense, such a regulation can hardly be relied upon to dismiss the plaintiff’s claims.”¹²²²

c. Jurisprudence on the need for laws that establish limitations that are clear and precise, not vague or generic

227. Likewise, the Colombian court established clear rules on the need for laws that place limits on the right to access to be written in clear and precise language. In this sense, the Court found that a law of this kind “must be precise and clear in defining what kind of information can be made confidential and what authorities can do so.”¹²²³ According to the court, the Constitution rejects “generic or vague provisions that can end up being a kind of general authorization for authorities to keep secret any information they feel is adequate at their discretion. So that this does not happen and the general rule of publicity is not inverted, the law must clearly and precisely establish the kind of information that can be made confidential, the conditions under which it can be made confidential, the authorities that can make it confidential, and the systems of control that supervise the actions that for this reason remain confidential.”¹²²⁴

¹²²¹ Third Review Chamber of the Constitutional Court, *Sentencia* T-705, see files T-1613624, T-1613625 T-1613626, T-1613627 joined, Bogotá, Colombia September 7, 2007. *Fundamento jurídico* 9. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/T-705-07.htm>.

¹²²² Invocation of judgment T-1268/91, issued by the Full Chamber of the Constitutional Court, *Sentencia* C-491/07, *Expediente* D-6583, Bogotá, Colombia, June 27, 2007. *Fundamento jurídico* 11. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/C-491-07.htm>.

¹²²³ Full Chamber of the Constitutional Court, *Sentencia* C-491/07, *Expediente* D-6583, Bogotá, Colombia, June 27, 2007. *Fundamento jurídico* 11. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/C-491-07.htm>.

¹²²⁴ Full Chamber of the Constitutional Court, *Sentencia* C-491/07, *Expediente* D-6583, Bogotá, Colombia, June 27, 2007. *Fundamento jurídico* 11. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/C-491-07.htm>.

d. Jurisprudence on the need for limited and reasonable time limits to be established on confidential information

228. Based on the rule of time limits for confidential material, the Colombian court found that a law that did not place a time limit on the confidentiality of disciplinary investigations was “a disproportionate restriction on the exercise of [...] fundamental rights.”¹²²⁵ The court ruled that the law was constitutional, but with the caveat that once the evidence had been gathered in the disciplinary process, the file should be made public. The court stated that, “Under these conditions, the public can be freely informed of the charges, the removal of charges, and the supporting evidence. The public can then access the file, even before any ruling is issued, ensuring that if new evidence emerges from the public scrutiny, it can be assessed before the final decision is made.”¹²²⁶ Extending the classification of information beyond this would be disproportionate and a violation of the right of access to public information.

e. Jurisprudence on the need for strict proportionality when the confidential nature of information is invoked

229. On December 3, 2007, the Second Review Chamber of the Constitutional Court of Colombia ruled on a writ of amparo (*tutela*) filed for the denial of information by the National Defense Ministry. In the case, a group of individuals had requested the names of the commanders of a checkpoint in an area where there had been a massacre. The information was needed to begin legal proceedings for failure in the duty to protect.¹²²⁷

230. The ministry denied the request for information, arguing that providing the names of these individuals affected their judicial guarantees, “among them the most elemental, the presumption of innocence, expressly recognized in [...] many international human rights treaties [because] [n]ot recognizing this right implies that the military and law enforcement personnel whose names are sought [...] are presumed guilty.”¹²²⁸

231. The Constitutional Court found: (1) that in the right of access to information, a test of strict constitutionality must be applied—that is, at the moment of restricting the right, the State must give sufficiently clear and compelling reasons demonstrating that confidentiality is useful, absolutely necessary, and strictly proportional to achieve a legitimate aim; and (2) that in some cases, keeping names confidential could meet both requirements – for example when it could violate the right to life and personal integrity. In this case, the court found that confidentiality was neither proportionate nor necessary. In its opinion, on analyzing the details of the case, the tribunal indicated that “the decision does not meet the standards of necessity and strict proportionality required by strict scrutiny of the [...] measure [because] the decision of the Defense Ministry nullifies the right of citizens to access information held by State institutions. In reality, the protection of due process and the presumption of innocence of the Police Force members whose

¹²²⁵ Full Chamber of the Constitutional Court, *Sentencia* C-491/07, *Expediente* D-6583, Bogotá, Colombia, June 27, 2007. *Fundamento jurídico* 11. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/C-491-07.htm>.

¹²²⁶ Full Chamber of the Constitutional Court, *Sentencia* C-491/07, *Expediente* D-6583, Bogotá, Colombia, June 27, 2007. *Fundamento jurídico* 11. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/C-491-07.htm>.

¹²²⁷ Second Revision Chamber of the Constitutional Court, *Sentencia* T-1025/07, Bogotá, December 3, 2007. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/T-1025-07.htm>.

¹²²⁸ Second Revision Chamber of the Constitutional Court, *Sentencia* T-1025/07, Bogotá, December 3, 2007. *Fundamento jurídico* 8. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/T-1025-07.htm>.

names the appellant requests could be achieved through measures that are less damaging to the right of access to information."¹²²⁹

232. The Court incorporated several international law standards on human rights to reiterate the precedency of freedom of expression over measures that would restrict it. The Court invoked Inter-American Court of Human Rights' Advisory Opinion 5/85 and its judgment in the case of *Claude Reyes et al. v Chile*.

233. However, the court found that in some exceptional cases, the measure could be proportional and necessary. This exception, which was not put forward during the legal proceeding, obligates an assessment of the details of who requested the names, the situation of those who live with their families or with family members outside the barracks, and whether the release of the information could violate their rights to life and personal integrity. Taking these details into consideration, it would be possible to deny a request for the names of the police officers, as long as the General Commissioner of the National Police certifies the conditions under which they live and justifies their names not being made public by citing the need to protect their lives and the lives of their families in the face of clear and present risk that is not avoidable in a way that is less restrictive to rights.

234. However, considering that this hypothetical was not the case, the Court concluded that maintaining the confidentiality of the names of the soldiers who participated in the massacre would not meet the standards of a strict test of constitutionality, and therefore the Police Force could take other measures less damaging to the right of access to information.

235. Therefore, the court ordered that the information requested by the petitioner be turned over, and that it include the names of the members of the Police Force, indicating their dates of service and their postings. However, the court found that the an inclusion of a name on the list should in no way be understood as a suspicion, indication, or recognition of responsibility.

236. In this way, the court incorporated into its jurisprudence the international and Inter-American framework of human rights protection through Article 13 of the American Convention on Human Rights, looking to interpretations of that article by the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights, and several statements and principles prepared by the Office of the Special Rapporteur for Freedom of Expression.

237. The Colombian court recalled that, "In Article 13.1, the American Convention on Human Rights holds that '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.'" It also recalled that the Inter-American Court of Human Rights reasoned that, "Article 13 indicates that freedom of thought and expression 'comprise the liberty to seek, receive, and disburse information and ideas of all kind....' This language establishes literally that those who are under the protection of the Convention have not only the right and freedom to express their own thoughts, but also the right and freedom to seek, receive, and impart information and ideas of all kinds. Therefore, when an individual's freedom of expression is illegally restricted, it is not only this individual's right that is being violated, but also the rights of everyone to 'receive' information and ideas. It is here that the right protected by Article 13 takes on special scope and character. Here the two dimensions of freedom of expression are clear. Effectively, this freedom demands on one hand that no one be arbitrarily blocked or prevented from expressing their own thoughts, and therefore

¹²²⁹ Second Revision Chamber of the Constitutional Court, *Sentencia* T-1025/07, Bogotá, December 3, 2007. Fundamento jurídico 12. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/T-1025-07.htm>.

represents an individual right; but it also implies, on the other hand, the collective right to receive any information and learn the thoughts of others."¹²³⁰

238. The Court also recalled that in its 2001 report, the Office of the Special Rapporteur for Freedom of Expression established that, "The absence of participation by society in terms of access to information that directly affects its members prevents the full development of democratic societies, increasing the potential for corrupt conduct in the administration of government and spawning policies of intolerance and discrimination. The inclusion of all segments of society in the processes of communication, decision-making, and development is fundamental to ensuring that the needs, opinions, and interests of individual citizens are taken into account in the processes of policy design and decision-making."¹²³¹

f. Jurisprudence on the obligation to prepare a public version of a document when the requested information is partially confidential

239. In an April 22, 2009 ruling on a writ of review, Mexico's Federal Institution of Access to Public Information reaffirmed – upon finding that part of the requested information was of a confidential nature and part of a public nature – the obligation of preparing a public version of requested documents to guarantee the right of access to information.

240. In this case, the appellant requested that the National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*) turn over information on a banking institution to carry out the sale of loans of its credit portfolio to another legal entity.

241. The National Banking and Securities Commission denied the request for information, arguing that it was "confidential" both because it contained personal information and because it was protected by banking secrecy.

242. In order to resolve the dispute on its merits, the Institute did an analysis of Mexican legislation on sale of loans and banking secrecy and concluded that "information on assets of a legal entity that include facts and actions of an economic, accounting, legal, or administrative nature and that could be useful to a competitor, [...] is [only] confidential when it is designated as such by those – either legal entities or individuals – it concerns; that is to say, information that refers to the private affairs, in this case, of a legal entity, and that is not excepted by a legal provision determining its publicity, must be considered confidential."

243. In the instant case, the Institute found that the requested documents "contain information on the assets of several of the legal entities that make up the credit portfolio that is the object of the sale of loan. In this sense, because it involves economic and legal actions on the assets of a legal entity, the information is of a confidential nature, considering that were it to be publicized, it would reveal economic facts or actions of a legal entity that could be useful to a competitor or affect business negotiations."

244. However, the Institute also noted that the requested documents contained information "relevant to the public performance of the National Banking and Securities Commission

¹²³⁰ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 69.

¹²³¹ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2001. OEA/Ser.L/V/II.114. Doc. 5 rev. 1. 16 April 2002. Chapter III. para. 14. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=137&IID=1>

as the authority responsible for statements that the subject made regarding the request for authorization, as well as the names of the public servants who endorsed the communication in carrying out their duties.”

245. For this reason, although part of the information contained in the requested communication was information on the assets of a legal entity, as well as other sensitive information, another part of the same document referred to the National Banking and Securities Commission’s failure of supervision and control, information which is by nature public.

246. Consequently, the Institute ordered “the National Banking and Securities Commission [...] to prepare a public version of the requested information” that only leaves out information that according to the classification criteria is protected by confidentiality.

g. Jurisprudence on the State’s duty to demonstrate causality and proof of damage in order to invoke the confidentiality of an administrative procedure

247. On August 18, 2009, Chile’s Transparency Council (*Consejo para la Transparencia*) made an important contribution to determining when records or deliberation produced prior to the execution of a resolution, measure or public policy should be confidential. The Council determined that if authorities wish to invoke confidentiality on the grounds that information refers to a deliberation or records produced prior to the execution of a resolution, measure, or policy, they are obligated to demonstrate that it complies with two requirements: (1) causality between the records or prior deliberation and the final resolution, measure, or policy; and (2) proof of damage to its work due to the distribution of the requested information.¹²³²

248. The incident that gave rise to this decision was a denial by the Chilean Undersecretary of Transportation of a request for information. The individual who made the request sought information on a 2008-2009 road tolls study carried out by a consultant. The Undersecretary maintained that the requested information was of a confidential nature.¹²³³

249. In the instant case, the Council determined that the grounds for confidentiality found in Chilean legislation demand “two copulative requirements that must be applied and satisfied: (...) a. That the information required involves records or deliberation prior to the adoption of a resolution, measure, or policy. b. That the publicity, knowledge, or distribution of the information would affect the body’s proper completion of its functions.”¹²³⁴

¹²³² Transparency Council, Amparo Ruling A79-09, August 18, 2009, Available at: http://www.consejotransparencia.cl/prontus_consejo/site/artic/20090706/asocfile/20090706202325/a79_09_decision_fondo.pdf.

¹²³³ The Undersecretary of Transportation denied the request for information on the grounds of secrecy or confidentiality, grounds, which are valid “when the publicity, communication, or knowledge of the information (when that information includes records or deliberations produced prior to adopting a resolution, measure, or policy) would effect the body’s due compliance with its functions, notwithstanding the publication of those documents after the decision is made.” In this sense, in his opinion, “the requested roadway toll study is a record that anticipates the eventual adoption of a public policy that allows for the confrontation of the traffic problems in the city of Santiago,” for which reason, according to the grounds cited, it should be confidential.

¹²³⁴ Transparency Council, Amparo Ruling A79-09, August 18, 2009, *Considerando* 3) Available at: http://www.consejotransparencia.cl/prontus_consejo/site/artic/20090706/asocfile/20090706202325/a79_09_decision_fondo.pdf.

250. According to the Council, the authority failed to demonstrate “that the distribution of the information would cause damage to the proper compliance of its functions.”¹²³⁵ The court added that, “The information required in this case covers a subject of great public relevance, both for its social importance regarding urban transportation and because the funds involved are part of the United Nations Development Program, for which reason the public interest demands the fostering of social control over this information. Indeed, rather than negatively affecting the functions of a government agency, knowledge and distribution of this information could prove a benefit, making government action on the adoption of necessary measures to solve the urgent problem of the urban transportation of passengers in the city of Santiago more transparent.”¹²³⁶

251. As a consequence, the Council ordered the Undersecretary of Transportation to turn over a copy of the 2008-2009 roadway toll study within 15 working days of the of the adoption of the decision, with the Council itself giving notice and verifying compliance.

7. Jurisprudence on the prohibition on punishing journalists or media outlets for publishing confidential information

252. The Constitutional Court of Colombia also reiterated that it is illegitimate to censor the publication of government information obtained by journalists, even if that information is confidential. In this sense, the Court indicated that “law [...] that prohibits the publication of extracts or summaries of the content of confidential investigations until after a ruling is handed down is inexecutable as it is clearly and unequivocally a form of censorship, violating as it does the freedom and independence of journalism activities.”¹²³⁷ The obligation to maintain the confidentiality of the information should be understood to be binding essentially on public officials but not on journalists who have obtained the information in good faith and can only be subject to subsequent liability under the terms of Article 13.2 of the American Convention.

¹²³⁵ Transparency Council, *Amparo* Ruling A79-09, August 18, 2009, *Considerando* 5) Available at: http://www.consejotransparencia.cl/prontus_consejo/site/artic/20090706/asocfile/20090706202325/a79_09_decision_fondo.pdf.

¹²³⁶ Transparency Council, *Amparo* Ruling A79-09, August 18, 2009, *Considerando* 6) Available at: http://www.consejotransparencia.cl/prontus_consejo/site/artic/20090706/asocfile/20090706202325/a79_09_decision_fondo.pdf.

¹²³⁷ Full Chamber of the Constitutional Court, *Sentencia* C-038/96, Bogotá, Colombia, February 5, 1996. *Fundamento jurídico* 16. Available at: <http://www.corteconstitucional.gov.co/relatoria/1996/C-038-96.htm>.

CHAPTER V NATIONAL INCORPORATION OF THE INTER-AMERICAN STANDARDS ON FREEDOM OF EXPRESSION DURING 2009

1. This chapter discusses some of the most important advances made in 2009 with respect to the domestic incorporation of inter-American standards on freedom of thought and expression. The Office of the Special Rapporteur considers it very positive that the legislative branches, national courts and other national authorities of several countries have incorporated into their decisions the standards set by the inter-American system for the protection of human rights on matters of freedom of expression. This domestic implementation process is one of the fundamental aims of the inter-American system in its capacity as subsidiary guarantor of the human rights of all those who inhabit the region. As such, strengthening the capacity of national systems for the protection of human rights has always been a concern of the IACHR and its Office of the Special Rapporteur. Likewise, familiarity with the judicial and legislative decisions of the region's States has enabled the regional bodies for the protection of human rights to promote and enrich their own doctrines and case law.

2. This chapter aims to contribute to this productive dialogue among the regional human rights bodies and the national bodies and authorities, with the conviction that sharing different experiences leads to a virtuous circle of mutual learning.

3. The legislative decisions reviewed in this chapter are extremely valuable in at least two regards. First, with the issuance of these provisions, the Member States take an important step to protect, guarantee and promote the free exercise of the right to freedom of expression in their respective territories, and advance the process of bringing national provisions into line with inter-American standards, thus meeting the obligation set forth in article 2 of the American Convention. In addition, the ratification of these standards by the legislative bodies is an example for other Member States to follow, in terms of the way in which legislative branches can facilitate, through regulatory measures, the incorporation of the inter-American standards into their national legal systems. The Office of the Special Rapporteur commends these legislative decisions and others that could not be included in this chapter, but which are mentioned in Chapter II of this report as part of the dissemination work set forth in its mandate of promoting freedom of expression in the Americas.

4. In order to present these examples of good practices, this chapter has been divided into four main sections. In the first part, the Office of the Special Rapporteur will provide a brief introduction to the issue of the legal integration of international human rights law and national law. The second part provides examples of legislative incorporation, specifically modifications of freedom of expression laws in Argentina and Uruguay. Third, the chapter will review seven specific cases of which the Office of the Special Rapporteur is aware, all decided in 2009, in which the inter-American doctrine and case law referring to Article 13 of the American Convention were taken expressly as criteria for the decisions. Although the cases cited in this section are not the only ones, and other examples may be found in the aforementioned jurisdictions as well as in other countries, they are illustrative cases worth mentioning. Finally, some conclusions are presented.

A. Implementation of the legal standards of the inter-American system in national legal systems

5. Article 2 of the American Convention establishes States' obligation to give domestic legal effect to the Convention's mandates. Meanwhile, article 33 of the American Convention establishes that the IACHR and the Inter-American Court have jurisdiction to hear matters related to the compliance of States parties with their inter-American legal obligations. The IACHR and the Inter-American Court, as guardians of the American Convention, are therefore authorized to interpret

the treaty, and the jurisprudence and doctrine found in their judgments defines the scope and content of the provisions that—in accordance with the aforementioned article 2—must be incorporated into the domestic law of States parties to the American Convention.

6. It is fundamental to mention that the States of the region have maintained on repeated occasions that the protection bodies of the inter-American system are fundamental in contributing to the States' efforts to develop and strengthen national systems for the promotion and protection of human rights.¹ Likewise, the Member States have confirmed on multiple occasions the importance of complying with the decisions of the Inter-American Court of Human Rights and following the recommendations of the IACHR.² In this same regard, the IACHR as well as the Inter-American Court have stated that the improvement of the inter-American system of human rights requires, as an essential step for its strengthening, that the Member States comply fully and effectively with the judgments of the Inter-American Court and the recommendations of the IACHR,³ and that they bring their national legal systems into line with inter-American human rights standards. With regard to freedom of expression, through resolutions 2287 (XXXVII-O/07), 2434 (XXXVIII-O/08) and 2523 (XXXIX-O/09), the OAS General Assembly has invited the Member States to consider the recommendations of the Office of the Special Rapporteur, particularly the recommendations made with respect to defamation, in terms of "repealing or amending laws that classify *desacato* and defamation as criminal offenses." Likewise, the General Assembly has reaffirmed to the IACHR that it follow up on the issues contained in the annual reports.

7. In accordance with the foregoing considerations, the incorporation of inter-American legal standards into domestic law constitutes both a legal obligation of States and a political commitment reiterated by the organs of the OAS. However, the obligation to give domestic legal effect to international human rights law also derives from a very important transformation in the constitutional regimes of countries in the hemisphere. In effect, developments in constitutional law in member States reveal the incorporation of open constitutional clauses that refer, in different ways, to human rights treaties, particularly the American Convention. In light of the relevance of this matter for the issue addressed in this chapter, it is worthwhile to briefly describe the different ways in which the region's constitutions incorporate inter-American human rights law into domestic law.

8. An initial incorporation mechanism arises when the constitution itself refers expressly to specific human rights treaties, including the American Convention. This mechanism thus makes it possible for the provisions of those instruments to complement the national legal system and to require that they be used to interpret the fundamental rights provisions contained in the constitutional or legal texts. For example, Article 75(22) of the 1994 Constitution of Argentina incorporated, with "constitutional ranking," several international human rights treaties that are considered complementary to the rights and guarantees recognized therein.⁴ Similarly, Article 93 of

¹ AG/RES. 2407 (XXXVIII-O/08) Strengthening of Human Rights Systems Pursuant to the Mandates Arising from the Summits of the Americas (June 3, 2008).

² AG/RES. 2407 (XXXVIII-O/08) Strengthening of Human Rights Systems Pursuant to the Mandates Arising from the Summits of the Americas (June 3, 2008).

³ OAS Permanent Council. Joint Appeal by the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights to the Representatives of the States at the Organization of American States. OEA/Ser.G CP/CAJP-1930/02, 23 April 2002.

⁴ Constitution of the Argentine Republic. Article 75. It is incumbent upon the Congress: (...) 22. To ratify or reject treaties entered into with other nations and with international organizations and concordats with the Holy See. Treaties and concordats have a higher rank than laws. The American Declaration on the Rights and Duties of Man; the Universal Declaration of Human Rights; the American Convention on Human Rights; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights and its Optional Protocol; the Convention on the Prevention and Punishment of the Crime of Genocide; the International Convention on the Elimination of All Forms of Racial

the Colombian constitution makes reference to the Rome Statute of 1998, which created the International Criminal Court. That article authorizes the Colombian State to accept the jurisdiction of that court.⁵

9. A second incorporation option is to refer generally to the human rights treaties ratified by the respective State. Some of the judgments discussed in this chapter demonstrate this incorporation mechanism, particularly the cases of Brazil, Colombia and Chile. For example, the Constitution of Bolivia establishes that the international treaties and covenants that enshrine human rights and prohibit its limitation in states of emergency prevail in domestic law.⁶ Article 256 in turn states that the human rights treaties “that declare rights more favorable than those set forth in the constitution shall be enforced preferentially over [the constitution],” and that the rights recognized in the constitution itself must be interpreted “in accordance with international human rights treaties when they provide more favorable standards.”⁷ The same is true of the constitutions of Brazil and Chile, which establish that the rights of their citizens are guaranteed by the constitution but also by the international treaties to which the States are parties.⁸ Article 23 of the Constitution of the Bolivarian Republic of Venezuela establishes the constitutional rank of “the human rights treaties, pacts and conventions [that] prevail in the national legal system, to the extent that they contain provisions on their enjoyment and exercise that are more favorable than those established by this Constitution and the laws of the Republic.”⁹ The same article provides that those treaties can be enforced immediately and directly by the courts and other government bodies. The Constitution of

...continuation

Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Convention on the Rights of the Child; while in force, have the rank of constitutional law, do not repeal any article of the first part of the Constitution, and must be understood as complementary to the rights and guarantees recognized therein. They may be denounced, if appropriate, only by the national Executive Branch, upon the approval of two-thirds of the total members of each Chamber. Other human rights treaties and conventions, once ratified by Congress, shall require the vote of two-thirds of the total members of each Chamber in order to enjoy constitutional ranking.

⁵ Constitution of Colombia. Article 93. The Colombian State may recognize the jurisdiction of the International Criminal Court in the terms provided in the Rome Statute, adopted on July 17, 1998 by the United Nations Conference of Plenipotentiaries, and consequently, may ratify this treaty in accordance with the procedure set forth in this Constitution. The admissibility of different treatment on substantive matters by the Rome Statute with respect to the guarantees contained in the Constitution shall have effects exclusively within the sphere of the subject matter regulated therein.

⁶ Constitution of Bolivia. Article 13. IV. The international treaties and conventions ratified by the Plurinational Legislative Assembly that recognize human rights and prohibit their limitation during States of Emergency shall prevail in the national legal system. The rights and duties enshrined in this Constitution shall be interpreted in accordance with the international human rights treaties ratified by Bolivia.

⁷ Constitution of Bolivia. Article 256. I. The international human rights treaties and instruments that have been signed, ratified or acceded to by the State, which declare rights more favorable than those contained in the Constitution, shall be applied with priority over the Constitution. // II. The rights recognized in the Constitution shall be interpreted according to the international human rights treaties when those treaties provide more favorable standards.

⁸ Constitution of Brazil. Article 5 § 2. The rights and guarantees established expressly in this Constitution do not exclude others derived from the system and the principles adopted from it, or by the international treaties to which the Federal Republic of Brazil is a party.

Constitution of Chile. Article 5. Sovereignty lies essentially with the Nation. It is exercised by the people through plebiscites and periodic elections and, also, by the authorities that this Constitution establishes. No sector of society or individual person may assume its exercise. // The exercise of sovereignty recognizes as a limitation the respect for the essential rights that emanate from human nature. It is the duty of the bodies of the State to respect and promote such rights, guaranteed by this Constitution, as well as by the international treaties ratified by Chile and in force.

⁹ Constitution of the Bolivarian Republic of Venezuela. Article 23. The treaties, covenants and conventions on human rights, signed and ratified by Venezuela, have constitutional ranking and prevail in the national legal system, to the extent that they contain provisions on the enjoyment and exercise of such rights that are more favorable than those established by this Constitution and under the laws of the Republic, and shall be immediately and directly enforceable by the courts and other Government bodies.

Colombia also makes reference to the international treaties signed by that country in Articles 93 and 214. The first of those articles provides that the “international treaties and conventions ratified by Congress, which recognize human rights and prohibit their limitation in states of emergency, shall prevail in the national legal system.” It further establishes that the rights enshrined in the Constitution “shall be interpreted in accordance with the international human rights treaties ratified by Colombia.” Finally, Article 214 provides that neither human rights nor fundamental freedoms may be suspended during states of emergency, and stipulates that “the rules of international humanitarian law” must be respected.¹⁰

10. Ecuador also incorporated these principles into its recently approved constitution. Thus, Article 11 of the new constitutional text provides that the rights and guarantees “established in the Constitution and in international human rights instruments shall be directly and immediately enforceable by and before any judicial or administrative public servant, *sua sponte* or at the request of one of the parties.”¹¹ The Constitution also sets forth the obligation of the State to guarantee human rights and the obligation of the legislature to bring the regulatory framework into line with the rights recognized by the Constitution and by the human rights treaties to which Ecuador is a party.¹² For its part, Peru set forth in Final and Temporary Provision Four that “the provisions on the rights and freedoms recognized in the Constitution shall be interpreted in accordance with the Universal Declaration of Human Rights and the international treaties and agreements on those rights and freedoms ratified by Peru.”¹³ It should likewise be noted that a great number of constitutions of the Americas incorporate international treaties in the so-called constitutional supremacy clauses, which establish the order of priority of the different sources of domestic law in those countries.¹⁴

11. Finally, a third option for the incorporation of international law arises when the text of the constitution neither refers directly to any treaty nor makes general references to international law, but incorporates a general opening clause, which may be one of two kinds: a substantive clause whereby the recognition of the rights established in the constitution does not exclude other rights pertaining to the individual; and a more procedural clause, by virtue of which the constitutions require that States comply in good faith with the agreements recognized in their international treaties.

¹⁰ Constitution of Colombia. Article 93. The international treaties and agreements ratified by Congress, which recognize human rights and prohibit their limitation during states of emergency, shall prevail in the national legal system. The rights and duties enshrined in this Constitution shall be interpreted in accordance with the international human rights treaties ratified by Colombia.

Article 214. The states of emergency referred to in the previous articles shall be subject to the following provisions: (...) 2. Neither human rights nor fundamental freedoms may be suspended. In all cases the rules of international humanitarian law shall be respected.

¹¹ Constitution of the Republic of Ecuador. Article 11. The exercise of rights shall be governed by the following principles: (...) 3. The rights and guarantees established in the Constitution and in international human rights instruments shall be directly and immediately enforceable by and before any judicial or administrative public servant, *sua sponte*, or at the request of one of the parties.

¹² Constitution of the Republic of Ecuador. Article 84. The National Legislature and all regulatory bodies shall have the obligation to adapt, substantively and procedurally, the laws and other legal provisions to the rights provided for in the Constitution and the international treaties, and those necessary to guarantee the dignity of the individual or of communities, peoples and nationalities. In no case shall the amendment of the Constitution, the laws, other legal provisions or acts of government violate the rights recognized in this Constitution.

¹³ Constitution of Peru, Fourth Final and Temporary Provision.

¹⁴ This is done, for example, by Bolivia (Article 410), Costa Rica (Article 7), Ecuador (Articles 424 & 425), Mexico (Article 133) and Paraguay (Article 137).

12. An example of the “substantive” clauses is provided in Article 33 of the Argentine Constitution, which states that, “the declarations, rights and guarantees enumerated in the Constitution shall not be understood to deny other rights and guarantees that are not enumerated, but which stem from the principle of the sovereignty of the people and the republican form of government.”¹⁵ In the same vein, the Ninth Amendment to the Constitution of the United States provides that, “the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”¹⁶ Ecuador, for its part, provides in Article 11 of its constitution that the recognition of rights established in the constitution and in the international human rights instruments “shall not exclude other rights derived from the dignity of individuals, communities, peoples and nationalities, which are necessary for their full development,”¹⁷ and Colombia and Venezuela have provisions that use nearly identical language to establish this principle.¹⁸

13. It is also notable that certain countries incorporate constitutional formulas that refer to general concepts contained in international human rights treaties. Thus, for example, Article 226 of the Constitution of Brazil provides that it is the duty of the State to ensure the “dignity” of children and adolescents. Similarly, the Bolivian Constitution establishes that the State is based “on the values of unity, equality, inclusion, dignity, liberty, solidarity, reciprocity, respect, complementarity, harmony, transparency, equilibrium, equal opportunity, social and gender equity in participation, common welfare, responsibility, social justice, distribution and redistribution of social goods and products.”¹⁹ The Constitution of Ecuador holds that the National Legislature must adapt the domestic legal framework not only to the rights contained in the Constitution and in international treaties but also with respect to the rights “necessary to guarantee the dignity of the individual, or of communities, peoples and nationalities.”²⁰ Through these types of clauses that use general concepts, judges can incorporate rights contained in international instruments.

14. In the same way, there are examples of “procedural” clauses in those provisions that impose upon different authorities the obligation to comply with the international agreements of States. Such is the case of the Constitution of Ecuador in relation to the President (Article 147) and the National Equality Councils (Article 156), to cite just two examples. Moreover, the constitution itself establishes a legal remedy for noncompliance aimed precisely at guaranteeing compliance with the judgments and reports of international bodies.²¹

¹⁵ Constitution of the Argentine Republic. Article 33.

¹⁶ Constitution of the United States of America. Amendment IX.

¹⁷ Constitution of the Republic of Ecuador. Article 11.7.

¹⁸ Constitution of Colombia. Article 94. The enunciation of the rights and guarantees contained in the Constitution and in the international agreements in force shall not be understood to deny others that, being inherent to every individual, are not set forth expressly in them.

Constitution of the Bolivarian Republic of Venezuela. Article 22. The enunciation of the rights and guarantees contained in this Constitution and in the international human rights treaties shall not be understood to deny others that, being inherent to every individual, are not set forth expressly in them. The absence of laws regulating these rights does not diminish the exercise of them.

¹⁹ Constitution of Bolivia, Article 8.II.

²⁰ Constitution of the Republic of Ecuador. Article 84.

²¹ Constitution of the Republic of Ecuador. Article 93. The purpose of the noncompliance action shall be to guarantee the application of the provisions of the legal system, as well as compliance with the judgments or reports of international human rights bodies, when the provision or decision sought to be enforced contains a clear, express and enforceable obligation to act or not to act. The action shall be filed before the Constitutional Court.

15. Even in the abovementioned cases of substantive and procedural clauses that contain general references, the case law has demonstrated in practice that it is possible, based on the general standards of interpretation of international and constitutional law, to make use of the inter-American legal standards. To this end, national judges have turned to notions such as the "special and privileged treatment" of international human rights instruments.

16. Thanks to these transformations, the case law from important courts in the region has incorporated international human rights law into domestic law through the direct enforceability of international treaties or the interpretation of constitutional rights in view of the doctrine and case law of the inter-American bodies responsible for the authentic interpretations of those treaties.

17. In light of the concerns that exist with regard to these forms of complementarity between international human rights law and domestic law, it is sufficient to say in this chapter that it is derived from the voluntary option of each one of the States that has agreed to comply, in good faith, with the provisions of international human rights law. As is well known, such provisions can only be complied with if they are enforced in the domestic legal system, with the objective of protecting, guaranteeing and promoting the human rights of the inhabitants of the respective State. Indeed, the international human rights treaties recognize legal prerogatives that may be enforced by the inhabitants of States' own countries, that is to say, by individual rights-holders besides other States. This specific nature of human rights treaties, which distinguishes them from other public law treaties, has been recognized by the different international courts and bodies, including the bodies of the inter-American system.²²

18. Based on the obligations to individuals arising directly from human rights treaties, local authorities are undertaking to overcome the classic theories that used to impose serious barriers to the domestic implementation of treaties, in order to concentrate on determining the best way to meet international human rights obligations in the interest of better protecting the individual in his own country. Indeed, the case law of several States that are signatories to international human rights treaties—including those theoretically attached to the dualist theory—has approached a monist-like interpretation when dealing with human rights treaties. This has enabled judicial authorities to take the international standards into consideration as tools that support their legal reasoning or conclusions of law. This "*de facto* monism" assumes the consideration of international treaties as tools for interpretation, which enables the courts to use them directly in matters regarding the protection of human rights.

²² On this point, in Advisory Opinion OC-2/82 of September 24, 1982, entitled *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75)*, the Inter-American Court stated that, "modern human rights treaties in general, and the American Convention in particular, are not multilateral treaties of the traditional type concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the contracting States. Their object and purpose is the protection of the basic rights of individual human beings irrespective of their nationality, both against the State of their nationality and all other contracting States. In concluding these human rights treaties, the States can be deemed to submit themselves to a legal order within which they, for the common good, assume various obligations, not in relation to other States, but towards all individuals within their jurisdiction." I/A Court H.R., *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights* (Arts. 74 and 75). Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2. para. 29. This idea has been reiterated in the case law of the Court in several cases, including the judgment on competence in the *Case of Ivcher Bronstein v. Perú*, in which the Court held: "The American Convention and the other human rights treaties are inspired by a set of higher common values (centered around the protection of the human person), are endowed with specific supervisory mechanisms, are applied as a collective guarantee, embody essentially objective obligations, and have a special character that sets them apart from other treaties. The latter govern mutual interests between and among the States Parties and are applied by them, with all the juridical consequences that follow there from for the international and domestic legal systems." I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Competence. Judgment of September 24, 1999. Series C No. 54. para. 42. See also I/A Court H.R., *Case of the Constitutional Court v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 55. para. 41.

19. Finally, as already suggested, another argument in favor of the domestic incorporation of international standards stems from the obligation that international law imposes upon the States, embodied in the concept of *pacta sunt servanda*. By virtue of this principle, a State may not invoke provisions of its national law to justify noncompliance with international obligations. Complementarily, the principle of *pacta sunt servanda* gives rise to a positive obligation for States to adapt their domestic legal systems to the international obligations assumed.

20. Nevertheless, it is important to mention here that although both international human rights law and constitutional law are incumbent upon all branches of government, national judges are, in general, the ones who have led this process to incorporate the provisions of international human rights law into domestic law. On this point it is worth recalling that, ultimately, the ability of States to correct human rights violations in the domestic legal system depends upon national judges, given that they are the ones called upon to investigate and try the cases in which such violations are at issue. If they do so in accordance with the requirements of international standards, the judges will be able to prevent the intervention of the international systems for the protection of human rights. This is another reason why the judicial incorporation of these standards is fundamental not only for obtaining effective substantive justice but also as a safeguard for the international responsibility of States.

21. In the same way, the judicial practices that are presented in this chapter indicate that if high-ranking judges, especially those in the constitutional courts, assert consistently and rigorously in their decisions that the judicial incorporation of international human rights standards is imperative, and if they make their case law binding upon other judges, they will be able to generate a multiplier effect on the decisions of other judges.

22. Finally, it is important to consider that the decisions of the different bodies of the inter-American system for the protection of human rights can be valuable to the national authorities in three ways: (i) they serve as criteria for the interpretation of the standards enshrined in the international treaties, given that those bodies are their authorized interpreters; (ii) they are particularly important as guidelines for identifying acts or omissions inconsistent with the rights recognized in the Convention; and (iii) they are guidelines for the States to take measures that seek to guarantee the observance of human rights and prevent future violations.

23. The cases discussed in this section prove that many of the obstacles to domestic incorporation of international law identified by legal practitioners can be overcome through legislative reforms or the judicial interpretation of the constitutional texts of the countries of the region.

B. Incorporation of standards on freedom of expression through legislative reform

24. During 2009, at least two legislative reforms of note were undertaken. First, as explained below, the State of Uruguay eliminated the penalties for the dissemination of opinions or information concerning public officials or matters of public interest, except when the person allegedly harmed is able to demonstrate actual malice.²³ In addition, Argentina, as a result of the judgment in the *Case of Kimel v. Argentina*,²⁴ proceeded to decriminalize the criticism of matters of public interest. The Office of the Special Rapporteur views these legislative advances positively and

²³ Office of the Special Rapporteur-IACHR. June 22, 2009. Press Release No. R38/09. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=750&IID=2>

²⁴ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177.

finds that they contribute decisively to protecting freedom of expression and promoting stronger public debate under democratic conditions. For purposes of disseminating these measures, their fundamental characteristics are outlined below.

1. The decriminalization of speech concerning matters of public interest in Uruguay²⁵

25. The Executive Branch introduced a bill before Congress with the aim of amending the criminal provisions that regulated subsequent liability for the broadcasting of any expression, opinion and/or dissemination of interest to the public. The Executive Branch intended to promote regulations on the activity and responsibility of the press in accordance with the "standards established under international human rights law." In particular, according to the bill's preliminary recitals, it sought the "incorporation of the prior history of the inter-American system for the protection of human rights, from the IACHR as well as the Inter-American Court."²⁶

26. The Office of the Special Rapporteur is pleased by these important reforms to the Criminal Code and the Press Law, which were ultimately passed by the legislature on June 10, 2009. Several aspects of the law deserve to be highlighted, as they are an example of the way in which States can incorporate the inter-American standards directly through legislative means.

27. First, while it did not totally depenalize, by enacting these reforms the State of Uruguay eliminated the penalties for the dissemination of opinions or information concerning public officials or matters of public interest, except when the person allegedly harmed is able to demonstrate actual malice. Thus, Article 4 of the law that was enacted establishes that any person who seeks to overcome the exemption from liability in defamation and libel cases must prove "the actual malice of the perpetrator in insulting individuals or violating their privacy." Second, in spite of the fact that the reform does not repeal all forms of *desacato*, it substantially reduces the scope of application of this offense and states expressly that no person shall be punished for disagreeing with or questioning authority. Third, the new legislation eliminates penalties for offending or insulting national symbols or attacking the honor of foreign authorities.

28. With regard to the application of inter-American legal standards, perhaps the most relevant point is that the new legislation states that the international treaties on the issue are governing principles for the interpretation, implementation and integration of the civil, procedural and criminal provisions on freedom of expression. Further, it recognizes expressly the relevance of inter-American legal standards, as well as their authorized interpretations. Article 3 of the law itself establishes that:

"The provisions set forth in the Universal Declaration of Human Rights, the American Convention on Human Rights and the International Covenant on Civil and Political Rights are governing principles for the interpretation, implementation and integration of the civil, procedural and criminal provisions on expression, opinion and dissemination, relative to communications and information. Likewise, the criteria contained in the judgments and advisory opinions of the Inter-American Court of Human Rights, and in the resolutions and reports of the Inter-American Commission on Human Rights, shall be taken into special consideration, provided that they do not lessen the standards of protection established under national law, or recognized by national case law."

²⁵ Bill introduced before the National Assembly of Uruguay. Available at: http://www.presidencia.gub.uy/web/proyectos/2008/09/CM556_26%2006%202008_00001.PDF

²⁶ Bill introduced before the National Assembly of Uruguay, p. 4. Available at: http://www.presidencia.gub.uy/web/proyectos/2008/09/CM556_26%2006%202008_00001.PDF

29. Thus, the National Legislature incorporated the international standards into the national legal system and made clear that the interpretation and application of the provisions in force must be guided by the highest standards on freedom of expression.

2. Amendments to the Criminal Code and the Press Law of Argentina to decriminalize speech in the public interest²⁷

30. On November 18, 2009, the Argentine Senate passed an amendment of the Criminal Code to decriminalize defamation offenses (*injuria* and *calumnia*). The initiative was introduced by the Executive Branch, which took it in part from a proposal submitted by a civil society organization, and had previously been passed in the House of Representatives on October 28, 2009.

31. This bill moved through the legislative process in compliance with the orders of the Inter-American Court in its May 2, 2008 judgment in the *Case of Kimel v. Argentina*.²⁸ In that decision, the Court ordered the Argentine State to amend its criminal laws on defamation offenses. In rendering this decision, the Inter-American Court took into consideration that “Criminal Law is the most restrictive and harshest means to establish liability for an illegal conduct,”²⁹ and that “the broad definition of the crime of defamation might be contrary to the principle of minimum and *ultima ratio* intervention of criminal law.”³⁰ The Inter-American Court’s judgment also held that, “an opinion cannot be subjected to sanctions, even more so where it is a value judgment on the actions of a public official in the performance of his duties.”³¹

32. This reform eliminates penalties for the dissemination of opinions or information concerning public officials or matters of public interest. Indeed, the legislative reform contains four important points. First, the law eliminates the penalty of imprisonment for the commission of criminal defamation offenses, replacing it with a monetary fine. Second, the law establishes that in no case shall expressions that refer to matters of public interest, or expressions that are not affirmative, constitute criminal defamation. Likewise, the provision establishes that speech harmful to another person’s honor shall not constitute criminal defamation when it bears relation to a matter of public interest. Third, the law provides that any person who publishes or reproduces, by any means, defamation inferred by another, may not be considered the perpetrator of such defamation, unless the content was attributed in a manner substantially faithful to the pertinent source. Finally, the law establishes that a person accused of defamation shall be exempt from punishment if he makes a public retraction prior to answering the criminal complaint or in the act of doing so, and that such retraction is not an admission of guilt on the defendant’s part. With this measure, retraction is an effective mechanism of making reparations without resorting to criminal penalties.

²⁷ Criminal Code. Law 26.551. Available at: <http://www.infoleg.gob.ar/infolegInternet/anexos/160000-164999/160774/norma.htm>

²⁸ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177.

²⁹ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. p. 76

³⁰ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. p. 76

³¹ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. p. 93

C. Decisions of national courts that incorporate inter-American standards on freedom of expression

33. In this section the Office of the Special Rapporteur will discuss seven cases decided by courts in Brazil, Colombia, Chile and Mexico during 2009. The Office of the Special Rapporteur highlights these cases for their proper use of the inter-American standards on freedom of expression, and would like to invite more local courts to be aware of this practice and to inform the Office of the Special Rapporteur of their decisions so that those cases may be similarly highlighted in future reports.

1. Judgment of the Federal Supreme Court of Brazil on the requirement of a professional degree for the practice of journalism³²

34. On June 17, 2009, hearing and deciding an extraordinary appeal, the Federal Supreme Court of Brazil ruled that the requirement of a diploma in journalism and professional registration with the Ministry of Labor, as a condition for the practice of the profession of journalism, is unconstitutional. In rendering its judgment the Court examined whether the mandatory degree requirement was an unjustified barrier to the exercise of freedom of expression. In its analysis, it incorporated expressly Article 13 of the American Convention and the relevant doctrine of the supervisory bodies for the enforcement of that treaty.

a. Brief summary of the case

35. The Federal Public Ministry, with the support of the Union of Radio and Television Companies of the State of Sao Paulo, filed a public civil action against an order of the Federal Regional Court of the Third Region. That order was based on Executive Order No. 972 of 1969, which required a person to have a diploma or university course in journalism registered with the Ministry of Education in order to engage in journalistic work. The Public Ministry argued that the law was contrary to the Brazilian Constitution, since it placed an unlawful restriction on the exercise of freedom of expression.

36. The 16th Federal Civil Court of Sao Paulo admitted the case and found it properly filed in part. That decision was appealed by the representative of the federal executive branch. The proceedings were then forwarded to and heard by the Federal Regional Court of the Third Region. That court overturned the judgment of the court of first instance, as it found that the professional qualification requirements were not unreasonable. The Regional Court held that the practice of journalism has a relevant social function and carries with it significant professional responsibility, and therefore State regulation of the practice of that profession is justified in order to protect it from irresponsible practice and prevent potential violations of fundamental rights. According to the Court, these restrictions are justified by the Constitution itself, which authorizes the legislature to regulate specific professions.

37. The Regional Court's judgment was subject to an extraordinary appeal filed by the Federal Public Ministry and the Union of Radio and Television Companies of the State of Sao Paulo. The representative of the Union also intervened in that proceeding to defend the Regional Court's interpretation.

³² Plenary Court, Supreme Federal Court of Brazil. Recurso Extraordinário 511.961. Sao Paulo. Rapporteur: Minister Gilmar Mendes. June 17, 2009. Available at: <http://www.stf.jus.br/portal/inteiroTeor/obterInteiroTeor.asp?id=605643&idDocumento=&codigoClasse=437&numero=511961&siglaRecurso=&classe=RE>.

38. The Federal Supreme Court declared that Article 4(V) of Executive Order 972 of 1969, which established the requirement of a diploma from a university course in journalism in order to practice the profession, was inconsistent with the Constitution because it was an unlawful restriction on the right to freedom of expression enshrined in the Federal Constitution.

b. Legal Reasoning of the Court and incorporation of inter-American standards

39. Through the abovementioned judgment, the Brazilian State set aside a restriction to the free exercise of the dissemination of opinions and information that had been established during the time of the military dictatorship and which was in flagrant contradiction to the case law of the Inter-American Court and IACHR doctrine. Along these lines, the Office of the Special Rapporteur views this case law very positively and notes the reasoning used by the Supreme Court to arrive at this conclusion.

40. The first issue that the Supreme Court addressed was the scope of Article 5.XIII of the Federal Constitution, which authorizes the legislature to establish requirements and regulations for the exercise of specific professions. On this point, the Supreme Court stressed that this reservation of legal authority is not absolute and, therefore, must be in keeping with proper standards of reasonableness and proportionality.

41. Accordingly, the Supreme Court then questioned whether the requirement of a professional degree to engage in journalistic activity could be considered a reasonable and proportionate regulation in a democratic society. To answer this question, the Supreme Court used inter-American doctrine and case law expressly.

42. First, the Court sought to establish whether journalistic activity was related to or different from other professions that required a university degree in order to practice, such as medicine or law. The Supreme Court thus considered that journalism is a profession that is distinct from those others due to the fact that it is closely related to the exercise of freedom of expression. In this respect, journalism is "the very expression and dissemination of thought and information, in continuous, professional and remunerated form."³³ Therefore, journalism and freedom of expression are two activities that overlap due to their very nature and cannot be considered and treated separately.

43. Based on this interrelatedness, the Supreme Court held that, "the requirement of a university diploma for the practice of journalism or the professional development of the freedoms of expression and information is not authorized by the Constitution, as it is a restriction, an impediment, a true, flat-out suppression of the effective exercise of freedom of expression, which is prohibited expressly by Article 220(1) of the Constitution."³⁴

44. The Supreme Court found that the offending law did not pass the proportionality test, as it was a prior restriction on the exercise of the right to freedom of expression. According to the Supreme Court, any control of this type that interferes with access to journalistic activity is a prior control that constitutes real prior censorship of freedom of expression.

45. The Office of the Special Rapporteur likewise notes the Federal Supreme Court's use of the inter-American standards in support of its decision. To this end, the Court based its

³³ Federal Supreme Court, RE 511.961 18/SP. p. 758.

³⁴ Federal Supreme Court, RE 511.961 18/SP. p. 761.

decision on Advisory Opinion OC-5/85, in which the Inter-American Court had already established that the requirement of a university diploma for the professional practice of journalism contradicts Article 13 of the American Convention. Accordingly, the Federal Court departed from the opinion of the Regional Court and the representative from the Executive Branch, who had opposed the use of the inter-American standards based on the notion that, if they were found to be binding, they should have been integrated into the national system with the rank of law, in which case the constitutional provision authorizing the legislature to regulate certain professions would take precedence. Although the Supreme Court did not discuss the legal ranking of those standards in depth, it found in practice that the inter-American bodies' interpretation of the right to freedom of expression contained in Article 13 of the American Convention was a useful guide in the interpretation of the corresponding provision of the Brazilian Constitution on freedom of expression (Article 220).

46. Likewise, the decision cited extensively to the considerations raised by the Office of the Special Rapporteur in Chapter III of its 2008 Annual Report, in the section entitled "Importance of journalism and the media for democracy; characterization of journalism under the American Convention."³⁵

2. Judgment of the Federal Supreme Court of Brazil finding the press law incompatible with the Constitution³⁶

47. The Federal Supreme Court of Brazil declared the country's press law, which had been enacted during the military regime, incompatible with the Federal Constitution. To this end, it gave an in-depth explanation of the scope and importance of freedom of expression in a democratic system, using—among other sources—the international standards on the issue.

a. Brief summary of the case

48. The Democratic Workers' Party (PDT) filed a constitutional action called *Arguição de Descumprimento de Preceito Fundamental* (ADPF), alleging that the Brazilian press law was inconsistent with the principles and provisions of the Federal Constitution. The law had been established in 1967 during the military dictatorship that ruled the country at that time. The plaintiffs asserted that several provisions of the law resulted in practices of censorship and punished journalists for the commission of criminal defamation offenses with jail sentences more severe than those established in the Criminal Code. They argued that such provisions were inconsistent with the right to freedom of expression established by the Federal the Constitution of 1988, and therefore it was proper to declare unconstitutional the entire law challenged in the lawsuit.

49. Upon examining the charges alleged in the suit and finding that it was properly filed, the Supreme Court declared the law incompatible with the Federal Constitution.

b. Legal reasoning of the court and application of inter-American standards

³⁵ Federal Supreme Court, RE 511.961 18/SP. p. 781; IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. paras. 177-183. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

³⁶ Plenary Court, Supreme Federal Court of Brazil. ADPF 130 / DF - Distrito Federal. Arguição de Descumprimento de Preceito Fundamental. Rapporteur: Minister Carlos Britto. April 30, 2009. Available at: <http://www.stf.jus.br/portal/inteiroTeor/obterInteiroTeor.asp?id=605411&idDocumento=&codigoClasse=776&numero=130&siglaRecurso=&classe=ADPF>.

50. The Office of the Special Rapporteur has expressed its satisfaction with this decision, as the press law had imposed severe penalties for criminal defamation offenses, and had permitted prior censorship and other measures that restricted the exercise of freedom of expression.³⁷ The Supreme Court indicated that this legislation was contrary to the right to freedom of expression. The Office of the Special Rapporteur highlights this decision and the case law on the protection of freedom of the press and the relationship between the exercise of this freedom and democracy.

51. The Supreme Court held that freedom of the press is a manifestation of the freedoms of thought, information and expression. Accordingly, full freedom of the press is the intangible heritage that demonstrates the political and cultural evolution of a people. According to the Court, given this intrinsic relationship between freedom of the press and democracy, the press must enjoy a freedom of action that is even greater than the freedom of thought and expression of individuals by themselves. The free press must likewise be plural; therefore, no monopolies or oligopolies must be allowed in this sector.

52. Likewise, the Supreme Court stressed that the press is a natural forum for the shaping of public opinion and an alternative to the official version of events. In this regard, critical thought is an integral part of complete and reliable information. Thus, the exercise of freedom of the press ensures the journalist's right to criticize any person, especially government agents and authorities. According to the Supreme Court, "journalistic criticism, due to its inherent relationship to public interest, cannot *a priori* be subject to legislative or judicial censorship."

53. According to the Supreme Court, the legal imposition of excessive monetary damages against communications media can, in and of itself, have a powerful chilling effect on freedom of the press. These kinds of damages violate the principle of proportionality of the restriction, and therefore violate freedom of expression.

54. In addition, the Supreme Court held that the State cannot, through any of its bodies, determine in advance what journalists may or may not say. Consequently, the Court decided that the press law should be declared unconstitutional in its entirety.

55. Based on these considerations, the Supreme Court ruled that there was an insurmountable substantive incompatibility between Press Law Law 5.250/67 and the Federal Constitution. The Court held that, in the future, potential abuses committed by journalists or communications media shall be subject to ordinary law.

3. Judgment T-298/09 of the Constitutional Court of Colombia, on confidentiality of sources³⁸

56. On April 23, 2009, in *tutela* [writ for the protection of constitutional rights] judgment T-298 of 2009, the Constitutional Court of Colombia protected the right to confidential sources, citing expressly the inter-American standards on freedom of expression.

³⁷ Office of the Special Rapporteur-IACHR. June 22, 2009. Press Release No. R38/09. Available at <http://www.cidh.org/Relatoria/showarticle.asp?artID=750&IID=1>.

³⁸ Third Chamber of Revision, Constitutional Court of Colombia. Judgment T-298/09. Bogotá, Colombia. April 23, 2009. Available at: <http://www.corteconstitucional.gov.co/relatoria/2009/T-298-09.htm>.

a. Brief summary of the case

57. In February of 2007, a Colombian newspaper published an article entitled, "Neiva Hospital Employees Turn on the Fan." According to the article, some doctors at the region's public hospital had given the reporter a letter condemning serious acts of corruption on the part of its director. The doctors indicated that one of those illegal acts "may have been" the financing of a senator's campaign. Given that the doctors had requested anonymity, the article neither identified nor mentioned by name those who had allegedly signed the letter. Nevertheless, the article mentioned that "the complaints have already been submitted to the Office of the Prosecutor General of the Nation, the Office of the Anticorruption Czar and the Attorney General's Office."

58. The senator in question alleged, among other things, that by virtue of the publication, the public had been left with the erroneous perception that he was involved in the acts of corruption that took place at the El Huila Hospital, and that this adversely affected his fundamental rights to honor and reputation. For this reason, he asked the newspaper for the letter signed by the doctors who made the allegations.

59. After hearing the case, and following an exhaustive examination of the right of correction and the confidentiality of journalistic sources, the Constitutional Court denied the plaintiff's right to see the confidential letter that had given rise to the proceedings or to oblige the newspaper to provide the names of those who had made the allegations.

b. Legal reasoning of the court and application of inter-American standards

60. In deciding the case, the Constitutional Court began by distinguishing the type of speech involved in the situation that was complained of. Thus, the Court framed the case according to the standard of the democratic interest of information relating to public affairs. From there, the Constitutional Court reiterated its doctrine on the "greatest breadth and resistance" of the right to freedom of expression in these cases.

61. At the same time, the Constitutional Court recognized that the reinforced protection of this right does not mean that it has no limits. In the words of the Constitutional Court: "Even though political speech and the criticism of public officials is subject to fewer limitations than perhaps the exercise of this right in other areas of lesser public relevance, it is certain that even in those cases freedom of expression has limits."³⁹ To the extent that in this case the right is accorded reinforced but not unlimited protection, it is necessary to determine what types of limitations to its exercise may be permissible. Here, the Constitutional Court made use of the inter-American standards to establish the framework of permissible restrictions. On this issue, the Colombian Court states:

The general framework of admissible limitations to freedom of expression is provided in Article 19 of the International Covenant on Civil and Political Rights, and Article 13 of the American Convention on Human Rights, which guide the interpretation of Article 20 of the Constitution and other related provisions. A careful reading of these provisions reveals that the limitations to freedom of expression (in a strict sense), information and press, must meet the following basic requirements in order to be constitutional: (1) they must be set forth in laws that are drafted clearly and precisely; (2) they must pursue certain compelling objectives; (3) they must be necessary to accomplish such objectives; (4) they must be subsequent to and not prior to the expression; (5) they must not constitute censorship in any of its forms, which includes the

³⁹ Third Chamber of Revision, Constitutional Court of Colombia. Judgment T-298/09. Legal Grounds 4.4. Bogotá, Colombia. April 23, 2009. Available at: <http://www.corteconstitucional.gov.co/relatoria/2009/T-298-09.htm>

requirement of maintaining neutrality with respect to the content of the expression that is limited; and (6) they must not affect the exercise of this fundamental right excessively.⁴⁰

62. On the issue of confidential sources, the Constitutional Court found that “the inviolability of professional privilege (confidentiality of sources) allows a journalist to maintain confidentiality with regard to the existence of specific information, its content, its origin or source, or the manner in which he obtained such information. The confidentiality of sources is a right that is fundamental and necessary to protect the true independence of the journalist, so he may practice the profession and satisfy the right to information without indirect limitations or threats that hinder the dissemination of information relevant to the public.”⁴¹

63. The Constitutional Court has considered the interpretation of the bodies of the inter-American system of human rights to be an authentic interpretation of the treaties of that system. Such interpretation is doctrine that is relevant in determining the scope of fundamental constitutional rights. Consequently, to find the scope of the right to freedom of expression and the guarantee of confidentiality of sources, the Court quoted verbatim Principle 8 of the Declaration of Principles,⁴² and the corresponding doctrine formulated by the Office of the Special Rapporteur, according to which “*confidentiality is an essential element in the undertaking of journalistic work and in the role conferred upon journalism by society to report on matters of public interest.*”

64. On the importance of the confidentiality of sources, and in light of the fact that the journalist who wrote the article in question had already had to flee and take refuge elsewhere because of the threats that the publication had provoked, the Constitutional Court stated: “Above all, in those cases involving large-scale criminal or mafia organizations, which have no scruples when they intimidate a source to prevent the revelation of information that may affect their interests, the confidentiality of the source becomes a privileged guarantee so that brave and independent journalism can do its work. (...) In those cases, greater diligence is required of journalists in the corroboration and assessment of information, but they cannot be required to reveal the source...”⁴³

65. In view of the foregoing arguments, the Constitutional Court found that the journalist and the newspaper had the full constitutional right to maintain the confidentiality of the source of the information published. In the Court’s opinion, although it was true that the senator affected by the information could have defended his rights much better had he known the identity of the authors of the letter quoted in the newspaper, it was also true that such information was subject to the right to protect sources and, consequently, could be kept confidential by the newspaper.

⁴⁰ Third Chamber of Revision, Constitutional Court of Colombia. Judgment T-298/09. Legal Grounds 4.8. Bogotá, Colombia. April 23, 2009. Available at: <http://www.corteconstitucional.gov.co/relatoria/2009/T-298-09.htm>

⁴¹ Third Chamber of Revision, Constitutional Court of Colombia. Judgment T-298/09. Legal Grounds 5.4. Bogotá, Colombia. April 23, 2009. Available at: <http://www.corteconstitucional.gov.co/relatoria/2009/T-298-09.htm>

⁴² Principle 8 indicates that: “*Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.*”

⁴³ Third Chamber of Revision, Constitutional Court of Colombia. Judgment T-298/09. Legal Grounds 5.8. Bogotá, Colombia. April 23, 2009. Available at: <http://www.corteconstitucional.gov.co/relatoria/2009/T-298-09.htm>

4. Judgment of the Labor Court of First Instance in Valparaíso in Chile: social protest and freedom of expression⁴⁴

66. On August 31, 2009, the Labor Court of First Instance in Valparaíso, in deciding a petition for the protection of constitutional rights in a labor-related case (*tutela laboral*), applied the inter-American standards on social protest and freedom of expression in order to protect a group of workers whose right to protest was being limited unlawfully.

a. Brief summary of the case

67. The president of the labor union of the company El Mercurio Valparaíso S.A.P. filed a petition for the protection of constitutional rights against his employer, a communications medium in the city of Valparaíso. His main objectives were: to obtain an order for the employer to turn over some photographs taken of the workers during a labor union march; the implementation of specific reparations measures; and the imposition of the fines established in the Labor Code against the employer for having violated the rights of the workers affiliated with the union.

68. The events giving rise to the case occurred in the context of the negotiation of a collective bargaining agreement between the unionized workers and the communications medium. This negotiation began in the month of April, 2009, and continued until May, 2009. In this context, on April 16, 2009, the union leaders, with the authorization of its members, participated "for the first time in its 182-year history" in a march convened by the Central Workers Union (CUT).

69. According to the statement of facts set forth in the judgment, the director of the newspaper *La Estrella de Valparaíso*, which was part of the group of companies sued, met with the workers and warned that photographs and videos would be taken of the workers who participated in the march, for purposes of later firing them. The march was held on the scheduled date and several employees of the defendant company participated in it. A company director was caught by another communications medium taking pictures of the march from a balcony at the newspaper's facility. In addition, the head of the newspaper's human resources department and the head of the administrative unit appeared that day in the company's lobby to watch and monitor which employees participated actively in the march.

70. The workers alleged that those acts violated their fundamental rights to freedom of expression, assembly and equality. The workers argued that the taking of photographs with the threat of termination, in addition to the workplace monitoring, violated their right to assembly and to expression, insofar as marches and protests are forms of expression that a State must respect and guarantee and that the newspaper must tolerate.

71. The company had two defense arguments. First, it maintained that the march was a subject of journalistic interest, and therefore it was justifiable that a written communications medium would seek to cover it by taking pictures. In addition, the representatives of the company asserted that the taking of photographs did not in itself violate any right, as subsequent to these events none of the workers who had participated in the march was fired. They argued that this

⁴⁴ Labor Court of First Instance of Valparaíso. RIT T-19-2009. RUC 09-4-0011952-7. Valparaíso, Chile. August 31, 2009. Available at:

http://laboral.poderjudicial.cl:9081/SITLAPORWEB/ConsultaDetalleAtPublicoAccion.do?TIP_Consulta=1&TIP_Cuaderno=0&CRR_IdCuaderno=0&ROL_Causa=19&TIP_Causa=T&ERA_Causa=2009&CRR_IdCausa=27973&COD_Tribunal=1338&

demonstrated that the newspaper's coverage had been guided strictly by a journalistic interest and did not aim to retaliate against the workers involved in the march.

72. Upon examining the facts and the allegations of the parties, the Court of First Instance ruled that the defendant company had violated the workers' freedom of expression. The Court therefore ordered the company to pay the court costs. The Court further ordered the company—in the case that the alleged photographs had been taken—to refrain from using those images or any other type of records that could harm the union or its members. It denied the claims alleging violations of the right to assembly and equality, as well as the request for the imposition of fines.

b. Reasoning of the court and application of inter-American standards

73. The Office of the Special Rapporteur notes the dual use of the inter-American standards in this judgment. First, the court used the inter-American standards to determine the legal framework applicable to the specific case. In addition, the rules of interpretation used in the regional case law and doctrine were also used by the court to resolve the issue at the heart of the case.

74. From the beginning of the case, the judge integrated the inter-American standards into the relevant legal framework to reach a decision. Thus, the applicable legal standards were set based on both the constitutional provisions (Art. 19.12 of the Constitution of the Republic) and the inter-American provisions (Art. 13 of the American Convention; Art. IV of the American Declaration; Art. 4 of the Inter-American Democratic Charter).⁴⁵ To this end, the court used the tools of harmonization and legal integration that are part of the Chilean Constitution itself (Art. 5.2). Based on this constitutional provision, the court found that it was possible to integrate into the constitutional legal framework "other guarantees that are enshrined and recognized in international treaties ratified by Chile and that have been incorporated thereby into domestic law."⁴⁶ This inclusion broadened considerably the legal framework applicable to the specific case.

75. Second, the very content of these national and international standards benefited from the interpretation of the right to freedom of expression in inter-American case law. The legal argument that justifies the application of the right to freedom of expression to the analysis of the case is based on inter-American doctrine, as systematized in the reports of the Office of the Special Rapporteur. Based on this doctrine, the judge recognized the triple role this right plays in the inter-American system: as an individual right of every person, as a channel for democratic expression, and as a key tool for the exercise of other rights.⁴⁷

⁴⁵ Labor Court Letras from Valparaíso. RIT T-19-2009. RUC 09-4-0011952-7. Conclusion of Law 15. Valparaíso, Chile. August 31, 2009. Available at :

http://laboral.poderjudicial.cl:9081/SITLAPORWEB/ConsultaDetalleAtPublicoAccion.do?TIP_Consulta=1&TIP_Cuaderno=0&CRR_IdCuaderno=0&ROL_Causa=19&TIP_Causa=T&ERA_Causa=2009&CRR_IdCausa=27973&COD_Tribunal=1338&.

⁴⁶ Labor Court Letras from Valparaíso. RIT T-19-2009. RUC 09-4-0011952-7. Conclusion of Law 15. Valparaíso, Chile. August 31, 2009. Available at :

http://laboral.poderjudicial.cl:9081/SITLAPORWEB/ConsultaDetalleAtPublicoAccion.do?TIP_Consulta=1&TIP_Cuaderno=0&CRR_IdCuaderno=0&ROL_Causa=19&TIP_Causa=T&ERA_Causa=2009&CRR_IdCausa=27973&COD_Tribunal=1338&.

⁴⁷ Labor Court Letras from Valparaíso. RIT T-19-2009. RUC 09-4-0011952-7. Conclusion of Law 15. Valparaíso, Chile. August 31, 2009. Available at :

http://laboral.poderjudicial.cl:9081/SITLAPORWEB/ConsultaDetalleAtPublicoAccion.do?TIP_Consulta=1&TIP_Cuaderno=0&CRR_IdCuaderno=0&ROL_Causa=19&TIP_Causa=T&ERA_Causa=2009&CRR_IdCausa=27973&COD_Tribunal=1338&.

76. Based on this last attribute and bearing in mind the doctrine produced by the Office of the Special Rapporteur, the national court linked the violation of the right to protest (right to assembly) with freedom of expression. This enabled it to conclude that "social protest is one more collective form of expression." By virtue of this principle, it concluded that "the involvement of workers in mass social acts falls within the sphere of protection of the fundamental guarantee under examination [the right to freedom of expression]."⁴⁸ As such, the potential employer retaliations against the workers who participated in the public demonstration and the acts of intimidation (filming and taking photographs) are facts that must be examined from the perspective of the right to assembly as well as the right to freedom of expression.

77. But the incorporation of this standard had fundamental substantive and procedural consequences in the decision of the case. According to Chilean labor law (Art. 485 of the Labor Code), the right to assembly is excluded from the sphere of protection of the petition for constitutional relief in a labor matter (*tutela laboral*), which was the action the workers had filed. However, freedom of expression can in fact be subject to judicial relief through this procedure. Thus, the Court decided the case based on standards on freedom of expression developed by the inter-American bodies, and it refrained from examining the facts from the perspective of the right to assembly protected by the Chilean Constitution. A different decision would have made it impossible for the court to reach the merits of the case for want of subject matter jurisdiction.

78. Once the legal framework was identified and the jurisdiction of the court was established, the judgment proceeded to compare the right to freedom of expression with the facts of the case in order to determine whether there had been any conduct that was prohibited by the pertinent provisions. The judgment turned then on examining whether the employer's acts were justified in the exercise of its rights (including freedom of expression), or whether, to the contrary, the acts alleged exceeded the scope of this sphere of protection and therefore violated the fundamental freedoms and rights of the union and its members.

79. To solve this legal problem, the judge again made proper use of international standards. In addressing the problem, in its judgment the court conducted a balancing test based on the rules set by the case law of the inter-American system. Based on this case law, the court set out to determine whether the employer's acts were consistent with the principle of proportionality, understood under the three assumptions specified by the IACHR and the Inter-American Court: the criteria of suitability, necessity and proportionality, *stricto sensu*.⁴⁹ In the application of this test to the specific case, the Court concluded that "the previously described monitoring that took place does not pass the test of necessity. It was not essential, and although it is true it is suitable, this lack of necessity renders unjustifiable the restriction to the fundamental right to freedom of expression that such measure entailed for the workers who were members of the complainant labor union."⁵⁰ This decision demonstrates how the inter-American standards are not only useful when

⁴⁸ The Labour Court Letras based its conclusion on the doctrine of the Office of the Special Rapporteur concerning the relationship freedom of expression and the freedom of assembly, protest and social mobilization. On this point, see: IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2005. OEA/Ser.L/V/II.124. Doc. 7. 27 February 2006. Chapter IV. paras. 98-108. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=662&IID=1>

⁴⁹ Labor Court Letras from Valparaiso. RIT T-19-2009. RUC 09-4-0011952-7. Conclusion of Law 17. Valparaíso, Chile. August 31, 2009. Available at : http://laboral.poderjudicial.cl:9081/SITLAPORWEB/ConsultaDetalleAtPublicoAccion.do?TIP_Consulta=1&TIP_Cuaderno=0&CRR_IdCuaderno=0&ROL_Causa=19&TIP_Causa=T&ERA_Causa=2009&CRR_IdCausa=27973&COD_Tribunal=1338&.

⁵⁰ Labor Court Letras from Valparaiso. RIT T-19-2009. RUC 09-4-0011952-7. Conclusion of Law 15. Valparaíso, Chile. August 31, 2009. Available at :

establishing the content and scope of abstract rights but also provide tools of interpretation that enable the national courts to apply those standards to specific cases where competing rights are at stake.

80. The Office of the Special Rapporteur notes the use that this court decision makes of the instruments provided by the inter-American system on legal standards and rules for the resolution of situations in which the exercise of rights is limited or violated. The decision also demonstrates how a dialogue can be established between national substantive laws and the standards of the inter-American system, and between the rules for case resolution and constitutional interpretation used by the national courts and the standards of the inter-American system for the protection of human rights. In this respect, the Office of the Special Rapporteur appreciates that during this year the Valparaíso Court has made use of the compilation of standards contained in the Office's 2008 Annual Report. Indeed, the report of the Office of the Special Rapporteur specifically served the Judge in the case for three purposes. First, it was useful in establishing the scope and meaning of the right to freedom of expression in general.⁵¹ Second, it was useful in defining the specific content of the relationship between freedom of expression and social mobilization.⁵² Finally, the report was useful in establishing the legal framework on which the final decision was based.⁵³

5. Decision of the Supreme Court of Mexico on the unconstitutionality of vague criminal laws that protect the honor and privacy of public officials⁵⁴

81. In its *amparo* [appeal for relief under the Constitution in a case of violation of civil rights] judgment of June 17, 2009, the Supreme Court implemented the inter-American standards on freedom of expression expressly in declaring the admissibility of the *amparo* action of a director of a communications medium. The director had been criminally convicted of the offense of "attack on privacy," for having published an article about a government official. The Supreme Court, with the express application of the inter-American standards on the issue, found that the State of Guanajuato's criminal provisions to protect honor and privacy were incompatible with the Constitution.

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⁵¹ On this point, the judgment states, "The 2008 Annual Report of the Office of the Special Rapporteur for Freedom of Expression of the Organization of American States (OAS) has referred to the meaning and scope of the right to freedom of expression in the legal framework of the Inter-American Human Rights system...."

⁵² In this regard, the court's decision states, "[The Office of the Special Rapporteur] has stated in its report that social protest is one of the most effective forms of collective expression. In view of all of the foregoing, this Court concludes that the fundamental guarantee under examination includes within its scope of protection the participation of workers in mass social acts."

⁵³ Thus, in summarizing the provisions on which it bases its decision, the Court first cites the provisions of the Constitution, several ILO provisions, "Article 13 of the American Convention [...] Article IV of the American Declaration, Article 4 of the Inter-American Democratic Charter, the 2008 Annual Report of the Office of the Special Rapporteur for Freedom of Expression of the Organization of American States (OAS), [and] Articles 1, 2, 5, 432 *et seq.* and 485 *et seq.* of the Labor Code."

⁵⁴ First Chamber of the Supreme Court of the Nation of Mexico. Amparo Directo en Revisión 2044/2008. June 17, 2009. Rapporteur: Ministro José Ramón Cossío Díaz. Secretary: Francisca María Pou Giménez and Roberto Lara Chagoyán. Available at: <http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/08020440.010.doc>.

a. Brief summary of the case

82. On December 23, 2004, an interview was published in a regional communications medium in the State of Guanajuato. In that interview, a former municipal public servant made statements concerning activities that he had had to perform, and orders he had received during the time he worked as a driver for the Municipal President of Acámbaro. As a result of that publication, the public official filed a criminal complaint alleging that "everything that had been published was untrue, that those statements caused him dishonor, discredit and harm—by indicating, *inter alia*, that he had made improper use of public funds—and that they discredited him and made a fool of him as a public official."⁵⁵

83. The Public Prosecutor named the director of the communications medium as the alleged perpetrator of the crime of attacks on privacy. On January 25, 2007, the Trial Judge for Civil and Criminal Matters of the Acámbaro Judicial District convicted the defendant for the offense of attacks on privacy, and imposed a prison sentence of three years, one month and fifteen days. The judge also denied the defendant the privileges of probation and commutation of the sentence, but granted him a substitute sentence of community service. The judgment was appealed. The appellate court amended the judgment with respect to the reparation of the harm but affirmed the rest of the holding.

84. The director of the communications medium filed an action for direct *amparo* against the criminal conviction. The court of first instance denied the *amparo*, and the plaintiff filed a motion for review before the Three-Judge Court, which affirmed the lower court's decision. The Three-Judge Court based its decision on the following considerations: i) freedom of expression has limits, and the legislature may specify them in the regular performance of its regulatory duties; ii) the offense in question considers an attack on privacy to be all statements or expressions made in print, or in any other manner circulated publicly, which expose a person to hatred, scorn or ridicule, and can cause harm to his reputation and interests; iii) the attacks covered by the Press Law of the State of Guanajuato are a valid limitation to constitutional guarantees insofar as they refer to privacy but not to the conduct of public officials in the performance of their official duties; and iv) the protection of the reputation of individuals is a justified limitation to the work of the communications media.

85. The Three-Judge Court ordered that the case be forwarded to the Supreme Court of the Nation, because it alleged the unconstitutionality of the state criminal law pursuant to which the criminal penalty was imposed. The Supreme Court overturned the *amparo* judgment, declared the unconstitutionality of several articles of the Press Law of the State of Guanajuato, and thereby overturned the criminal sentence imposed against the director of the communications medium.

b. Legal reasoning of the court and application of inter-American standards

86. In this monumental decision, the Mexican Supreme Court overruled the court decisions in both the criminal case and the *amparo* suit, holding that they violated the right to freedom of expression recognized by the Mexican Constitution and the American Convention. Essentially, the Court found four reasons to arrive at its conclusion: 1) the legal reasoning of the lower courts reflected an erroneous understanding of the role the law plays in the development and

⁵⁵ First Chamber of the Supreme Court of the Nation of Mexico. Amparo Directo en Revisión 2044/2008. Statement of Facts, Point One. June 17, 2009. Rapporteur: Ministro José Ramón Cossío Díaz. Secretary: Francisca María Pou Giménez and Roberto Lara Chagoyán. Available at: <http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/08020440.010.doc>

consolidation of fundamental rights; 2) the legal reasoning reflected an erroneous understanding of what is entailed in resolving a conflict between fundamental rights in a specific case; 3) the courts operated with an improper understanding of public officials' right to honor and to privacy; and 4) there was an incorrect interpretation of the Constitution that led to a prison sentence based on Articles 1, 3, 4, 5, 6, 7 and 8 of the Press Law of the State of Guanajuato, which must be declared unconstitutional.⁵⁶

87. The Office of the Special Rapporteur would like to emphasize that the legal reasoning of the Supreme Court was based, in large part, on the standards that the inter-American system has developed on the subject. As was established expressly in the text of the judgment, the Supreme Court availed itself in its decision of the judgments and advisory opinions of the Inter-American Court, as well as the decisions and recommendations of the Inter-American Commission and the reports and opinions of the Office of the Special Rapporteur. In this respect, there are four highly relevant issues involved in the incorporation of the inter-American standards into national law.

88. First, the Supreme Court affirmed the content and scope of the right to freedom of expression protected by the inter-American system in the broad sense. At the same time, the Court recognized that the exercise of that right entails duties and responsibilities for the person expressing himself. In the words of the Supreme Court, "the freedoms of expression, press and information enshrined in the Constitution and in the treaties have limits."⁵⁷ These limits are specified strictly by the international treaties and by the Constitution of Mexico. In this regard, the Supreme Court establishes that the above "does not mean that any legal regulation presented as a manifestation of those limits is automatically legitimate."⁵⁸

89. The Supreme Court thus turned to the inter-American standard to evaluate the admissibility of limitations to the right to freedom of expression. Consequently, it understood that any limitation must meet several substantive and procedural requirements. The mere existence of a

⁵⁶ Articles 1, 2, and 3 of the Press Law of the State of Guanajuato referred to attacks on privacy, attacks on morals and attacks on public peace or order in terms such as the following: "ARTICLE 1.- The following shall constitute attacks on privacy: I.- Any malicious statement or expression made verbally or through signs in the presence of one or more people, or by written or printed means, drawings, lithographs, photographs or any other means that, exhibited or circulated in public, or transmitted by mail, telegraph, telephone, radiotelegraphy or message, or by any other means, exposes a person to hatred, scorn or ridicule, or could cause harm to his reputation or interests."; ARTICLE 2.- "The following shall constitute attacks on morals: I.- Any verbal or written expression, or expression by any other means enumerated in section I of the preceding article, which publicly defends or excuses, counsels, or propagates vices, crimes or misdemeanors, or promotes them or their perpetrators;" ARTICLE 3.- "The following shall constitute attacks on order or public peace: I.- Any malicious statement or exhibition made publicly through speeches, cries, songs, threats, [that are] handwritten or printed, drawings, lithography, photography, cinematography, recording, or in any other form, that has the purpose of discrediting, ridiculing or destroying the institutions of the State or by which the State, the Municipalities, or the officials of such Entities are defamed."

Article 7 established that an expression was made publicly when it was made or carried out in the streets, squares, avenues, theaters or other public meeting places, or in private places, but in such a way that it could be observed, seen or heard by the public.

Finally, Article 8 referred to incitement to anarchy. This conduct occurred when a person "counsels or incites robbery, murder, the destruction of property through the use of explosives, or if these offenses or their perpetrators are promoted, as a means of achieving the destruction or the reform of the existing social order."

⁵⁷ First Chamber of the Supreme Court of the Nation of Mexico. Amparo Directo en Revisión 2044/2008. Conclusion of Law 5, p. 16. June 17, 2009. Rapporteur: Ministro José Ramón Cossío Díaz. Secretary: Francisca María Pou Giménez and Roberto Lara Chagoyán. Available at: <http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/08020440.010.doc>.

⁵⁸ First Chamber of the Supreme Court of the Nation of Mexico. Amparo Directo en Revisión 2044/2008. Conclusion of Law 5, p. 16-17. June 17, 2009. Rapporteur: Ministro José Ramón Cossío Díaz. Secretary: Francisca María Pou Giménez and Roberto Lara Chagoyán. Available at: <http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/08020440.010.doc>.

law that expressly sets limits is not sufficient for the restrictions it establishes to be considered valid. On this point, the Supreme Court looks to the inter-American case law that has considered in general terms that fundamental rights must be exercised with respect for other rights, and that the State plays a key role in the process of harmonization, through the establishment of the limits and responsibilities necessary for that harmonization.⁵⁹

90. Second, the Supreme Court acknowledged the existence of a differentiated standard of protection for different types of speech, especially in terms of the reinforced protection of specially protected speech, as has been developed in the case law of the inter-American system. Particularly important in the case at hand is the Court's analysis of the protection of political speech, and speech concerning matters of public interest, in relation to the protection of the privacy of the public official involved in the events. The Supreme Court began by weighing the role of the subjects involved in the events, noting the significance to the case that "the holder of the right to privacy who wishes to have his rights preserved through the use of the criminal law is, or has been, a public official."⁶⁰

91. This precision enabled the Supreme Court to apply a specific standard to the facts of the case: the greater protection accorded to expressions, information and opinions relevant to matters of public interest. It is notable that the IACHR has asserted that the use of criminal mechanisms to penalize expressions concerning matters of public interest or public officials, candidates for public office or politicians violates *per se* Article 13 of the American Convention, as there is no compelling social interest that justifies it, it is unnecessary and disproportionate, and furthermore it may constitute a means of indirect censorship given its intimidating and chilling effect on speech concerning matters of public interest.⁶¹ As an educational exercise, it is worth quoting the manner in which the Supreme Court internalized those standards:

One of the most agreed-upon specific rules in the sphere of comparative law and international human rights law—precipitated by repeated exercises in the balancing of rights, including those meant to examine the legislature's balancing tests in general provisions—is the rule according to which individuals who perform or have performed public duties (in the previously defined broad terms), as well as candidates for public office, have a right to privacy and honor that is generally less protected than that of ordinary citizens when confronted by the acts of the mass media in the exercise of the rights of expression and information.⁶²

92. Following this doctrine, the Supreme Court stated that in cases where the right to the honor of public officials conflicts with freedom of expression, the balancing test must start with the *prima facie* priority of freedom of expression, which acquires a greater weighted value because

⁵⁹ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 75.

⁶⁰ First Chamber of the Supreme Court of the Nation of Mexico. Amparo Directo en Revisión 2044/2008. Conclusion of Law 5, p. 19. June 17, 2009. Rapporteur: Ministro José Ramón Cossío Díaz. Secretary: Francisca María Pou Giménez and Roberto Lara Chagoyán. Available at: <http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/08020440.010.doc>

⁶¹ IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*, cited in I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 101.2); IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 72.h).

⁶² First Chamber of the Supreme Court of the Nation of Mexico. Amparo Directo en Revisión 2044/2008. Conclusion of Law 5, p. 33. June 17, 2009. Rapporteur: Ministro José Ramón Cossío Díaz. Secretary: Francisca María Pou Giménez and Roberto Lara Chagoyán. Available at: <http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/08020440.010.doc>

it deals with a kind of speech that is accorded special protection under the American Convention. In the opinion of the Supreme Court, the freedom to impart and receive information protects vigorously the expression and dissemination of information on political issues and, more broadly, on matters of public interest. Political speech is more directly related than other types of speech—for example, commercial advertising speech—to the social aspect and the institutional functions of the freedoms of expression and information. Therefore, the protection of its free circulation is especially relevant so that these freedoms can properly perform their strategic functions in the shaping of public opinion, within the structure inherent to representative democracy.

93. Third, the Supreme Court referred to the type of limitations compatible with Article 13 of the American Convention. The central issue on this point was to determine whether the criminal penalties established by the state law could be considered valid measures for the subsequent imposition of liability for the abusive exercise of the right to freedom of expression. This reasoning proceeded on the basis that inter-American law requires that, to repair the harm caused by such abusive exercise, the States must choose the means least costly to freedom of expression. On this point, the Court reproached the Three-Judge Court for failing to apply this standard and for not having analyzed the relevance of the application of criminal law to the case. The Court held expressly that "there is no trace of any analysis designed to determine the conditions under which the need for limits could be so strong and intense as to justify the use of the criminal law (the most intense and dangerous instrument in the limitation of rights, which must be a tool of last resort in a constitutional democracy)." ⁶³

94. The Supreme Court thus established—in a manner similar to how the inter-American case law has—that the subsequent imposition of liability for imparting specially protected speech that allegedly violates the honor of public officials or other individuals related to the performance of public duties cannot be a necessary, suitable and proportionate judicial response unless the following conditions, *inter alia*, are met: a) legal support and clear language; b) specific intent to cause harm or clear negligence (*actual malice*); c) actual, verified harm; and d) varying degrees of liability and the minimization of indirect restrictions.

95. Upon applying this test to the specific case, the Supreme Court found that several provisions of the Guanajuato Press Law were contrary to the right to freedom of expression protected by the Mexican Constitution and by the American Convention. To start, the Supreme Court found that Article 1 of the Press Law of Guanajuato should address especially serious and clearly verified attacks on reputation. However, in referring simply to statements or expressions that expose a person to hatred, scorn or ridicule, or that can harm his reputation or interests, Article 1 criminalized even cases in which the harm to a person's good reputation was merely a possibility. Furthermore, the Supreme Court found a lack of specificity and excessive breadth of other expressions in other articles. In view of these considerations, the Court concluded that the law did not meet the conditions of the principle of precision encompassed by the general principle of criminal legality. It found that it also failed to meet the requirement, functionally equivalent in this case, that all restrictions to freedom of expression be established in advance in a law that is drafted clearly and precisely. Thus, according to the Supreme Court, "The Press Law of the State of Guanajuato is a statute, but it is vague, ambiguous, overly broad and open: it does not meet the basic conditions that would enable it to be classified as a constitutionally (and conventionally) admissible restriction to the rights protected under Articles 6 and 7 of the Constitution." ⁶⁴

⁶³ First Chamber of the Supreme Court of the Nation of Mexico. Amparo Directo en Revisión 2044/2008. Conclusion of Law 5, p. 18. June 17, 2009. Rapporteur: Ministro José Ramón Cossío Díaz. Secretary: Francisca María Pou Giménez and Roberto Lara Chagoyán. Available at: <http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/08020440.010.doc>

⁶⁴ First Chamber of the Supreme Court of the Nation of Mexico. Amparo Directo en Revisión 2044/2008. Conclusion of Law 5, p. 50. June 17, 2009. Rapporteur: Ministro José Ramón Cossío Díaz. Secretary: Francisca María Pou
Continued...

96. Finally, the judgment of the Supreme Court makes reference to the exercise of freedom of expression through the communications media and its relationship to democracy. On this issue, the Supreme Court pointed out, for example, that the mass communications media play an essential role in the collective function of freedom of expression. Thus, based on Advisory Opinion OC-5/85 of the Inter-American Court, the Mexican court stressed that "the communications media are among the basic shapers of public opinion in current democracies, and it is essential that conditions be assured for them to accommodate the most diverse information and opinions."⁶⁵

97. The Supreme Court distinguishes in its analysis between the forming of opinions and the circulation of information. It recalls that only the second type of speech can be required, as stated in the Constitution, to be "true and impartial" information. Nevertheless, the Supreme Court calls for a correct interpretation of the scope of those terms, which is quite relevant in the context of constitutional litigation.

98. Once again, the Supreme Court undertakes an integrated interpretation between the requirements of truthfulness and impartiality set forth in the Mexican Constitution and the standards set by the inter-American bodies. Thus, the Court stated that "truthful" information does not imply that it must be "true," that is, clearly and incontrovertibly certain. In the Supreme Court's opinion, "to require this would distort the exercise of rights." Under this understanding, the mention of truthfulness entails simply a requirement that the reports, interviews and journalistic articles meant to influence public opinion be supported by a reasonable practice of research and fact-checking aimed to determine whether what is to be disseminated is sufficiently based in reality. The informer must be able to demonstrate in some way that a certain standard of diligence has been respected in the verification of the facts he is reporting, and if he does not arrive at indubitable conclusions, the information must be presented in such a way as to give that message to the reader. He must suggest with sufficient clarity that there are other points of view and other possible conclusions regarding the facts or events recounted. As for the requirement of impartiality, the court recognized that this requirement does not demand absolute impartiality; rather, it is a barrier against the intentional dissemination of inaccuracies and against the unprofessional treatment of information whose dissemination always has an impact on the lives of the individuals involved. What the Supreme Court essentially does is adopt the standard of actual malice to define potential subsequent liabilities.

99. In sum, the Office of the Special Rapporteur appreciates the Supreme Court's use of the doctrine and case law compiled by the Office in its 2008 Annual Report. Indeed, as mentioned, in establishing its doctrine on the requirements for the subsequent imposition of liability for specially protected speech that allegedly violates the honor of public officials, the Supreme Court mentions expressly that it found support in the standards set forth in "paragraphs 64 and 63 of Chapter III of the 2008 Annual Report of the Office of the Special Rapporteur for Freedom of Expression of the Organization of American States, published in May of this year."⁶⁶

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Giménez and Roberto Lara Chagoyán. Available at:
<http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/08020440.010.doc>

⁶⁵ First Chamber of the Supreme Court of the Nation of Mexico. Amparo Directo en Revisión 2044/2008. Conclusion of Law 5, p. 30. June 17, 2009. Rapporteur: Ministro José Ramón Cossío Díaz. Secretary: Francisca María Pou Giménez and Roberto Lara Chagoyán. Available at:
<http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/08020440.010.doc>

⁶⁶ First Chamber of the Supreme Court of the Nation of Mexico. Amparo Directo en Revisión 2044/2008. Conclusion of Law 5, note 31. June 17, 2009. Rapporteur: Ministro José Ramón Cossío Díaz. Secretary: Francisca María Pou
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6. Decision of the First Chamber of the Supreme Court of the Nation of Mexico on the special protection of the right to freedom of expression concerning matters that may be in the public interest⁶⁷

100. On October 7, 2009, the Supreme Court of the Nation in Mexico, in deciding a direct *amparo* case, implemented the inter-American standards on the special protection of the right to freedom of expression with respect to matters that may be of public interest.

a. Brief summary of the case

101. A Mexican citizen, the wife of a former President of the Republic, filed an ordinary civil action against a journalist and the communications media (a magazine) that employed her. The plaintiff alleged that the journalist and the magazine had violated her rights to privacy and honor, in an article the magazine published about the reasons for which the plaintiff had requested the annulment of her first marriage. As a result of this alleged harm, the plaintiff requested the payment of money damages for the pain and suffering caused by the journalist and the magazine; she further requested that the court order the publication in the defendant magazine of the judgment of the civil court under the same terms in which the article had been published.

102. The lawsuit was heard in the Twelfth Civil Court of the Federal District, which ruled for the plaintiff. First, the Court ordered the journalist and the magazine to pay damages jointly. Second, the court ordered the journalist and the magazine, again jointly, to publish a summary of the judgment in the magazine.

103. The defendants filed an appeal that was heard by the First Civil Division of the Superior Court of Justice of the Federal District. That court overturned in part the judgment of the court of first instance. On one hand, the court found that the magazine had no liability for the violation of rights, based on the following arguments: i) the information published in the magazine was simply a reprint of a report previously published in a book (accurate report); ii) there was no criticism or opinion given by the editor in the presentation of the information; iii) it had not been proven that the information was false or inaccurate; and iv) the information was of public interest in that it concerned a public figure, as the plaintiff was the wife of the President of the Republic and, therefore, it was common knowledge that the plaintiff was the "country's first lady."

104. On the other hand, the Court affirmed the sentence against the journalist, but decided to reduce the amount of the money damages. According to the court, the journalist had already published the same information in a book, to which the plaintiff had not consented. As such, the publication of the same information in the defendant magazine was a new act on the part of the journalist, from which it is inferred that the journalist acted with malice and with the clear intention of harming the plaintiff's reputation and privacy. Consequently, the court ordered the journalist to publish an excerpt from the judgment in the newspaper *El Sol de México* at her own expense.

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Giménez and Roberto Lara Chagoyán. Available at:
<http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/08020440.010.doc>

⁶⁷ First Chamber of the Supreme Court of the Nation of Mexico. Amparo Directo 6/2009. October 7, 2009. Rapporteur: Ministro Sergio A. Valls Hernández. Secretaries: Laura García Velasco and José Álvaro Vargas Ornelas. Available at: <http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/09000060.001.doc>.

105. The plaintiff was dissatisfied with this decision and filed for protection and relief in the federal courts. The First Chamber of the Supreme Court of the Nation, in its judgment of October 7, 2009, found all of the violations alleged by the plaintiff to be unfounded.

b. Legal reasoning and application of inter-American standards

106. In the opinion of the Office of the Special Rapporteur, the value of this decision is two-fold. First, it affirms the case law on the application of the inter-American standards on the special protection of the right to freedom of expression with regard to matters that may be of public interest, as set forth in the judgment discussed in the above paragraphs. Furthermore, in this decision the Supreme Court established important criteria for deciding cases involving alleged conflicts between the exercise of freedom of expression and the privacy of public or well-known figures.

107. First of all, the Supreme Court reiterated, based on the standards set by the Inter-American Court in the *Herrera Ulloa v. Costa Rica* case, that "one of the means by which the circulation of information and public debate are most powerfully limited is the imposition of civil or criminal liability against journalists, for their own acts or the acts of others."⁶⁸ Bearing this situation in mind, the Mexican case-law, adopting the inter-American standards, reiterated the need to apply specific rules for the resolution of conflicts among expression, information and honor in cases involving public officials. Those rules state that "the collective or systematic function of freedom of expression and the right to information, and its specific underlined features, must be considered carefully when such freedoms conflict with the so-called personal rights, including the right to privacy and the right to honor."⁶⁹

108. The Supreme Court states that this case was not about a public official or a candidate for public office; rather it was about a "high-profile" person. In this respect, in the Supreme Court's view, the fundamental legal issue is to discern how freedom of expression and the right to information operate when dealing with individuals who, due to certain circumstances (which may be of a personal or family, social, cultural, artistic, athletic, or other nature) are known publicly or have public notoriety and can be considered "public figures", and who, as a result of such notoriety, affect or influence the community. The Supreme Court noted that there was a true and recognized interest in the information or opinions published about such persons, which may be derived from the issue or matter being addressed, or from the fact that the person is "newsworthy" because of the type of person he or she is.

109. To decide the issue, making use of the inter-American standards and of comparative law, the Supreme Court established a detailed repertoire of rules.

110. First, the Supreme Court stated that public or well-known figures are those persons who, "due to social, family, artistic, or athletic circumstances, or because they themselves have disseminated facts and events of their private lives, or due to any other analogous circumstance, have a high profile or notoriety in a community and, therefore, submit voluntarily to the risk that

⁶⁸ First Chamber of the Supreme Court of the Nation of Mexico. Amparo Directo 6/2009. Conclusion of Law 5. p. 47. October 7, 2009. Rapporteur: Ministro Sergio A. Valls Hernández. Secretaries: Laura García Velasco and José Álvaro Vargas Ornelas. Available at: <http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/09000060.001.doc>.

⁶⁹ First Chamber of the Supreme Court of the Nation of Mexico. Amparo Directo 6/2009. Conclusion of Law 5. p. 49. October 7, 2009. Rapporteur: Ministro Sergio A. Valls Hernández. Secretaries: Laura García Velasco and José Álvaro Vargas Ornelas. Available at: <http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/09000060.001.doc>.

their activities or private lives may be the object of greater dissemination."⁷⁰ Accordingly, these people "must withstand a greater level of interference in their privacy, unlike private individuals or regular citizens, because society has a legitimate interest in receiving information about this public figure and, therefore, the media have a legitimate interest in disseminating it in the interest of free public debate."⁷¹ These people subject themselves to the risk that their activities, as well as their personal information, will be disseminated; therefore, they subject themselves to the opinions and criticism of third parties, including those that may be annoying, awkward or hurtful. Notwithstanding, the Supreme Court is emphatic in stating that such persons are constitutionally protected in their privacy or private lives. As such, just like any private citizen, they can assert their right to privacy when facing opinions, criticisms or information harmful to that right, and its resolution will warrant a balancing test to determine which right deserves greater protection in each case.

111. Second, the Supreme Court lays down rules for conducting this balancing test. In the Supreme Court's opinion, in this exercise, the public interest ascribed to the facts or information published is the legitimating circumstance for the invasions of privacy. Thus, the right to privacy must yield to freedom of expression when the facts disseminated can have public relevance, "whether due to [the person's] public conduct or to those private aspects which are of interest to the community, since the exercise of such rights is the foundation of free and open public opinion in a democratic society."⁷²

112. In this regard, the Court specifies the meaning of the notion of *public interest*. According to the Court, this concept does not correspond to *the public's interest*. Therefore, there is no place for curiosity or morbid interest. What must be considered is the public relevance of the information to community life; that is to say, it must deal with matters of general interest. Accordingly, a person cannot be required to withstand passively the journalistic dissemination of information relevant to his personal life, when it is trivial and irrelevant to public interest or debate.

113. Finally, the Supreme Court established that the resolution of the conflict between freedom of expression or the right to information and the right to privacy or one's private life must be decided on a case-by-case basis, in order to verify which of those rights deserves greater protection. It must even be considered that, "when dealing with public figures, a distinction must be made according to the person's degree of notoriety, given his position in society, as well as the manner in which he has modulated public knowledge about his private life."⁷³

114. In applying these rules of jurisprudence to the case at hand, the Supreme Court found that in this specific case the right to privacy must give way to freedom of expression. First of all, the Supreme Court found that the person the information pertained to was a public figure, not only because of her relationship to the President of the Republic but because for several years she

⁷⁰ First Chamber of the Supreme Court of the Nation of Mexico. Amparo Directo 6/2009. Conclusion of Law 5. p. 78. October 7, 2009. Rapporteur: Ministro Sergio A. Valls Hernández. Secretaries: Laura García Velasco and José Álvaro Vargas Ornelas. Available at: <http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/09000060.001.doc>.

⁷¹ First Chamber of the Supreme Court of the Nation of Mexico. Amparo Directo 6/2009. Conclusion of Law 5. p. 78. October 7, 2009. Rapporteur: Ministro Sergio A. Valls Hernández. Secretaries: Laura García Velasco and José Álvaro Vargas Ornelas. Available at: <http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/09000060.001.doc>.

⁷² First Chamber of the Supreme Court of the Nation of Mexico. Amparo Directo 6/2009. Conclusion of Law 5. p. 79. October 7, 2009. Rapporteur: Ministro Sergio A. Valls Hernández. Secretaries: Laura García Velasco and José Álvaro Vargas Ornelas. Available at: <http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/09000060.001.doc>

⁷³ First Chamber of the Supreme Court of the Nation of Mexico. Amparo Directo 6/2009. Conclusion of Law 5. p. 81. October 7, 2009. Rapporteur: Ministro Sergio A. Valls Hernández. Secretaries: Laura García Velasco and José Álvaro Vargas Ornelas. Available at: <http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/09000060.001.doc>.

herself had been a candidate and a public official with a high national and international profile. As such, the Court concluded that she enjoyed less protection from interference with her personal rights. Second, the Supreme Court found that the summary included in the publication should not have been examined in isolation but rather in the context of the article published. The Supreme Court found in its analysis that, viewed in the context in which it was presented, society had a legitimate interest in knowing such information. Finally, the Supreme Court took into consideration that the information contained in the article was a "neutral report" that satisfied the requirements of truthfulness and public relevance, as it was limited to disseminating an article written by a third party.

7. Judgment C-417/09 of the Constitutional Court of Colombia over the truth exception (*exceptio veritatis*)⁷⁴

115. On June 26, 2009, the Constitutional Court of Colombia, sitting *en banc*, handed down judgment C-417 of 2009, which declared unconstitutional a provision of the criminal code related to slander (*calumnia*). According to that provision, in cases of defamation where the victim of the defamatory statements had been acquitted, the person responsible for the accusations could not be acquitted.

a. Brief summary of the case

116. In a public action of unconstitutionality, a group of citizens filed suit against the provision of the criminal code (Article 224.1 of Law 599 of 2000) that excluded the *exceptio veritatis* in criminal cases for criminal defamation offenses.⁷⁵ The plaintiffs alleged that the impossibility of submitting evidence of the truthfulness of the accusations of any punishable conduct that had resulted in an acquittal, closure of the investigation or termination of proceedings or their equivalent, violated the principle of equality by establishing the discriminatory and unjustified treatment of the subject who finds himself in such circumstances. In addition, they alleged that this restriction was inconsistent with the Constitution because it violated the essential purpose of guaranteeing the validity of a just legal system, because it ignored the rights of defense and due process of the defendant in a defamation case, and also because it violated freedom of expression and information.

117. Upon examining the case, the Constitutional Court held that the provision under review was incompatible with the Constitution of Colombia. In particular, the Constitutional Court found that the criminal provision was neither necessary nor strictly proportionate, since in the interest of protecting the fundamental rights to honor and reputation, and the constitutional principles of legal certainty and *res judicata*, the provision eliminated freedom of expression in its various forms in the cases covered therein. In the Constitutional Court's opinion, the protection of the rights and principles the provision intended to safeguard neither required nor justified the harm it caused to the right to freedom of expression.

⁷⁴ Constitutional Court of Colombia. Judgment C-417-09. Bogotá, Colombia. June 26, 2009. Available at: <http://www.corteconstitucional.gov.co/relatoria/2009/C-417-09.htm>.

⁷⁵ The provision stated: "*Grounds for acquittal. Any person who proves the veracity of the accusations shall not be liable for the conduct described in the previous articles.// However, in no case shall evidence be admitted://1. Regarding the accusation of any punishable act that has resulted in an acquittal, closure of the investigation or termination of the proceedings or their equivalent, except where the statute of limitations on the action has expired [...]*".

b. Legal reasoning of the Colombian Constitutional Court and the application of inter-American standards

118. The Office of the Special Rapporteur highly appreciates the fact that the Colombian Constitutional Court incorporated international human rights law expressly into its reasoning when determining the legal framework applicable to the case. Moreover, the Office of the Special Rapporteur underscores the importance in this specific case of the decisions of other courts and tribunals of the region that had been praised in the public statements of this Office of the Special Rapporteur,⁷⁶ as well as the doctrine established in its annual reports. The judgment of the Constitutional Court is, in this sense, a notable example of how local courts can play a very important role in the implementation of the inter-American standards and, in particular, of the hemispheric agenda proposed by the Office of the Special Rapporteur in its 2008 report, which was cited extensively by the Constitutional Court.

119. On the issue of comparative law, the Constitutional Court assessed the attitudes of other States in the world (and in the region, in particular) regarding the trend of decriminalizing offenses that place subsequent restrictions on the right to freedom of expression and information. Thus, the Colombian Constitutional Court found in the work of the Office of the Special Rapporteur, particularly in the press releases, up-to-date information that enabled it to study the situations of other countries.⁷⁷ The judgment cites decisions and laws examined in this chapter, including the Uruguayan legislature's amendment of the Press Law and the decision of the Federal Supreme Court of Brazil repealing the 1967 Press Law.

120. In conducting this comparative study, the Constitutional Court found that "within this trend, the proposal set forth by the **regional human rights system** is particularly persuasive" (emphasis in the original). Delving deeper into this issue, the Colombian Constitutional Court looked to the 2008 Annual Report of the Office of the Special Rapporteur, which "establishes among the components of the 'hemispheric agenda' for the defense of that freedom, the need to 'eliminate the provisions that criminalize expression and to promote proportionality in the subsequent imposition of liability.'" ⁷⁸

121. The Constitutional Court took into particular consideration the fact that this report states that the ideal citizen under the democracies of the Americas and the inter-American system for the protection of human rights is that of "a thinking subject who *has the courage to use his own intelligence* and who is willing to discuss with others the reasons for his decisions."⁷⁹ In this respect, the Colombian Court valued the position of the report that advocates "taking seriously the idea of a democratic and politically active citizenry," which entails the "design of institutions that

⁷⁶ Office of the Special Rapporteur-IACHR. June 22, 2009. Press release No. R38/09. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=750&IID=1>.

⁷⁷ Constitutional Court of Colombia. Judgment C-417-09. Legal Grounds and Conclusions of Law. 2.b.2.d. Bogotá, Colombia. June 26, 2009. Available at: <http://www.corteconstitucional.gov.co/relatoria/2009/C-417-09.htm>.

⁷⁸ Constitutional Court of Colombia. Judgment C-417-09. Legal Grounds and Conclusions of Law. 2.b.2.d. Bogotá, Colombia. June 26, 2009. Available at: <http://www.corteconstitucional.gov.co/relatoria/2009/C-417-09.htm>. Legal Grounds and Conclusions of Law. 2.b.2.d.

⁷⁹ Constitutional Court of Colombia. Judgment C-417-09. Legal Grounds and Conclusions of Law. 2.b.2.d. Bogotá, Colombia. June 26, 2009. Available at: <http://www.corteconstitucional.gov.co/relatoria/2009/C-417-09.htm>.

enable, rather than inhibit or make difficult, the deliberation of all matters and phenomena of public relevance."⁸⁰

122. In order for this to be implemented in these democracies, the Colombian Court stated that "the very institutions of punitive law, especially of criminal law, are particularly relevant, as they serve as coercive means to impose a single viewpoint and discourage vigorous debate, and are otherwise incompatible with the principles that guide democratic systems, especially freedom of expression in the terms provided under Article 13 of the American Convention on Human Rights."⁸¹

123. The Constitutional Court's judgment further underscores the special priority that the Office of the Special Rapporteur has accorded to this issue within the hemispheric agenda of freedom of expression. The Colombian Court specifically cites as an issue of concern: "(i) The existence of *desacato* and other criminal defamation laws, particularly when they are enforced to criminally prosecute those who have made critical assessments of matters of public interest or public figures; [and] (ii) the use of the criminal law to protect the 'honor' or 'reputation' of ideas or institutions (...)." ⁸²

124. On this subject, the Court then pointed out that "in all of their reports on this issue, the IACHR and the Office of the Special Rapporteur have stressed the need to *decriminalize* the exercise of this freedom and to establish criteria of proportionality in establishing the subsequent imposition of liability that may arise from its abusive exercise, in accordance with Principles 10 and 11 of the Declaration of Principles."⁸³

125. In defining the legal scope of these standards, the Colombian Court demonstrates a remarkable knowledge of the political documents of the inter-American system and refers to the obligations established by the States in the resolutions of the highest political body of the OAS, the General Assembly. In this respect, it is worth quoting the language of the Constitutional Court of Colombia:

Finally, it is of interest to note that in Resolution 2434 (XXXVIII-0/08), passed by the OAS General Assembly, "Right to freedom of thought and expression and the importance of the media," based on the broadly recognized importance of this set of freedoms in the consolidation of democratic societies, one of the decisions adopted is: To invite member states to consider the recommendations concerning defamation made by the Office of the Special Rapporteur for Freedom of Expression of the IACHR, namely by repealing or amending laws that criminalize *desacato*, defamation, slander, and libel, and, in this regard, to regulate these conducts exclusively in the area of civil law.⁸⁴

126. Based on this valuable examination of the inter-American precedents, the trends and hemispheric objectives regarding freedom of expression, the Colombian Constitutional Court declared unconstitutional the provision barring grounds for acquittal of the offense of defamation

⁸⁰ Constitutional Court of Colombia. Judgment C-417-09. Legal Grounds and Conclusions of Law. 2.b.2.d. Bogotá, Colombia. June 26, 2009. Available at: <http://www.corteconstitucional.gov.co/relatoria/2009/C-417-09.htm>.

⁸¹ Constitutional Court of Colombia. Judgment C-417-09. Legal Grounds and Conclusions of Law. 2.b.2.d. Bogotá, Colombia. June 26, 2009. Available at: <http://www.corteconstitucional.gov.co/relatoria/2009/C-417-09.htm>.

⁸² Constitutional Court of Colombia. Judgment C-417-09. Legal Grounds and Conclusions of Law. 2.b.2.d. Bogotá, Colombia. June 26, 2009. Available at: <http://www.corteconstitucional.gov.co/relatoria/2009/C-417-09.htm>.

⁸³ Constitutional Court of Colombia. Judgment C-417-09. Legal Grounds and Conclusions of Law. 2.b.2.d. Bogotá, Colombia. June 26, 2009. Available at: <http://www.corteconstitucional.gov.co/relatoria/2009/C-417-09.htm>.

⁸⁴ Constitutional Court of Colombia. Judgment C-417-09. Legal Grounds and Conclusions of Law. 2.b.2.d. Bogotá, Colombia. June 26, 2009. Available at: <http://www.corteconstitucional.gov.co/relatoria/2009/C-417-09.htm>.

(*calumnia*) when the person who was the object of the allegedly defamatory statements has been acquitted by a criminal judge. On this point it is important to explain that the only provision at issue in the lawsuit was the one that established the defense of grounds for the acquittal of criminal defamation offenses, and not the provision that contained the legal definition of the offense itself. Therefore, the Court's decision is limited to the examination of that defense.

D. Conclusions

127. The Office of the Special Rapporteur takes a very positive view of the jurisprudence derived from the cases referred to in this chapter. These cases demonstrate the sufficiency with which the judges who issue the decisions implement the international standards. This, in turn, not only results in a better application of the law in the specific case but also promotes the application of these standards to similar cases, whether by these same judicial authorities or by other courts.

128. The judicial practice exemplified in the cases examined denotes the intersection of international law and constitutional law on the issue of human rights protection. This intersection has enabled the development of mechanisms for the interpretation and application of the legal standards that seek to meet this fundamental objective of contemporary law in an integrated manner.

129. This judicial practice is increasingly common in the hemisphere, and is a positive development in the task of strengthening national as well as international mechanisms for the protection of human rights. The Office of the Special Rapporteur disseminates these practices so that other courts and tribunals, as well as the verification bodies of the regional system for the protection of human rights, can be aware of them and study them. The Office also notes with satisfaction that an increasing number of judges from different States are finding in the inter-American standards practical tools for deciding specific cases.

130. Indeed, the judicial incorporation of the standards on freedom of expression developed by the bodies of the inter-American system are an important step forward in the administration of prompt and effective justice for the victims of violations. With this application, the States not only accomplish their work as guarantors of rights but they also prevent victims from turning repeatedly to international forums to ensure their rights. Thus, the incorporation of standards plays a fundamental role in enforcing the principle of subsidiarity that characterizes the regional system for the protection of human rights.

131. The cases reviewed further demonstrate that the absence in the text of a constitution of an express reference to the American Convention is not an absolute impediment to the protection of the right to freedom of expression through tools of constitutional interpretation. However, the task of incorporation would be more clear and direct for judicial authorities if States would eliminate the technical and legal barriers to the incorporation of international human rights law standards. One notable example of this process is the incorporation of the doctrine and case law of the Inter-American Court and the IACHR in the new Uruguayan law that was cited previously.

132. The reports of the Office of the Special Rapporteur can be a useful tool for judges in their task of incorporating international standards into the domestic system. This is particularly true given that, in addition to explaining the interpretation of the contents of the right to freedom of expression, the reports contain compilations of the standards that the IACHR and the Inter-American Court have developed. In this way, judicial authorities have material at their disposal that seeks to provide the necessary tools for deciding cases; it facilitates the determination of the applicable legal framework and the content and scope of the rights and obligations pertaining to the issue.

133. The Office of the Special Rapporteur acknowledges the work of the courts that issued the decisions studied herein, and encourages them to continue with their work of defending human rights. Likewise, the Office of the Special Rapporteur invites other courts to consider these practices an example worthy of being reinforced throughout the hemisphere.

134. In the future, the Office of the Special Rapporteur will follow decisions of this type and invite the national courts that decide cases with similar or new incorporation techniques to bring their decisions to the Office's attention. Likewise, the Office of the Special Rapporteur undertakes to study and disseminate the best practices on this subject and hopes to increase the free-flowing dialogue with judicial authorities in order to move forward in this important mutual learning process.

CHAPTER VI FREEDOM OF EXPRESSION AND BROADCASTING

A. Introduction

1. Article 13 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) enshrines the right to freedom of expression and indicates that this right can be exercised *through any medium*. Effectively, Article 13 of the Convention establishes that the right to seek, receive, and impart information and ideas of all kinds can be exercised “orally, in writing, in print, in the form of art, or *through any other medium of one’s choice*.” Accordingly, Principles 1 and 6 of the Declaration of Principles recognize that every individual has the right to an equal opportunity to receive, seek and impart information through any *communication* medium without discrimination.

2. Likewise, more than 20 years ago, the Inter-American Court found that “freedom of expression goes further than the theoretical recognition of the right to speak or to write. It also includes and cannot be separated from the right to use whatever medium is deemed appropriate to impart ideas and to have them reach as wide an audience as possible.”¹ The Inter-American Court has also indicated that the media plays an essential role as a vehicle or instrument for the exercise of freedom of expression and information – in its individual and collective aspects – in a democratic society.² Indeed, the media has the task of distributing all variety of information and opinion on matters of general interest. The public has a right to receive and assess this information and opinion independently.³ In this sense, regional jurisprudence and doctrine have reiterated that the existence of a free, independent, vigorous, pluralistic, and diverse media is essential for the proper functioning of a democratic society.⁴

3. On this point, it is important to recall that the democratic scope of freedom of expression recognized in international human rights law implies both the power of individuals to express their thoughts, as well as the power to seek, receive, and impart information and ideas of all kinds, whether orally, in print, through the mass media, or in any other medium they choose. This democratic scope of freedom of expression recognizes a collective component that includes the public’s right to receive (and the right of those who express themselves through a medium of communication, to impart) the greatest possible diversity of information and ideas.

4. In this sense, the right to freedom of expression is based on one hand on the right to establish or use a media outlet to exercise freedom of expression and, on the other, on society’s right to have access to a free, independent, and pluralistic media that allows for the most and most diverse information. In other words, the media –and especially the audio-visual media⁵ perform an

¹ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 31. Emphasis added.

² I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 117; I/A Court H.R., *Case of Ivcher-Bronstein v. Peru*. Merits, Reparations and Costs. Judgment February 6, 2001. Series C No. 74, para. 149.

³ I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. para. 153

⁴ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter IV. paras. 216-230. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

⁵ According to the International Telecommunications Union, “radio broadcasting” includes free-to-air radio and television. Meanwhile, “audiovisual communications services” can include all visual and audio communication media, regardless of the technology they use for broadcasting. Although many of the standards laid out in this document can be

essential function in guaranteeing the freedom of expression of individuals, as the media serve to distribute individuals' thoughts and information while at the same time allowing them access to the ideas, information, opinions, and cultural expressions of other individuals.

5. Currently, the exercise of the right to freedom of expression through the media is a guarantee that is fundamental for advancing the collective deliberative process on public issues. In this sense, the strengthening of the guarantee of freedom of expression is a precondition for the exercise of political rights, as well as a precondition to the right for participation to be informed and reasoned. Indeed, in contemporary societies, the media play a lead role in this deliberation, as they allow individuals to access both the relevant information and a variety of perspectives that are necessary for reaching reasonable and informed conclusions on public matters.⁶

6. However, the exercise of the right to freedom of expression through the mass media is not solely a guarantee of the democratic process. It also allows for individual independence in other aspects of the life of each person. Effectively, freedom of expression exercised through the media allows for individuals to express and receive different visions of the world (aesthetic, moral, cultural, etc.) and form independent outlooks for choosing their own life path.

7. The essential role, then, that the media plays in promoting real democratic debate on public matters and facilitating the decision-making process on private and individual matters is clear. For this reason, the Inter-American Court has been emphatic in ruling that freedom and diversity must be guiding principles in the regulation of broadcasting,⁷ as well as in indicating that media activity must be guided and protected by the standards of freedom of expression law. In this respect, the Inter-American Court has held that, "It is the mass media that make the exercise of freedom of expression a reality. This means that the conditions of its use must conform to the requirements of this freedom...."⁸ Therefore, any regulation of – and any public policy in general concerning – the media must be evaluated according to the guidelines and directives imposed by the right to freedom of expression.

8. The same doctrine has been laid out repeatedly by the IACHR and its Office of the Special Rapporteur, whose reports have put forward the important role of the State in regulating the radioelectric spectrum to ensure free, independent, vigorous, plural, and diverse broadcasting. In this sense, and as mentioned previously, all individuals have the right to establish or join media outlets, and those outlets requiring the use of the spectrum should be subject to clear, transparent, and democratic regulation that ensures the greatest enjoyment of this right by the greatest number of people, thereby also ensuring the greatest circulation of information and opinions. Indeed, and as previously indicated, the regulation of the radioelectric spectrum must simultaneously guarantee freedom of expression of the greatest number of people or perspectives, equality of opportunities in

...continuation

applied to all audiovisual communication media, for the purposes of this report, the term "radio broadcasting" is used broadly as a generally accepted term.

⁶ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter IV. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

⁷ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5.

⁸ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. paras 31 and 34.

media access, and the right of contemporary societies to plural and diverse information.⁹ In order to achieve these objectives, States must submit themselves to a serious of rules, without which it would be impossible to grant all the guarantees mentioned. Both the Inter-American Court and the IACHR have paid special attention to detailing these guidelines and directives. The following part of this document gathers the doctrine and jurisprudence of these specialized bodies to develop further some of the principles posed by them.

B. General aims and limits of State broadcasting regulation

9. The IACHR has recognized the State's authority to regulate broadcasting. This authority includes not only the possibility of defining the method of handling concessions, renewals, or revocation of licenses,¹⁰ but also the planning and implementation of public policy related to broadcasting, as long as the guidelines set by the right to freedom of expression are followed.¹¹

10. Broadcasting regulation normally includes procedures related to access, renewal, or revocation of licenses, the requirements for access to licenses, conditions under which they can be used, the composition and authority of the enforcement authority, and oversight, among other subjects. As these aspects of broadcasting regulation can mean restrictions on the right to freedom of expression, in order to be legitimate they must be provided for in a clear and precise law; have the freedom and independence of the media as an aim, as well as the equity and equality of access to the mass communication; and establish only those subsequent limits to freedom of expression that are necessary, appropriate, and proportional for the legitimate aim they pursue.¹² The following paragraphs specify each of the requirements that broadcasting regulation must fulfill in order to meet the parameters set forth by the right to freedom of expression.

1. Nature of broadcasting regulation

11. Inter-American jurisprudence has highlighted that for the protection, guarantee, and promotion of human rights, it is not enough that States simply abstain from "engaging in actions or favoring practices that may in any way be aimed, directly or indirectly, at creating situations in which certain groups or persons are discriminated against or arbitrarily excluded, *de iure* or *de facto*, from enjoying or exercising the right to freedom of expression." In addition, States have an obligation to "adopt affirmative measures (legislative, administrative, or of any other nature), in a condition of equality and non-discrimination, to reverse or change existing discriminatory situations that may compromise certain groups' effective enjoyment and exercise of the right to freedom of expression."¹³

⁹ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. paras. 184-187. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

¹⁰ This report uses the terms "concessions," "licenses," "authorizations" and "permits" interchangeably, although it is recognized that they may have different meanings in each country of the region.

¹¹ "The Commission recognizes the State's prerogative to administer the wave bands, to previously establish the duration of concessions and to decide on their renewal at the end of those periods." (IACHR, Press Release N° 29/07. May 25, 2007). Available at:

<http://www.cidh.oas.org/Comunicados/Spanish/2007/29.07sp.htm>.

¹² IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter IV. para. 82. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

¹³ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter IV. para. 230. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

12. The State's authority to regulate broadcasting is based on, *inter alia*, the "duty to guarantee, protect, and promote the right to freedom of information, pursuant to conditions of equality and non-discrimination, and the right of society to access all types of information and ideas."¹⁴ In this way, the broadcasting regulation that the State can and should create would form a framework under which the broadest, freest, and most independent exercise of freedom of expression for the widest variety of groups and individuals is possible. The framework should function in such a way that it guarantees diversity and plurality while simultaneously ensuring that the State's authority will not be used for censorship.

2. General requirements for broadcasting regulation compatible with the provisions for limiting freedom of expression found in Article 13.2 of the American Convention

13. Freedom of expression is not an absolute right¹⁵ and therefore can be regulated and restricted. The general framework establishing the conditions under which State regulation is legitimate is found in Subparagraphs 2, 3, 4 and 5 of Article 13 of the American Convention.¹⁶ Specifically, Subparagraph 2 holds that, "The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: (a) respect for the rights or reputations of others; or (b) the protection of national security, public order, or public health or morals." For its part, Subparagraph 3 states that, "The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions."

14. Inter-American jurisprudence has developed a series of guidelines for analyzing the legitimacy of restrictions of freedom of expression and their compatibility with the American Convention. These guidelines are applicable to the regulation of broadcasting, as broadcasting is a means of exercising freedom of expression. According to the Office of the Special Rapporteur for Freedom of Expression, "The standards for the admissibility of restrictions are applied to all of the constitutive elements of freedom of expression in its diverse manifestations. Thus, for example, limitations imposed upon the expression of a person's own thoughts and ideas, access to information, the dissemination and circulation of information and upon the communications media

¹⁴ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter IV. para. 216. Emphasis added. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

¹⁵ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 54; I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 79; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 120; I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. para. 106; I/A Court H. R., *Case of Aritz-Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 5, 2008 Series C No. 182. para. 131; IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17. February 1995. Chapter V.

¹⁶ I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 120; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 35; IACHR. Report No. 11/96. Case 11.230. Merits. Francisco Martorell. Chile. May 3, 1996. para. 55; IACHR, Arguments before the Inter-American Court of Human Rights in the *Case Ricardo Canese v. Paraguay*, cited in I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 72.a); IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009, p. 135. Available at:

<http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

must all meet these conditions," as must every manifestation of State power (laws, administrative acts and judicial rulings) over the exercise of a right.¹⁷

15. The first general standard that both regulations and restrictions must meet in order to be legitimate according to the American Convention is compatibility with democratic principles; in other words, they "must incorporate the just demands of a democratic society."¹⁸ In analyzing this general standard, the jurisprudence of the system has identified three specific conditions derived from Article 13.2, known as the "three-part test": (1) The limitation must have been precisely and clearly defined through formal and material law; (2) the limitation must be designed to achieve imperative objectives authorized by the American Convention; and (3) the limitation must be necessary in a democratic society, adequate to meet the objective it pursues, and strictly proportional for meeting that objective. Finally, the inter-American system has established that these three standards must be met simultaneously, and that it is the responsibility of the State authority imposing the limits to demonstrate that these standards have been met.¹⁹

16. The following paragraphs apply these specific standards to the regulation of radio broadcasters.

3. Regulation of radio must be prescribed by law with clear and precise language

17. Because it can imply a limitation of the exercise of the right to freedom of expression, the regulation of broadcasting must be previously established in law that is explicit, restrictive, precise, and clear, both in a material and in a formal sense.²⁰ The Inter-American Court's Advisory Opinion 6/86 is applicable in this regard. The opinion states that the expression "laws" does not mean any legal norm, but rather those general statutes passed by a democratically elected legislature provided for under procedures established in the Constitution and concerned with the common good.²¹

18. It is crucial that the legal framework provide citizens with legal certainty and set forth in the clearest and most precise terms possible the conditions for exercising the right and the

¹⁷ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. para. 61. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>, which makes reference to the I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 36; and I/A Court H. R., *Case of López-Álvarez v. Honduras. Merits, Reparations and Costs*. Judgment of February 1, 2006. Series C No. 141. para. 165.

¹⁸ IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

¹⁹ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. paras. 61-66. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

²⁰ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. paras. 39-40; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 120; IACHR. Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V; IACHR. Report No. 11/96. Case 11.230. Merits. Francisco Martorell. Chile. May 3, 1996. para. 55; IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 72.a); Also see IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. paras. 63-68. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

²¹ I/A Court H.R., *The Word "Laws" in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6. para. 22.

limitations to which broadcasting is subject.²² Thus, for example, in regulating the integration of the enforcement authorities, or the procedures for accessing or renewing licenses, or the power of the public authorities, the language of the statute must avoid vagueness and ambiguities that would allow for potential arbitrary actions that discriminate against an individual, group, or sector in broadcasting. The law must establish the substantive aspects of regulation; that is, it should not delegate the definitions of policies central to broadcasting to the enforcement authority. The enforcement authority may only interpret or specify the substantive aspects defined clearly and beforehand in the law.²³

19. On this point, the IACHR has held that, "Vague, ambiguous, broad or open-ended laws, by their mere existence, discourage the dissemination of information and opinions out of fear of punishment, and can lead to broad judicial interpretations that unduly restrict freedom of expression."²⁴

20. In their 2007 joint declaration, the freedom of expression rapporteurs of the UN, the OSCE, the OAS and the African Commission emphasized that, "Transparency should be a hallmark of public policy efforts in the area of broadcasting. This should apply to regulation, ownership, public subsidy schemes and other policy initiatives."²⁵

²² In the same sense *cf.* the jurisprudence of the European Court of Human Rights, which holds that, "According to its settled case-law, this expression, which is also used in Articles 10 and 11 of the Convention [European Convention for the Protection of Human Rights and Fundamental Freedoms] [...] not only require that an interference with the rights enshrined in these Articles should have some basis in domestic law, but also refer to the quality of the law in question. That law should be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail." European Court of Human Rights, judgment *Glas Nadezhda Eood and Elenkov v. Bulgaria*, no. 14134/02, § 45, E.C.H.R. (11/10/2007). Available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=prof&highlight=Glas%20|%20Nadezhda%20|%20Eood%20|%20Elenkov%20|%20v.%20|%20Bulgaria%20|%2014134/02&sessionId=39864985&skin=hudoc-en>.

²³ The general rule that requires restrictions to be defined by law in its formal sense "does not necessarily negate the possibility of delegations of authority in this area, provided that such delegations are authorized by the Constitution, are exercised within the limits imposed by the Constitution and the delegating law, and that the exercise of the power delegated is subject to effective controls, so that it does not impair nor can it be used to impair the fundamental nature of the rights and freedoms protected by the Convention" (I/A Court H.R., *The Word "Laws" in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6. para. 36). In this sense, the European Court of Human Rights has recognized that laws granting completely discretionary authority to regulate radio broadcasting are incompatible with the European Convention. The court indicated that, "Domestic law must also afford a measure of legal protection against arbitrary interferences by public authorities with the rights guaranteed by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion and the manner of its exercise. (...) It must furthermore provide adequate and effective safeguards against abuse, which may in certain cases include procedures for effective scrutiny by the courts." *Case of Glas Nadezhda Eood and Elenkov v. Bulgaria*, no. 14134/02, § 46, E.C.H.R. (11/10/2007). Available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=prof&highlight=Glas%20|%20Nadezhda%20|%20Eood%20|%20Elenkov%20|%20v.%20|%20Bulgaria%20|%2014134/02&sessionId=39864985&skin=hudoc-en>.

²⁴ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. para. 66. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

²⁵ Freedom of Expression Rapporteurs of the UN, OAS, OSCE and the African Commission on Human and Peoples' Rights (ACHPR), *International Declaration on Diversity in Broadcasting*, December 12, 2007.

4. When it can affect the right to freedom of expression, regulation of broadcasting is only legitimate if it pursues an aim set forth in the American Convention.

21. The jurisprudence of the inter-American system has established that to be legitimate, restrictions to the exercise of a right must pursue one of the objectives expressly provided for in the American Convention, to wit: the protection of the rights of others, national security, the public order, and public health and morality. This applies in the case of limitations placed on a right, as imperative public interest must be present to justify the limitation. These standards are fully applicable in the event that broadcasting regulation establishes a restriction on freedom of expression.²⁶

22. On this point, it is important to note that in the case of restrictions to freedom of expression, it falls to the State to demonstrate both the existence of an impending threat that could cause real harm and that it is crucial to impose the restriction in order to prevent the harm. In this respect, the Office of the Special Rapporteur has previously indicated that any limitation on freedom of expression in the name of one of the aims provided for “must be based on real and objectively verifiable causes that present the certain and credible threat of a potentially serious disturbance of the basic conditions for the functioning of democratic institutions. Consequently, it is not sufficient to invoke mere conjecture regarding possible disturbances of public order, nor hypothetical circumstances derived from the interpretations of the authorities in the face of events that do not clearly present a reasonable threat of serious disturbances (‘anarchic violence’). A broader or more indeterminate interpretation would inadmissibly open the door to arbitrariness and would fundamentally restrict the freedom of expression that is an integral part of the public order protected by the American Convention.”²⁷

23. Likewise, it is crucial that the categories laid out in Article 13.2 are interpreted in accordance with the American Convention. Thus, for example, the Court has ruled that the expression “public order” must be interpreted as “conditions that assure the normal and harmonious functioning of the institutions on the basis of a coherent system of values and principles.”²⁸ In that sense, regulation of broadcasting cannot limit the circulation of news, ideas and opinions that are bothersome, shocking, or disturbing in the name of defending “public order,” since “that concept of public order in a democratic society requires the guarantee of the widest possible circulation of news, ideas and opinions as well as the widest access to information by society as a whole. Freedom of expression constitutes the primary and basic element of the public order of a democratic society, which is not conceivable without free debate and the possibility that dissenting voices be fully heard. (...) It is also in the interest of the democratic public order inherent in the American

²⁶ Inter-American jurisprudence has made a particular effort to specify the correct way of harmonizing the exercise of freedom of expression with “the protection of the rights of others” and “the public order,” for example, in cases where the imposition of subsequent responsibilities regarding effects on the right to honor and reputation due to the exercise of the right to freedom of expression is at issue (see, among others, I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177). Likewise, the bodies of the inter-American system have stated that in order to justify limitations on freedom of expression for the protection of other rights, the rights must “be clearly harmed or threatened, and it is the burden of the authority imposing the limitation to demonstrate that this requirement is satisfied; if there is no clear harm to another’s right, the subsequent imposition of liability is unnecessary” IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. para. 97. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

²⁷ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter IV. para. 75. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

²⁸ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 68.

Convention that the right of each individual to express himself freely and that of society as a whole to receive information be scrupulously respected.”²⁹

24. The regulation of broadcasting must aspire to promote and expand the scope of the right to freedom of expression, not restrict it. Thus, its legal framework must ensure that the media can be a vehicle for the free, vigorous, open, plural, and diverse exercise of the freedom of expression. In this respect, the IACHR stated that, “the free circulation of ideas and news is not possible except in the context of a plurality of sources of information and media outlets.”³⁰ As a consequence, regulation must tend to guarantee greater safety for free self expression, without fear of being sanctioned or stigmatized for it, while at the same time promoting greater equality in the conditions of the exercise of freedom of expression. This implies a triple meaning: plurality of voices, diversity of voices, and non-discrimination. The following paragraphs address this standard in greater detail.

- a. The purpose of broadcasting regulation must be to guarantee greater security so individuals can express themselves freely and without fear of being sanctioned or stigmatized as a result**

25. The goal of broadcasting regulation must be to ensure predictability and legal certainty for those who possess or acquire a license. In this way, they will be able to exercise their right to freedom of expression freely and without fear of negative consequences in retaliation for their expression. As a consequence, the provisions must be designed in such a way that they offer sufficient guarantees against the possibility of arbitrary State actions. For example, this objective will require: (1) that the provisions establishing rights and obligations be clear and precise; (2) the inclusion of procedures that are transparent and respect due process—allowing for, among other things, judicial review of the any administrative decisions; (3) granting sufficient time for the use of a frequency to allow for the development of the communication project or for recouping the investment made, plus profit; (4) ensuring that while the frequency is in use, no additional requirements will be imposed beyond those that are established by law; and (5) ensuring that no decisions that affect the exercise of freedom of expression will be made as a consequence of editorial stance. These and other guarantees – which will be examined presently – are essential for the existence of truly free and vigorous broadcasting.

- b. Broadcasting regulation must aim to ensure equal access to radio frequencies and greater diversity of audiovisual media**

26. In the analysis of the legitimacy of the purpose pursued in broadcasting regulation, equality in the exercise of freedom of expression requires three components: plurality of voices (anti-monopoly measures), diversity of voices (social inclusion measures)³¹ and non-discrimination (equal access to processes that apportion frequencies).

²⁹ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 68. In this same sense, the Inter-American Commission has held that a functioning democracy is the best guarantee of public order, and that the existence of a democratic society is based on the cornerstone of the right to freedom of expression: “Desacato laws are incompatible with Article 13 of the American Convention on Human Rights because they suppress the freedom of expression necessary for the proper functioning of a democratic society.” IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

³⁰ IACHR, Application before the Inter-American Court of Human Rights, *Ivcher Bronstein v. Peru*, Case 11.762, p. 27.

³¹ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter IV. para. 216. Available at:

27. The need to promote a media landscape free of monopolies is recognized by the IACHR in Principle 12 of the Declaration of Principles, according to which, “Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people’s right to information. In no case should such laws apply exclusively to the media.” Indeed, the Office of the Special Rapporteur for Freedom of Expression has indicated that, “If these media are controlled by a reduced number of individuals, or by only one individual, this situation would create a society in which a reduced number of individuals, or just one, would exert control over the information and, directly or indirectly, on the opinion received by the rest of the people. This lack of plurality in sources of information is a serious obstacle for the functioning of democracy.”³² On this point, one should not lose sight of the fact that this rejection does not refer solely to the private concentration of property. Naturally, if the goal is to guarantee free, independent and pluralistic broadcasting, all of the aforementioned applies—and in a particular way—to processes that concentrate property or control of the media in the hands of the State.

28. However, the adoption of anti-trust measures is not enough to ensure equal access to the media. Article 13 of the Declaration of Principles emphasizes that, “The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.” In the same sense, the IACHR has indicated that, “One of the fundamental requirements of the right to freedom of expression is the need for a broad **plurality** of information.”³³

29. In this sense, the regulation of broadcasting must be part of a proactive policy of social inclusion that tends to reduce preexisting inequality in access to the media. This means that when in the act of regulating broadcasting, States must take into particular consideration groups with difficulties gaining access. Indeed, one purpose of regulation must be to promote equal conditions of competition among all sectors of society by guaranteeing special rules that allow access to groups traditionally marginalized from mass communication.

30. For their part, in 2001 the freedom of expression rapporteurs of the UN, the OSCE, and the OAS issued a joint declaration specifically addressing diversity in broadcasting. The declaration was a clear message designed to highlight the importance of guaranteeing equal opportunity of media access for all individuals. The declaration indicated that, “Promoting diversity

...continuation

<http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>; In this respect, the Freedom of Expression Rapporteurs of the UN, the OEA and the OSCE, highlighted the “fundamental importance of diversity in the media to the free flow of information and ideas in society, in terms both of giving voice to and satisfying the information needs and other interests of all, as protected by international guarantees of the right to freedom of expression” (Freedom of Expression Rapporteurs of the UN, OEA y OSCE, *Declaration on Challenges to Freedom of Expression in the New Century*, November 20, 2001).

³² IACHR, Justicia e Inclusión Social: los Desafíos de la Democracia en Guatemala. OEA/Ser.L/V/II.118. Doc. 5 rev. 1. 29 December 2003. Chapter VII. Available at: <http://www.cidh.oas.org/countryrep/Guatemala2003sp/capitulo7.htm>.

³³ IACHR, Justicia e Inclusión Social: los Desafíos de la Democracia en Guatemala. OEA/Ser.L/V/II.118. Doc. 5 rev. 1. 29 December 2003. Chapter VII. Available at: <http://www.cidh.oas.org/countryrep/Guatemala2003sp/capitulo7.htm>. In this citation, the term “information” is used broadly to include opinions, ideas, artistic and cultural expression, etc. In this respect, the Inter-American Court has found that, “Given the importance of freedom of expression in a democratic society and the responsibility it implies for social communication media firms and for those who professionally exercise these tasks, the State must minimize the restrictions to information and balance, as much as possible, the participation of the different movements present in the public debate, promoting informative pluralism. The protection of the human rights of whoever faces the power of the media, who must exercise the social task it develops with responsibility, and the effort to ensure structural conditions that allow an equal expression of ideas can be explained in these terms” (*Case of Ríos et al. v. Venezuela*, Judgment of January 28, 2009, para. 106).

should be a primary goal of broadcast regulation; diversity implies gender equity within broadcasting, as well as equal opportunity for all sections of society to access the airwaves."³⁴ Likewise, in their 2007 Joint Declaration, the Special Rapporteurs recognized that having different kinds of media outlets (private, public and community) with different reaches (local, national, regional and international) contributed to diversity in freedom of expression. They also recognized that both the undue concentration of the media and arbitrary government interference "constitute a threat to the diversity of the media."³⁵

31. On this same subject the 2005 UNESCO Convention on the Protection and the Promotion of the Diversity of Cultural Expression is worth citing. The Convention promotes respect for cultural identities, linguistic diversity, religion, and the customs of different sectors of society, and of minority groups in particular. The Convention establishes that, "Cultural diversity is made manifest not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted through the variety of cultural expressions, but also through diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used."³⁶ In its preamble, the Declaration states that, "cultural activities, goods and services have both an economic and a cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value." The purpose of diversity in broadcasting should be embodied in regulations that, among other things, ensure that enough space is available for broadcasting with different kinds of communications technology. As the Rapporteurs have stated, "In terms of terrestrial dissemination, whether analogue or digital, this implies an appropriate allocation of frequencies for broadcasting uses."³⁷

32. As previously mentioned, the aim of ensuring the greatest degree possible of pluralism and diversity in broadcasting necessarily depends on anti-discriminatory policy in two complementary senses.

33. On one hand, "States must abstain from engaging in actions or favoring practices that may in any way be aimed, directly or indirectly, at creating situations in which certain groups or persons are discriminated against or arbitrarily excluded, *de iure* or *de facto*, from enjoying or exercising the right to freedom of expression."³⁸ In this sense, the regulation of broadcasting must prohibit decisions that affect the exercise of freedom of expression based on the editorial stance of a media outlet or the contents of its reporting, or that deliberately blocks a group from access to the media (for example, non-commercial sectors or those that are only local or regional in scope). Thus, in its report on the human rights situation in Guatemala, the IACHR stated that, "auctions based

³⁴ Freedom of Expression Rapporteurs of the UN, OAS and OSCE, *Declaration on Challenges to Freedom of Expression in the New Century*. November 20, 2001.

³⁵ Freedom of Expression Rapporteurs of the UN, OAS and OSCE, *Declaration on Challenges to Freedom of Expression in the New Century*. November 20, 2001.

³⁶ UNESCO, Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Article 4.1.

³⁷ Joint Declaration on Diversity in Broadcasting. December 12, 2007 Id. The declaration also adds that, "Different types of broadcasters – commercial, public service and community – should be able to operate on, and have equitable access to, all available distribution platforms. Specific measures to promote diversity may include reservation of adequate frequencies for different types of broadcasters, must-carry rules, a requirement that both distribution and reception technologies are complementary and/or interoperable, including across national frontiers, and non-discriminatory access to support services, such as electronic programme guides."

³⁸ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. para. 230. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>. In general, on the State's obligation to guarantee rights without discrimination, see I/A Court H. R., *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18. paras. 103-104.

solely on economic criteria or that grant concessions without giving an equal opportunity to all sectors are not compatible with democracy and with the right to freedom of expression and information guaranteed in the American Convention on Human Rights and the Declaration of Principles on Freedom of Expression.”³⁹

34. In addition, States “must adopt affirmative measures (legislative, administrative, or of any other nature), in a condition of equality and non-discrimination, to reverse or change existing discriminatory situations that may compromise certain groups’ effective enjoyment and exercise of the right to freedom of expression. Naturally, such obligations must be carried out within the full respect towards the right of everybody to exercise freedom of expression, pursuant to the terms that have already been clearly defined by Inter-American jurisprudence.”⁴⁰

35. It is therefore clear that the regulation of radio broadcasters must aim to overcome the preexisting inequalities in access to the media, which include, for example, that of economically disadvantaged sectors of society. In this sense, States must not only refrain from discriminating against these sectors, but also promote proactive public policies for social inclusion.

36. In this regard, the Office of the Special Rapporteur has indicated that, “there is a component of freedom of expression to which we are indebted. The individual members of the social groups that have been traditionally marginalized, discriminated against, or that are in a situation of helplessness, are for various reasons systematically excluded from public debate. These groups do not have institutional or private channels for the serious, robust and constant exercise of their right to express publicly their ideas and opinions or to be informed of the issues that affect them. This process of exclusion has also deprived society of knowledge of their interests, of the needs and proposals of those who have not had the opportunity to access democratic debate on an equal footing. The effect of this phenomenon of exclusion is similar to the effect of censorship: silence.”⁴¹

37. Different aspects of radio broadcast regulation are associated with this aim. Thus, for example, the reservation of parts of the radio spectrum for certain sectors of society that are normally excluded and the establishment of special procedures that effectively allow those sectors access to licenses aim toward generating equal opportunities and real equality in the exercise of the right to freedom of expression.

³⁹ IACHR, *Justicia e Inclusión Social: los Desafíos de la Democracia en Guatemala*. OEA/Ser.L/V/II.118. Doc. 5 rev. 1. 29 December 2003. Chapter VII. para. 414. Available at: <http://cidh.org/countryrep/Guatemala2003sp/capitulo7.htm>

⁴⁰ IACHR, *Annual Report 2008, Volume III: “Annual Report of the Office of the Special Rapporteur for Freedom of Expression”* (Chapter V), Chapter III, para. 230.

⁴¹ IACHR, *Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008*. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter IV. para. 100. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>. The Office of the Special Rapporteur considers that such groups include women heads of families who live in poverty, the indigenous, African-Americans, rural communities or neighborhood organizations, and young artists, among others.

5. Broadcasting regulation should include only restrictions that are necessary, adequate, and proportional for achieving their desired purpose

38. It is established in inter-American system jurisprudence that limitations on freedom of expression must be “necessary in a democratic society,”⁴² appropriate and proportional for the objectives they pursue. In the event that State regulation of broadcasting places limits on freedom of expression, they must respect these three requirements.

39. The requirement of being “**necessary in a democratic society**” implies that in order to be legitimate, the limitation must be imperative, meaning that the same aim (which must, of course, be legitimate) cannot reasonably be achieved through any measure less restrictive of the right. In this sense, a restriction must be “useful,” “reasonable” and “desirable.”⁴³ “Necessary” means that the measure must not limit the right beyond what is strictly indispensable for guaranteeing the full exercise and scope of the right to freedom of expression.⁴⁴

40. In determining if the restriction imposed by regulation of broadcasting is proportionate, it should be considered whether alternatives less restrictive to freedom of expression are available that would achieve the desired aim. In other words, the measure least restrictive to the right protected by Article 13 of the Convention should be the one chosen.⁴⁵

41. Thus, for example, the establishment of criminal sanctions in cases of violations of broadcasting legislation does not seem to be a necessary restriction. In that sense, it is worth mentioning that both the IACHR and the Inter-American Court have found in every case considering this matter that they have heard and ruled on that using criminal sanctions to protect certain rights violated by the exercise of the right to freedom of expression was disproportionate and unnecessary in a democratic society.

42. Likewise, when broadcasting regulation provides for limitations to the right to freedom of expression, these restrictions must be **appropriate** for accomplishing the aim sought through their imposition. In this sense, regulation must be an instrument that is conducive to and adequate for accomplishing the legitimate and imperative objectives that they pursue.⁴⁶

⁴² I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. paras. 120-123; and I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 46.

⁴³ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 46; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 122; IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

⁴⁴ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 83; I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 85; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. paras. 121-122; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 46.

⁴⁵ Cf. IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. paras. 80-83. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

⁴⁶ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 83.

43. Likewise, for restrictions to freedom of expression that regulate broadcasting to be legitimate, they must be **strictly proportional** to the aim that justifies them and adhere closely to the accomplishment of that aim. They must interfere as little as possible with the legitimate exercise of the freedom they restrict.⁴⁷ In this regard, each case must be analyzed to determine whether the restriction or sacrifice of freedom of expression “it entails is exaggerated or excessive in relation to the advantages obtained through such measure.”⁴⁸

44. Though there is no general formula that allows for an *a priori* conclusion on whether a restriction is proportional or not, according to the Inter-American Court, the proportionality of a restriction that limits freedom of expression in order to preserve other rights must be established through the evaluation of three factors: (i) the degree to which the other right is affected (serious, intermediate, moderate); (ii) the importance of satisfying the other right; and (iii) whether the satisfaction of the other right justifies restricting freedom of expression.⁴⁹

45. Based on the discussion thus far, it is clear that, according to the principles developed by the inter-American system for the protection of human rights, States have the authority and the duty to regulate broadcasting. Likewise, the IACHR and the Inter-American Court have already set forth guidelines according to which regulation must comply with a series of requirements in order to meet the standards imposed by the right to freedom of expression: regulation must be established by a law, in the formal and material sense, which is clear and precise; and its purpose must be to guarantee legal certainty in the exercise of freedom of expression, as well as promote and guarantee equal access to the exercise of the right, which implies that the regulation must aim to achieve diversity and plurality of voices.

C. On the enforcement and oversight authority in charge of broadcasting

46. State regulation of broadcasting must meet a series of requirements in order to be compatible with the parameters imposed by the right enshrined in Article 13 of the American Convention. In this sense, the protection of the right to freedom of expression requires that the enforcement and oversight authority in charge of this regulation respect certain basic conditions as a guarantee of the adequate development of the right. Effectively, barriers to or limitations on the exercise of freedom of expression can arise not only from the legal framework but also from the abusive practices of enforcement bodies.

47. The legal norms on broadcasting in the majority of the countries in the region recognize the government’s competence to apply the respective provisions in two essential areas: the development and implementation of certain communication policies (enforcement) and the control of existing regulations (oversight). It is worth noting that although in some cases a “regulation authority” is named, in keeping with the standards of the inter-American system

⁴⁷ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 83; I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 85; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 123; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 46.

⁴⁸ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. para. 81. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>; I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 83.

⁴⁹ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. para. 82. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

previously examined, State regulation that substantially affects the right to freedom of expression must be enshrined in a law in the formal sense—that is, in a statute passed by a legislative body provided for in the Constitution. The enforcement and oversight authority could in all cases be vested with the authority to specify the circumstances in which the substance of the radio broadcast policy—defined clearly in the law beforehand—will be applied.⁵⁰

48. The broadcasting authority in charge of enforcement and oversight must be independent of both government influence and of the influence of private groups linked to public, private/commercial or community broadcasting.⁵¹ It must be a deliberative body that ensures plurality in its composition. It must be subject to clear, public and transparent procedures, as well as to the imperatives of due process and strict judicial review.⁵² Its decisions must be public, in accordance with existing legal norms, and adequately justified.⁵³ Finally, the body must be accountable for and give public account of its activities. In regard to the enforcement authority, the Inter-American Commission has indicated that, “it is fundamental that the bodies with oversight or regulatory authority over the communications media be independent of the executive branch, be fully subject to due process and have strict judicial oversight.”⁵⁴

49. Given the importance of this subject, it is worthwhile to focus for a moment on each of its several aspects.

⁵⁰ Cf. I/A Court H.R., *The Word “Laws” in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6. para. 36. Also, Cf. European Court of Human Rights, *Case of Glas Nadezhda Eood and Elenkov v. Bulgaria*, no. 14134/02, § 45, E.C.H.R. (11/10/2007). Available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=prof&highlight=Glas%20Nadezhda%20Eood%20Elenkov%20v.%20Bulgaria%2014134/02&sessionId=39864985&skin=hudoc-en>.

⁵¹ In this respect, Recommendation Rec(2000)23 of the Committee of Ministers of the Council of Europe, cited by the European Court of Human Rights, holds that, “The rules governing regulatory authorities for the broadcasting sector, especially their membership, are a key element of their independence. Therefore, they should be defined so as to protect them against any interference, in particular by political forces or economic interests.” Council of Europe. Committee of Ministers. *Appendix to Recommendation Rec(2000)23 of the Committee of Ministers to member states*. Paragraph 3. December 20, 2000. Available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(2000\)23&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(2000)23&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75).

⁵² The European Court of Human Rights has ruled on the characteristics that the regulatory, enforcement, and oversight authority of the communications sector should have, setting forth the same terms found in this document. Thus, for example, in the case of *Glas Nadezhda Eood and Elenkov v. Bulgaria*, the Court recalled that Recommendation Rec(2000)23 of the Committee of Ministers of the Council of Europe established the independence and the regulatory functions of radio broadcasting regulators, recommending that member states, *inter alia*, “include provisions in their legislation and measures in their policies entrusting the regulatory authorities for the broadcasting sector with powers which enable them to fulfil their missions, as prescribed by national law, in an effective, independent and transparent manner, in accordance with the guidelines set out in the appendix to this recommendation” (*Glas Nadezhda Eood and Elenkov v. Bulgaria*, no. 14134/02, § 33, E.C.H.R. (11/10/2007). Available at: <http://cmiskp.echr.coe.int/tkp197/search.asp?sessionId=39864985&skin=hudoc-en>.

⁵³ In this sense, Recommendation Rec(2000)23 of the Committee of Ministers of the Council of Europe has indicated that “27. All decisions taken and regulations adopted by the regulatory authorities should be duly reasoned, in accordance with national law; open to review by the competent jurisdictions according to national law; made available to the public.” Council of Europe. Committee of Ministers. *Appendix to Recommendation Rec(2000)23 of the Committee of Ministers to member states*. para. 27. December 20, 2000. Available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(2000\)23&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(2000)23&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75).

⁵⁴ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. para. 82. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

1. The enforcement and oversight authority must be independent and autonomous of political and economic power

50. The Special Rapporteurs for Freedom of Expression of the United Nations, the Organization of American States, and the Organization for Security and Cooperation in Europe remarked in their joint declaration in 2001 that "Broadcast regulators and governing bodies should be so constituted as to protect them against political and commercial interference."⁵⁵

51. Effectively, given the importance of the functions they perform, it is crucial that bodies charged with enforcing policy and overseeing regulatory compliance in broadcasting be independent of the influence of both political power and economic interest groups. In this respect, in a 2007 joint declaration on diversity and broadcasting, the four freedom of expression rapporteurs indicated that "Regulation of the media to promote diversity, including governance of public media, is legitimate only if it is undertaken by a body which is protected against political and other forms of unwarranted interference, in accordance with international human rights standards."⁵⁶

52. Consequently, it is crucial that the broadcasting oversight and enforcement authority be subjected to neither political interference from the government nor private sector interference from those with ties to broadcasting. For this reason, it is necessary for the rules that govern the creation and operation of this body to ensure that it will have sufficient operating, organizational and administrative guarantees to maintain independence from the pressures of both the political majority and economic interest groups.

53. Several measures serve to ensure the independence of this body and strengthen its legitimacy. For example, it is important that it be a deliberative body whose members are selected through a transparent process that allows for citizen participation and is guided by adequate objectives, as well as criteria selected in advance.⁵⁷ It also must establish strict standards regarding ineligibility, incompatibility and conflicts of interests to ensure independence from both the government and other sectors linked to broadcasting.⁵⁸ It should be clear that the officials working

⁵⁵ Freedom of Expression Rapporteurs of the UN, OEA y OSCE, *Declaration on Challenges to Freedom of Expression in the New Century*, November 20, 2001. Similarly, Cf. Recommendation Rec(2000)23 of the Committee of Ministers of the Council of Europe, according to which, "The rules governing regulatory authorities for the broadcasting sector, especially their membership, are a key element of their independence. Therefore, they should be defined so as to protect them against any interference, in particular by political forces or economic interests." Council of Europe. Committee of Ministers. *Appendix to Recommendation Rec(2000)23 of the Committee of Ministers to member states*. para 3. December 20, 2000. Available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(2000\)23&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(2000)23&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75)

⁵⁶ Freedom of Expression Rapporteurs of the UN, OAS, OSCE y CADHP, *Joint Declaration on Diversity in Broadcasting*, December 12, 2007.

⁵⁷ Regarding the selection process for the officials who make up the radio broadcasting enforcement authority, the Committee of Ministers of the Council of Europe indicated that, "Furthermore, rules should guarantee that the members of these authorities: are appointed in a democratic and transparent manner; may not receive any mandate or take any instructions from any person or body; do not make any statement or undertake any action which may prejudice the independence of their functions and do not take any advantage of them." Council of Europe. Committee of Ministers. *Appendix to Recommendation Rec(2000)23 of the Committee of Ministers to member states*. paras. 3-5. December 20, 2000. Available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(2000\)23&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(2000)23&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75)

⁵⁸ Regarding the importance of establishing a system of standards to guarantee the independence and impartiality of the radio broadcasting enforcement authority, the Committee of Ministers of the Council of Europe stated that, "For this purpose, specific rules should be defined as regards incompatibilities in order to avoid that: regulatory authorities are under the influence of political power; members of regulatory authorities exercise functions or hold interests in enterprises or other organisations in the media or related sectors, which might lead to a conflict of interest in connection with membership of the regulatory authority." Council of Europe. Committee of Ministers. *Appendix to Recommendation Rec(2000)23 of the*

in this body are subject only to the authority of the law and the Constitution. Set terms of service for the body's members, which do not coincide with the terms of those responsible for their appointment and which are separate and staggered, are recommended. Likewise, mechanisms for dismissal of members should be provided for, and those mechanisms should be transparent, should only be activated in the event of serious offences previously established by law, and should ensure due process, especially judicial review, in order to ensure that they are not used arbitrarily or as retaliation for the body's decisions.⁵⁹ Lastly, it is essential to ensure that the body has enforcement authority and the capacity for autonomous functional, administrative, and financial oversight, as well as a set budget that is guaranteed by law and ample enough for the body's mandate. Finally, the body must be required to publicly account for its actions.

2. The enforcement and oversight authority must proceed with transparency and respect for due process

54. Another guarantee of the due protection of the right to freedom of expression exercised through broadcasting is that the public authority with power to enforce regulations and supervise broadcasting activity act in a manner that is public and transparent, respectful of due process, and subject to strict judicial review.⁶⁰

55. Thus, in defining policies or planning measures to administer broadcasting, State bodies must be transparent and public, and have mechanisms for periodically giving an account of their actions. State bodies must guarantee the effective participation of civil society in the decision-making process. Depending on the institutional design of each country, the public giving of accounts of these bodies could take place before Parliament, the attorney general, the comptroller or even before a national human rights institution like the ombudsman's office.

56. In this sense, it is worth repeating that in their 2007 joint declaration, the Special Rapporteurs for Freedom of Expression stated that, "Transparency should be a hallmark of public policy efforts in the area of broadcasting. This should apply to regulation, ownership, public subsidy schemes and other policy initiatives."⁶¹ Transparent procedures include those that are previously set forth in regulations, that prescribe objective and clear standards of evaluation (for example, for assigning or revoking a license), that provide for public hearings, that ensure citizen access to public information, and that require sufficient justification for decisions, among other requirements.

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Committee of Ministers to member states. Rule 4. December 20, 2000. Available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(2000\)23&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(2000)23&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75).

⁵⁹ According to Recommendation Rec(2000)23 of the Committee of Ministers of the Council of Europe, "dismissal [of members of the enforcement authority] should only be possible in case of non-respect of the rules of incompatibility with which they must comply or incapacity to exercise their functions duly noted, without prejudice to the possibility for the person concerned to appeal to the courts against the dismissal. Furthermore, dismissal on the grounds of an offence connected or not with their functions should only be possible in serious instances clearly defined by law, subject to a final sentence by a court."

⁶⁰ In this sense, Recommendation Rec(2000)23 of the Committee of Ministers of the Council of Europe states that, "27. All decisions taken and regulations adopted by the regulatory authorities should be duly reasoned, in accordance with national law; open to review by the competent jurisdictions according to national law; made available to the public." Council of Europe. Committee of Ministers. *Appendix to Recommendation Rec(2000)23 of the Committee of Ministers to member states*. para. 27. December 20, 2000. Available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(2000\)23&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(2000)23&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75).

⁶¹ Freedom of Expression Rapporteurs of the UN, OAS, OSCE y CADHP, *Joint Declaration on Diversity in Broadcasting*. December 12, 2007.

57. Meanwhile, considering that the functions of the State body include oversight of regulatory compliance and dealing with offenses and punishment, it is crucial that this authority respect the guarantees of due process enshrined in Article 8.1 of the American Convention. Specifically, regulation must allow individuals affected by decisions to present evidence in their defense, access well-founded rulings issued within a reasonable time period, and appeal the decisions made by the authority, among other guarantees. On this last point, it is crucial that in all cases the person affected has access to an adequate and effective recourse for challenging administrative decisions that could compromise their right to freedom of expression, in keeping with Article 25 of the American Convention.

D. On assigning and renewing frequency concessions

58. The assignation of radio and television licenses must be guided by democratic criteria and procedures that are pre-established, public and transparent. The criteria and procedures must serve as a check on possible State arbitrariness and guarantee equal opportunities for all individuals and sectors who wish to take part. In this regard, the Inter-American Commission's Declaration of Principles on Freedom of Expression emphasizes that, "The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals."

59. To promote equal opportunity access to the media, affirmative measures should be provided for so that the three sectors of broadcasting can access licenses under equitable conditions; they must include democratic standards and transparent procedures for assigning licenses, and must establish conditions for use of the concessions that are reasonable and non-discriminatory.

1. Assignment criteria and procedure

60. The assignation of radio or television licenses is a decision that has a definitive impact on the right to freedom of expression in both its dimensions: the right of everyone to freely express themselves and the right to receive a variety of ideas and opinions. Both access to the media for those who request a frequency and society's right to receive plural information (in keeping with Article 13 of the Convention) depend on this decision. Effectively, when it assigns frequencies, the State decides which voice the public will be able to hear in the coming years. As a consequence, this process defines the conditions under which the democratic deliberation necessary for the informed exercise of political rights will be carried out, as well as the sources of information that will allow individuals to make informed decisions on their personal preferences and life paths.

61. The interests at stake demonstrate the enormous importance of the license assignation process. It is for this reason that the process must be strictly regulated by law, characterized by transparency,⁶² and guided by objective, clear, public, and democratic standards.⁶³

⁶² Freedom of Expression Rapporteurs of the UN, OAS, OSCE and CADHP, *Joint Declaration on Diversity in Broadcasting*, December 12, 2007. In this same sense, the Committee of Ministers of the Council of Europe stated, "One of the essential tasks of regulatory authorities in the broadcasting sector is normally the granting of broadcasting licenses. The basic conditions and criteria governing the granting and renewal of broadcasting licenses should be clearly defined in the law." It continues, "The regulations governing the broadcasting licensing procedure should be clear and precise and should be applied in an open, transparent and impartial manner. The decisions made by the regulatory authorities in this context should be subject to adequate publicity." Council of Europe. Committee of Ministers. *Appendix to Recommendation Rec(2000)23 of the Committee of Ministers to member states*. paras. 13 and 14. December 20, 2000. Available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(2000\)23&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(2000)23&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75).

⁶³ In this sense, the Committee of Ministers of the Council of Europe has recommended that, "The regulations governing the broadcasting licensing procedure should be clear and precise and should be applied in an open, transparent and

In this same sense, the procedure for granting a license must include sufficient guarantees against arbitrary actions, including the obligation to justify decisions that grant or deny requests, as well as adequate judicial review of these decisions.⁶⁴

62. The following paragraphs briefly explain some of the principles that should guide this process.

63. First, the criteria that should guide the assignation of licenses must be clearly and precisely provided for in the relevant laws, in such a way as to protect petitioners from arbitrary action. Indeed, the procedures must be transparent, clear and have predetermined deadlines. Likewise, the requirements for obtaining a license should be set forth in clear and precise laws that prevent discriminatory political factors that could, for example, affect assignation on account of the political, religious or other ideas of the person requesting the license. In this respect, the IACHR's Declaration of Principles on Freedom of Expression states that, "The exercise of power (...) by the state (...) (in) the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law."

64. The assignation criteria and procedure must be limited to establishing only those requirements that are necessary for the accomplishment of a legitimate aim.

65. Likewise, the criteria for assigning licenses must have the fostering of plurality and diversity of voices as one of its goals, and the requirements for granting licenses cannot be a disproportionate barrier to achieving this goal. Thus, for example, when the money offered or the economic criterion is the principle or exclusionary factor for the granting of all radio or television frequencies, it jeopardizes equal access to the radio spectrum and discourages pluralism and diversity. Although these criteria could be considered objective and non-discretionary, when they are used to assign all radio frequencies they result in the exclusion of broad segments of society from the process of access to the media. In this respect, the IACHR has indicated that, "auctions based solely on economic criteria or that grant concessions without equal opportunity to all sectors are not compatible with democracy and with the right to freedom of expression and information guaranteed in the American Convention on Human Rights [...] and the Declaration of Principles on Freedom of Expression."⁶⁵

66. For the same reasons indicated in the previous paragraphs, procedures for assigning licenses should not include technical or administrative requirements that are unreasonable and

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impartial manner. The decisions made by the regulatory authorities in this context should be subject to adequate publicity." Recommendation Rec(2000)23, Committee of Ministers of the Council of Europe, December 20, 2003, para. 14.

⁶⁴ Similarly, the European Court of Human Rights has found that, "As regards licensing procedures in particular, the Court reiterates that the manner in which the licensing criteria are applied in the licensing process must provide sufficient guarantees against arbitrariness, including the proper reasoning by the licensing authority of its decisions denying a broadcasting licence." Cf. European Court of Human Rights, *Meltex Ltd. & Mesrop Movsesyan v. Armenia* (Judgment June 17, 2008), para. 81 in fine. Available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=prof&highlight=Meltex%20%20Ltd.%20%20Mesrop%20%20Movsesyan%20%20v.%20%20Armenia&sessionId=40594356&skin=hudoc-en>.

⁶⁵ IACHR, Justicia e Inclusión Social: los Desafíos de la Democracia en Guatemala. OEA/Ser.L/V/II.118. Doc. 5 rev. 1. 29 December 2003. Chapter VII. para. 414. Available at: <http://cidh.org/countryrep/Guatemala2003sp/capitulo7.htm>. Also, the mechanism of an auction has been declared unconstitutional by the Supreme Court of Justice of Mexico, as it "violates the principles of fair competition by favoring the economic aspect of assignation. It also harms freedom of expression." The judgment analyzes the constitutionality of Article 17 of a decree that modifies the April 11, 2006, Federal Telecommunications Act (www.scjn.gob.mx).

require all license holders to hire technicians or specialists. Such requirements indirectly raise an economic barrier to access to radio frequencies. Neither should geographic distance serve as a barrier to access to licenses by, for example, requiring rural media outlets to travel to the capital to file a request.

67. Finally, the decision to accept or reject a request for the assignation of a radio frequency should always be public, justified by the law and subject to strict judicial review. On this point, it is crucial for the enforcing authority to supply objective and sufficient justification so that all individuals are protected against the possibility of arbitrary actions.⁶⁶

2. Recognition of the different sectors

68. The democratic scope of freedom of expression recognized in the American Convention includes not only the right of all individuals to freely express themselves, but also the right of the public to receive the maximum variety of information and ideas possible. This means, among other things, that the regulation of broadcasting should include setting aside space on the spectrum for a diverse system of media outlets that can together represent a society's diversity and plurality of ideas, opinions, and cultures.

69. In this sense, the different kinds of media (public and independent of the executive, private for-profit, and community or private non-profit) must be recognized and have equitable access to all available transmission technology, including the new digital dividend.⁶⁷ This chapter will later elaborate on aspects of each of those sectors. For now, it is enough to point out that the main idea is to achieve the greatest possible diversity in mass communications. To achieve that diversity, conditions must exist for the creation of truly public broadcasting, independent of political power and executive influence, as well as private commercial and non-profit radio that is free, vigorous, and independent.

3. Conditions of use required

70. Legal granting of access to a license is not enough to guarantee freedom, pluralism and diversity if there are provisions establishing arbitrary or discriminatory conditions for the use of the license.

71. Thus, for example, excessively short time limits on concessions would be arbitrary, as they make it difficult for commercial media to recoup their investment or establish a profitable business. Likewise, excessively short time limits would make it difficult for community or social radio stations to truly carry out their projects. Also, concessions that do not lead to contracts that expressly include the rules of use of the license or the conditions under which the rules can be amended can open the door to arbitrary decisions.

72. Some examples of discriminatory limitations would include those provided for by law or established in practice that allow certain kinds of restrictions regarding content, broadcasting

⁶⁶ The European Court of Human Rights has ruled on this issue, stating that, "The Court considers that a licensing procedure whereby the licensing authority gives no reasons for its decisions does not provide adequate protection against arbitrary interferences by a public authority with the fundamental right to freedom of expression." *Cf. European Court of Human Rights, Meltex Ltd. & Mesrop Movsesyan v. Armenia* (Judgment of June 17, 2008), para. 83 *in fine*. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=prof&highlight=Meltex%20%20Ltd.%20%20Mesrop%20%20Movsesyan%20%20v.%20%20Armenia&sessionId=40594356&skin=hudoc-en>.

⁶⁷ Freedom of Expression Rapporteurs of the UN, OAS, OSCE and ACHPR, *Joint Declaration on Diversity in Broadcasting*, December 12, 2007.

power, territorial reach or access to financing, without sufficient, objective and reasonable justification in pursuit of one of the legitimate ends provided for in the American Convention

73. It is always crucial that the administrative, economic and technical requirements for the use of a license be strictly necessary for guaranteeing its proper functioning, clearly and precisely provided for in the regulations, and not subject to modification without justification during the term of the license.

4. On the renewal of licenses

74. The Inter-American Commission has already recognized that States have authority to administer the radio spectrum and, specifically, to establish beforehand the duration of the concessions, as well as to decide whether to renew the concessions when the terms expire.⁶⁸ In the event the regulations include the possibility of renewing or extending the term of licenses, as with the assignation process the renewal or extension procedure must be regulated by law; be transparent; be guided by objective, clear and democratic criteria; and ensure due process.⁶⁹

75. In this sense, every decision on this subject must be justified objectively and submitted to a process that is public and respects due process. In this regard, the freedom of expression rapporteurs of the UN, the OAS, the OSCE and the African Commission have held that in these processes, "in accordance with the principle of equality of opportunity, states must promote open, independent and transparent procedures with clear, objective and reasonable criteria that avoid any political discrimination on the basis of the editorial line of a media outlet."⁷⁰

76. In particular, regulations must include set time periods and objective criteria in order to prevent uncertainty from becoming an instrument for exerting undue pressure on media outlets that wish to renew their licenses. Likewise, the procedure for reviewing license renewals must provide prior notice sufficiently in advance, as well as guarantee that others may compete for the license along with the individual wishing to renew it. If it has been demonstrated that all the regulations were followed and all the commitments assumed in seeking the license were met, the fact of holding a license can be viewed positively during the procedure evaluating the request for renewal.

77. The decision of whether to renew a license must be analyzed in each case according to its compatibility with the objective of fostering plurality and diversity of voices, particularly in countries or regions with media outlets concentrated in few hands, with a prohibition on punishment for the editorial stance or reporting of a media outlet. In this respect, the Office of the Special Rapporteur for Freedom of Expression has recommended that State regulation of broadcasting include "democratic criteria that guarantee equal opportunity to all individuals in the access and operation of these media outlets, under equitable conditions, without disproportionate and unreasonable restrictions" and that "the assignation, withdrawal or non-renewal of frequencies or licenses for discriminatory or arbitrary reasons be prevented."⁷¹ For this reason, it is crucial that, in

⁶⁸ IACHR, Press Release N° 29/07, "IACHR Concerned about Freedom of Expression in Venezuela," May 25, 2007. Available at: <http://www.cidh.oas.org/Comunicados/Spanish/2007/29.07sp.htm>.

⁶⁹ Freedom of Expression Rapporteurs of the UN, OAS, OSCE and ACHPR, *Joint Declaration on Diversity in Broadcasting*, December 12, 2007.

⁷⁰ Freedom of Expression Rapporteurs of the UN, OAS, OSCE and ACHPR, *Joint Declaration on Diversity in Broadcasting*, December 12, 2007.

⁷¹ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. para. 106. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

order to avoid arbitrary actions, regulations establish the criteria that guide decisions on requests or renewals of licenses beforehand and in a manner that is clear.

78. Finally, to diminish further the possibility of arbitrary actions, the procedure for examining requests for renewals of licenses must be carried out by a body with all the characteristics laid out earlier in this document. Among these characteristics, independence from political power and sectors linked to broadcasting are especially noteworthy. Likewise, there must be a transparent and public mechanism for carrying out hearings in which the public opinion can be heard. It is also crucial to allow for the right of those who wish to renew their licenses to be heard and offer evidence before any decision is made. The right to access to a well-founded decision within a reasonable time period should be guaranteed, as should subsequent judicial review.

E. Digital transformation

79. Technological development provides a fundamental opportunity to guarantee access to frequencies for people or sectors that are generally marginalized or excluded. The challenge now, and in the immediate future, is to transform the current inequality in the exercise of the right to freedom of expression into a digital opportunity for all.

80. The goal of the technological transformation in broadcasting should be to ensure that the new digital dividend makes optimal use of the spectrum to guarantee the greatest possible plurality and diversity. For this, the States should establish specific legal mechanisms to advance the switchover to digital broadcasting services. These regulations should provide for a migration program that takes into account the needs and capacities of the different actors involved in this process, as well as the level of application of the new technologies. In particular, the States should evaluate the broadcasting possibilities arising from the use of the digital dividend, and consider this technological change an opportunity to increase the diversity of voices and enable new sectors of the population to access communications media.⁷² At the same time, the States should take measures to prevent the cost of the transition from analog to digital technology from limiting the capacity of the communications media in terms of the financial costs.

81. On this point, in their 2007 Joint Declaration, the Special Rapporteurs on Freedom of Expression of the UN, the OSCE, the African Commission, and the OAS stressed that “[c]onsideration of the impact on access to the media, and on different types of broadcasters, should be taken into account in planning for a transition from analogue to digital broadcasting. This

⁷² On this point, the Declaration of Principles of the World Summit on the Information Society (WSIS – Geneva, 2003), convened by the UN General Assembly in Resolution 56/183 of December 21, 2001, states that: “We are [...] fully aware that the benefits of the information technology revolution are today unevenly distributed between the developed and developing countries and within societies. We are fully committed to turning this digital divide into a digital opportunity for all, particularly for those who risk being left behind and being further marginalized.” (Principle 10). It adds that “In building the Information Society, we shall pay particular attention to the special needs of marginalized and vulnerable groups of society, including migrants, internally displaced persons and refugees, unemployed and underprivileged people, minorities and nomadic people. We shall also recognize the special needs of older persons and persons with disabilities.” (Principle 13).

It is also pertinent to cite European Parliament Resolution 2007/2253 of September 25, 2008, on concentration and pluralism in the media in the European Union, in which the European Parliament: “Calls for a balanced approach to the allocation of the digital dividend to ensure equitable access for all players, thereby safeguarding media pluralism” (2007/2253(INI), para. 47). Likewise, in Resolution 2003/2237, on the risk of breaches of freedom of expression and information in the Union, particularly in Italy (section 2 of Article 11 of the Charter of Fundamental Rights) the European Parliament, “Notes that digital media will not automatically guarantee greater choice, because the same media companies that already dominate the national and global media markets also control the dominant content portals on the Internet, and since the promotion of digital and technical literacy are strategic issues for the development of lasting media pluralism, and expresses concern about the switching off of the analogue frequencies in some parts of the Union” (2003/2237(INI), para. 7).

requires a clear plan for switchover that promotes, rather than limits, public interest broadcasting. Measures should be taken to ensure that digital transition costs do not limit the ability of community broadcasters to operate."⁷³

82. Additionally, it should be borne in mind that the States of the region have acknowledged the importance of taking measures to reduce the digital divide among countries. Thus, in Resolution 2440 of the OAS General Assembly, the States agreed, among other things, that the Inter-American Telecommunication Commission (CITEL) should continue supporting the States in the adaptation of their technologies and standards to achieve optimal use of the spectrum.⁷⁴

F. Public media

83. Public media can (and should) play an essential part in ensuring the plurality and diversity of voices necessary in a democratic society. Its role is essential when providing high-quality content that is not necessarily commercial, and that reflects the informational, educational and cultural needs of the people. However, for public media really to be able to perform their role, they must be independent of the executive branch; truly pluralistic; universally accessible; with funding adequate to the mandate provided for by law; and they must provide community participation and accountability mechanisms at the different levels of content production, distribution and receipt.

84. On this point, in their 2007 Joint Declaration on Diversity in Broadcasting, the Special Rapporteurs on Freedom of Expression of the UN, the OAS, the OSCE and the African Commission maintained: "Special measures are needed to protect and preserve public service broadcasting in the new broadcasting environment. The mandate of public service broadcasters should be clearly set out in law and include, among other things, contributing to diversity, which should go beyond offering different types of programming and include giving voice to, and serving the information needs and interests of, all sectors of society. Innovative funding mechanisms for public service broadcasting should be explored which are sufficient to enable it to deliver its public service mandate, which are guaranteed in advance on a multi-year basis, and which are indexed against inflation."⁷⁵

1. Mandate set by law

85. First, it is important that the States regulate public media activity by law. The law must establish objectives and mandates that are complementary to, and not competitive with, private media—especially commercial media.

86. The law should also ensure: (1) the independent or non-governmental nature of the public media system; (2) programming aspects geared toward the public interest; (3) that the public media system is free of charge; (4) coverage throughout the State's territory; and (5) the regulation of its form of financing. The existence of clear legal guidelines simultaneously strengthens the communication design of the public media system.

⁷³ Special Rapporteurs on Freedom of Expression of the UN, OAS, OSCE and ACHPR, *Joint Declaration on Diversity in Broadcasting*, December 12, 2007.

⁷⁴ "Telecommunication Development in the Region to Reduce the Digital Divide" (AG/RES. 2440 (XXXIX-O/09)).

⁷⁵ Special Rapporteurs on Freedom of Expression of the UN, OAS, OSCE and ACHPR, *Joint Declaration on Diversity in Broadcasting*, December 12, 2007.

87. It is important to emphasize that in their 2009 Joint Statement on the Media and Elections, the Special Rapporteurs on Freedom of Expression recognized, for example, that during election periods, the public media have certain specific obligations to ensure that society has access to plural, impartial and balanced information that reflects the platforms of the different political parties and candidates.⁷⁶

2. Independence

88. Second, insofar as it has been recognized that freedom of expression necessarily requires a broad plurality of information,⁷⁷ it is essential to guarantee that these public media are *independent* of the government. In the opinion of the Inter-American Commission, the independence of public media likewise contributes to their credibility and legitimacy. On this point, it is important to recall that in accordance with Principle 12 of the Declaration of Principles on Freedom of Expression, the existence of private or *public monopolies or oligopolies* is a serious obstacle to both the adequate dissemination of thought and the receipt of diverse opinions. In the words of the Office of the Special Rapporteur: "Both the Inter-American Court and the Inter-American Commission on Human Rights have stated that freedom of expression requires that the communications media be open to all without discrimination or, more precisely, that no individual or group be excluded from access to such media. They also require certain conditions so that the media can truly be an instrument for freedom of expression."⁷⁸

89. In that regard, the States must orient public media toward the mandate of plurality and diversity of expressions and information, which necessarily entails that they not be subject to the arbitrary interference of the government or the private broadcasting sector. Thus, public radio and television cannot be used as tools of government communication or propaganda; rather, they must be autonomous forums for culture and information that act in the service of society as a whole. Their programming should: (1) disseminate artistic, cultural, scientific, academic and educational productions of general interest, carried out around the country; (2) provide information on issues of public interest; and (3) reflect society's political, social, geographic, religious, cultural, linguistic and ethnic diversity.⁷⁹

90. To ensure the autonomy of the public media, the independence of their news or editorial line should be established by law.⁸⁰ Likewise, notwithstanding the fact that each State can

⁷⁶ Special Rapporteurs on Freedom of Expression of the UN, OAS, OSCE and ACHPR, *Joint Statement on the Media and Elections*, May 15, 2009. It is also relevant to cite European Parliament Resolution 2007/2253 of September 25, 2008, on concentration and pluralism in the media in the European Union, in which the European Parliament: "Calls on the Member States to support high-quality public broadcasting services which can offer a real alternative to the programmes of commercial channels and can, without necessarily having to compete for ratings or advertising revenue, occupy a more high-profile place on the European scene as pillars of the preservation of media pluralism, democratic dialogue and access to quality content for all citizens" (2007/2253(INI), para. 32).

⁷⁷ See, e.g., IACHR, *Justicia e Inclusión Social: los Desafíos de la Democracia en Guatemala*. OEA/Ser.L/V/II.118. Doc. 5 rev. 1. 29 December 2003. Chapter VII, para. 419. available in Spanish at: <http://cidh.org/countryrep/Guatemala2003sp/capitulo7.htm>. It should again be explained that this in this cite, the term "information" is considered in the broad sense, and includes opinions, ideas, artistic and cultural expressions, and so on.

⁷⁸ IACHR, *Declaration of Principles on Freedom of Expression*, October 2000, Section B: Interpretation, para. 53.

⁷⁹ In that sense, Article 15 of the Universal Declaration on the Rights of Indigenous Peoples establishes that: "1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information," and Article 16 states: "1. [...]; 2. *States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity.*"

⁸⁰ In this regard, the Special Rapporteurs on Freedom of Expression maintained that the arbitrary interference of government is "a threat to diversity of the media" (see: Special Rapporteurs on Freedom of Expression of the UN, OAS, OSCE and ACHPR, *Joint Declaration on Diversity in Broadcasting*, December 12, 2007).

determine the most appropriate institutional design, it is important that all of the broadcasting media administered by the State are supervised by an independent authority, whose members are elected through a competitive and transparent procedure according to professional suitability and ethics.⁸¹ The law should provide for a strict system governing eligibility, incompatibility and conflicts of interest. The States must also consider objective and transparent requirements and procedures for the appointment and removal of the directors of each public medium, who should not be freely appointed and removed by the national executive branch.

3. Universal access and adequate funding

91. The system of public radio and television channels must strive to be free and reach the State's entire territory in order to guarantee the rights to freedom of expression and access to information for all people under its jurisdiction, without discrimination based on social, economic or geographic conditions.

92. For the public media system to conform to the standards of the right to freedom of expression enshrined in Article 13 of the Convention, it must not only guarantee the plurality and diversity of voices in its programming; it must also ensure that the greatest number of people can access it. In this respect, the States must promote access to public media for those people who live in areas where there are no other communications media because, for example, it is not a profitable business for the private sector.

93. The State must ensure that these media have sufficient and stable public funds. Public funding adequate to the mandate established by law is a guarantee against the arbitrary interference of the public and private sectors. In that regard, although other, complementary forms of funding (such as advertising) can be anticipated, they cannot make their public service mission conditional upon the determination of content. In addition, the public service broadcasters also must have a stable and autonomous financial budget that prevents arbitrary interferences from the government sector.

4. Transparency and accountability

94. The public media must act transparently. This means, on one hand, that the States must guarantee access to information on all aspects related to their administration (except the guarantees inherent to journalism, such as the confidentiality of news sources); and on the other hand, that they must provide for mechanisms of accountability and citizen participation, such as by providing for the receipt of proposals and comments or complaints from the audience.

95. As we saw in Section IV.3, *supra*, the States must act in a public and transparent manner in all matters relating to broadcasting activity since, as the Special Rapporteurs on Freedom of Expression established in their 2007 Joint Declaration, "transparency should be a hallmark of public policy efforts in the area of broadcasting. This should apply to regulation, ownership, public subsidy schemes and other policy initiatives."⁸²

⁸¹ In terms of the board membership of public media, the following recommendation of the Council of Europe is relevant: "The rules governing the status of the boards of management of public service broadcasting organisations, especially their membership, should be defined in a manner which avoids placing the boards at risk of any political or other interference" (Council of Europe, Recommendation No. R (96) 10 on the guarantee of the independence of public service broadcasting).

⁸² Special Rapporteurs on Freedom of Expression of the UN, OAS, OSCE and ACHPR, *Joint Declaration on Diversity in Broadcasting*, December 12, 2007.

G. Community broadcasting

96. The right to freedom of expression requires that the States not only refrain from performing acts that prevent the exercise of the right but also take measures to guarantee its exercise under conditions of equality and nondiscrimination.⁸³ Thus, for example, obstacles preventing certain sectors of society from accessing the media must be removed. At the same time, the State must actively promote the bringing of disadvantaged or currently marginalized groups into the media.

97. On several occasions, the IACHR and the Office of the Special Rapporteur have recognized that community media perform an essential function in our hemisphere for different sectors of society to exercise their rights to freedom of expression and access to information.⁸⁴ In those declarations they have established that it is necessary for States to legally recognize community media, for spectrum to be reserved for these types of media, and for there to be equal access to licenses that recognize the distinct nature of private non-commercial media.⁸⁵

1. Importance and characteristics

98. In the Chapter entitled "Freedom of Expression and Poverty," the 2002 Annual Report of the Office of the Special Rapporteur stated:

The freedom of individuals to debate openly and criticize policies and institutions guards against abuses of human rights. Openness of the media not only advances civil and political liberties—it often contributes to economic, social, and cultural rights. In some instances, the use of the mass media has helped drive public awareness and bring pressure to bear for the adoption of measures for improving the quality of life of the population's most vulnerable or marginalized sectors. // However, the traditional mass media are not always accessible for disseminating the needs and claims of society's most impoverished or vulnerable sectors. Thus, community media outlets have for some time been insisting that strategies and programs that address their needs be included on national agendas.⁸⁶

99. Later in this report, the Office of the Special Rapporteur observed:

The growing need for expression felt by majorities and minorities that lack media access, and their claims on the right to communication, to the free expression of ideas, and to the

⁸³ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. para. 230. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>. On the general obligation of the State to guarantee rights without discrimination, see: I/A Court H. R., *Judicial Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18. paras. 103-104.

⁸⁴ See, e.g., IACHR, *Justicia e Inclusión Social: los Desafíos de la Democracia en Guatemala*. OEA/Ser.L/V/II.118. Doc. 5 rev. 1. 29 December 2003. Chapter VII. para. 414. Available at: <http://cidh.org/countryrep/Guatemala2003sp/capitulo7.htm>; IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2002. OEA/Ser.L/V/II.117. Doc. 1 rev. 1. 7 March 2003. Chapter. IV. para. 41. Available at: <http://www.cidh.org/RELATORIA/showarticle.asp?artID=138&IID=1>

⁸⁵ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2007. OEA/Ser.L/V/II.131. Doc. 34 rev. 1. 8 March 2008. Chapter III, conclusions and recommendations, para 5. Available at: http://www.cidh.oas.org/annualrep/2007eng/Annual_Report_2007.VOL.II%20ENG.pdf

⁸⁶ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2002. OEA/Ser.L/V/II.117. Doc. 1 rev. 1. 7 March 2003. Chapter. IV. paras. 37-38. Available at: <http://www.cidh.org/RELATORIA/showarticle.asp?artID=138&IID=1>

dissemination of information makes it necessary to seek access to goods and services that will ensure basic conditions of dignity, security, subsistence, and development.⁸⁷

100. In the same regard, the IACHR's 2003 Report on "Justice and Social Inclusion: The challenges to democracy in Guatemala" states that:

The Commission and its Office of the Special Rapporteur understand that community radio is positive because it promotes the culture and history of communities, provided that they do so within a legal framework. The Commission recalls that the issuance or renewal of broadcast licenses must be subject to a clear, fair and objective procedure that takes into consideration the importance of the media so that all sectors of society [...] may participate in an informed manner in the democratic process. In particular, community radio is of great significance for the promotion of national culture, development [...] and the education of different communities [...].⁸⁸

101. In the 2007 Annual Report, the Office of the Rapporteur asserted that legal provisions regulating community broadcasting must recognize the special nature of these media and contain, as a minimum, the following elements: (a) simple procedures for obtaining licenses; (b) no demand of severe technological requirements that would prevent them, in practice, from even being able to file a request for space with the State; and (c) the possibility of using advertising to finance their operations. In this Report, the Office of the Special Rapporteur recommended that the States: "Legislate in the area of community broadcasting to assign part of the spectrum to community radio stations, and to ensure that democratic criteria be taken into account in assigning these frequencies that guarantee equal opportunity for all individuals in accessing them."⁸⁹

102. All of these elements are contained in the Joint Declaration on Diversity in Broadcasting, signed by the Rapporteurs for Freedom of Expression of the UN, OAS, OSCE, and ACHPR in December of 2007. The Office of the Special Rapporteur further added that: "Along the same lines, there is a need for legislation that appropriately defines the concept of community radio and that includes its social purpose, its nature as comprised of non-profit entities, and its operational and financial independence."⁹⁰

103. Finally, the Office of the Special Rapporteur stated in its 2008 Annual Report that:

The individual members of the social groups that have been traditionally marginalized, discriminated against, or that are in a situation of helplessness, are for various reasons systematically excluded from public debate. These groups do not have institutional or private channels for the serious, robust and constant exercise of their right to express publicly their ideas and opinions or to be informed of the issues that affect them. This process of exclusion has also deprived society of knowledge of their interests, of the needs and proposals of those

⁸⁷ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2002. OEA/Ser.L/V/II.117. Doc. 1 rev. 1. 7 March 2003. Chapter. IV. para. 41. Available at: <http://www.cidh.org/RELATORIA/showarticle.asp?artID=138&IID=1>

⁸⁸ IACHR, Justicia e Inclusión Social: los Desafíos de la Democracia en Guatemala. OEA/Ser.L/V/II.118. Doc. 5 rev. 1. 29 December 2003. Chapter VII. para. 414. Available at: <http://cidh.org/countryrep/Guatemala2003sp/capitulo7.htm>

⁸⁹ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2007. OEA/Ser.L/V/II.131. Doc. 34 rev. 1. 8 March 2008. Chapter III. para. 6. Available at: http://www.cidh.oas.org/annualrep/2007eng/Annual_Report_2007.VOL.II%20ENG.pdf

⁹⁰ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2007. OEA/Ser.L/V/II.131. Doc. 34 rev. 1. 8 March 2008. Chapter III. para. 5. Available at: http://www.cidh.oas.org/annualrep/2007eng/Annual_Report_2007.VOL.II%20ENG.pdf

who have not had the opportunity to access democratic debate on an equal footing. The effect of this phenomenon of exclusion is similar to the effect of censorship: silence.⁹¹

104. For all of the reasons mentioned, it has been recognized that community media perform an essential function not only in the process of social inclusion but also as mechanisms to promote culture and history, and for the development and education of different communities.⁹²

105. In particular, community media are fundamental in order to guarantee effective respect for the freedom of expression and access to information of the indigenous peoples of our region. In this regard, let us recall that Article 16 of the Universal Declaration on the Rights of Indigenous Peoples,⁹³ as well as Article VIII.2 of the Draft American Declaration on the Rights of Indigenous Peoples⁹⁴ (approved by the Inter-American Commission on February 25, 2007), recognize the right of indigenous peoples to establish their own communications media in their own languages. However, community media do not serve only indigenous peoples. As the Office of the Special Rapporteur stated in its 2008 Report, people who are excluded or marginalized include, for example, female heads of households who live in poverty (or extreme poverty), who do not have the means to express their needs or interests and who must bear the brunt of a sexist culture often nurtured by the powerful flow of information and opinions to which they do not have access; people of African descent who live in marginalized areas and must endure the consequences of deeply racist cultures without being able to decisively influence the debates that would help reverse processes of discrimination; rural or neighborhood communities organized around the purpose of overcoming outrageous conditions of social marginalization who cannot learn of successful alternatives for collective action or adequately inform society of their needs and proposals; and people with serious physical or mental handicaps, whose needs and interests are systematically excluded from collective deliberation. In short, there are millions of people whose freedom of expression is not sufficiently ensured, all of which leads to a fundamental flaw in the process of democratic deliberation.⁹⁵

⁹¹ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter IV. para. 100. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

⁹² IACHR, Justicia e Inclusión Social: los Desafíos de la Democracia en Guatemala. OEA/Ser.L/V/II.118. Doc. 5 rev. 1. 29 December 2003. Chapter VII. para. 414. Available at: <http://cidh.org/countryrep/Guatemala2003sp/capitulo7.htm>

⁹³ Article 16 of the Universal Declaration on the Rights of Indigenous peoples states that "1. *Indigenous peoples have the right to establish their own media in their own languages* and to have access to all forms of non-indigenous media without discrimination. 2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity" (emphasis added).

⁹⁴ Article VIII.2 of the Draft American Declaration on the Rights of Indigenous Peoples establishes that "The states shall take measures and ensure that broadcast radio and television programs are broadcast in the indigenous languages in the regions where there is a strong indigenous presence, *and to support the creation of indigenous radio stations and other media.*" (emphasis added).

⁹⁵ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter IV. para. 101. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

2. Legal recognition

106. Many laws in the countries of our region still contain disproportionate barriers or prohibitions that prevent the non-commercial private sectors from accessing the media. It is therefore important that the regulation of broadcasting recognize expressly the right of non-profit organizations to own audiovisual media. As the Office of the Special Rapporteur for Freedom of Expression of the OAS has stated, "These cases deal with a [legal framework] to promote the vitality of democracy if we bear in mind that the communicative process must satisfy not only the consumer needs of society's inhabitants (legitimate entertainment needs, for example) but also their information needs."⁹⁶

107. In that regard, in their Joint Declaration on diversity in broadcasting, the Special Rapporteurs on Freedom of Expression of the UN, OAS, OSCE, and ACHPR stressed that "community broadcasting must be recognized expressly under the law as a distinct media form." They similarly indicated that "different types of broadcasters – commercial, public service and community – should be able to operate on, and have equitable access to, all available distribution platforms," including the new digital dividend.⁹⁷

108. The law must define appropriately the concept of community media, including its non-commercial and social purpose, and its financial and operating independence from the state and from economic interests.⁹⁸ The law must also: (1) provide simple procedures for obtaining licenses; (2) refrain from demanding strict technological requirements that prevent access to them; and (3) allow for the possibility of using different sources of funding, such as advertising, as a means to finance operations.⁹⁹ In any case, the law must include sufficient guarantees to prevent such media from becoming dependent on the State through government funding.

3. Reservation of spectrum and equality of access and use of licenses

109. Given the existing conditions of exclusion, the States must take positive measures to include the non-commercial sectors in the communications media.¹⁰⁰ These measures include ensuring broadcast spectrum frequencies for the different types of media, and providing specifically for certain frequencies to be reserved for the use of community broadcasters, especially when they are not equitably represented in the spectrum. On this note, the Office of the Special Rapporteur

⁹⁶ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. para. 107. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

⁹⁷ Special Rapporteurs on Freedom of Expression of the UN, OAS, OSCE and ACHPR, *Joint Declaration on Diversity in Broadcasting*, December 12, 2007.

⁹⁸ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2007. OEA/Ser.L/V/II.131. Doc. 34 rev. 1. 8 March 2008. Chapter III. para. 5. Available at: <http://www.cidh.oas.org/annualrep/2007eng/Annual%20Report%202007.VOL.II%20ENG.pdf>

⁹⁹ On this matter, the Office of the Special Rapporteur has stated that, "It is indispensable to remove all disproportionate or discriminatory restrictions that prevent radio and television operators of all kinds to fully accomplish the commercial, social or public mission they undertake." IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter IV. para. 106. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

¹⁰⁰ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. para. 230. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

has insisted upon the need for broadcasting regulations to establish the duty to allocate part of the spectrum to community media.¹⁰¹

110. Another measure that the State should promote to create fair opportunities for real equality in the exercise of the right to freedom of expression enshrined in Article 13 of the American Convention is the establishment of special procedures enabling the non-commercial sectors to gain access to licenses. Accordingly, there should be procedures that do not demand strict technological requirements that, in practice, have a discriminatory effect on those sectors, thus preventing them from even applying for a license. To the contrary, the requirements for accessing licenses should consider the specific needs of community broadcasters.

111. As explained in a previous section of this chapter, in its 2003 report *Justicia e Inclusión Social: los Desafíos de la Democracia en Guatemala* [Justice and Social Inclusion: the Challenges for Democracy in Guatemala], the IACHR stated that “the issuance or renewal of broadcast licenses must be subject to a clear, fair and objective procedure that takes into consideration the importance of the media so that all sectors of society [...] may participate in an informed manner in the democratic process. [...] Therefore, the auctions that consider solely financial criteria, or which grant concessions without a fair opportunity for all sectors, are incompatible with democracy and with the right to freedom of expression and information guaranteed in the American Convention on Human Rights and in the Declaration of Principles on Freedom of Expression.”¹⁰² The Special Rapporteurs on Freedom of Expression of the UN, OAS, OSCE, and African Commission asserted similar criteria in their 2007 Joint Declaration on Diversity in Broadcasting.¹⁰³

112. Moreover, the mere legal recognition of access to a license is not enough to guarantee freedom of expression if there are discriminatory or arbitrary conditions on the use of licenses that severely limit the ability of the private non-profit sectors to utilize the frequencies, as well as the general public’s right to receive the broadcasts. The right to freedom of expression recognized in Article 13 of the American Convention prohibits the placing of arbitrary or discriminatory limits on the use of community broadcast licenses.¹⁰⁴ As such, the regulation must allow these communications media to have different sources of funding. This includes the possibility of accepting advertising insofar as there are other guarantees that prevent unfair competition with other radio stations, and provided that it does not interfere with their social purpose.¹⁰⁵ Likewise, it is necessary to ensure that state funding does not dissolve the independence of community radio, since that would entail the loss of the genuine community value of this broadcasting sector.

113. Finally, other arbitrary restrictions on the use of the licenses must be removed, such as limitations on the use of minority or indigenous languages by the communications media directed specifically at different communities.

¹⁰¹ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2007. OEA/Ser.L/V/II.131. Doc. 34 rev. 1. 8 March 2008. Chapter III. para. 5. Available at: http://www.cidh.oas.org/annualrep/2007eng/Annual_Report_2007.VOL.II%20ENG.pdf

¹⁰² IACHR, *Justicia e Inclusión Social: los Desafíos de la Democracia en Guatemala*. OEA/Ser.L/V/II.118. Doc. 5 rev. 1. 29 December 2003. Chapter VII. para. 414. Available at: <http://cidh.org/countryrep/Guatemala2003sp/capitulo7.htm>

¹⁰³ Special Rapporteurs on Freedom of Expression of the UN, OAS, OSCE and ACHPR, *Joint Declaration on Diversity in Broadcasting*, December 12, 2007.

¹⁰⁴ See also: Principle 13 of the Declaration of Principles, which prohibits any type of direct or indirect pressure aimed at silencing the dissemination of information by journalists or other members of the media.

¹⁰⁵ Special Rapporteurs on Freedom of Expression of the UN, OAS, OSCE and ACHPR, *Joint Declaration on Diversity in Broadcasting*, December 12, 2007.

H. Private commercial broadcasting

114. Article 13 of the American Convention provides for the right of all people to establish mass media in order to exercise thereby their freedom of expression. The right to establish and administer mass media is thus covered by the same reinforced guarantees that protect freedom of expression. In this respect, democratic societies must be inclined toward free, independent and plural broadcasting that is reinforced against arbitrary interferences and responsibly meets the legitimate, reasonable and proportionate obligations imposed upon it under the law and the Constitution.

115. All persons who exercise their right to freedom of expression through media that use frequencies have the right to be considered under equal conditions in a frequency allocation process that is transparent, clear, predetermined and observant of due process. Licenses must be subject to reasonable and proportionate conditions of use, and must allow the use of the frequency for a sufficient period of time for the individual to regain his investment and profitability. The authority charged with implementing the pertinent provisions must meet the conditions of independence and impartiality mentioned earlier in this chapter. Rules that regulate or limit the exercise of broadcasting must be established clearly in a law and must be clear, concise and necessary in a democratic society. Finally, there must be suitable and effective means of judicial recourse in order to remove any obstacle or repair any harm caused to those who legitimately exercise their right to freedom of expression in this manner.

I. The duty of the State to prevent monopolies or oligopolies in broadcasting

116. Monopolies or oligopolies in the media violate the freedom of expression enshrined in Article 13 of the American Convention, in that they hinder the diversity and plurality of voices necessary in a democratic society.¹⁰⁶ As such, both the IACHR and the Inter-American Court have maintained the importance of state intervention to guarantee competition and promote plurality and diversity. The effective measures that the States must take include the enactment of antitrust laws that limit the concentration of ownership and control of the broadcast media.

117. It is clear that the concentration of ownership of the media leads to the uniformity of the content that they produce or disseminate. Therefore, more than 20 years ago, the Inter-American Court held that any monopoly in the ownership or administration of the media is prohibited, regardless of the form it takes.¹⁰⁷ The Court also recognized that the States must actively intervene in order to prevent monopolies in the media sector. Thus, the region's highest court of justice held that "given the broad scope of the language of the American Convention, freedom of expression can also be affected without the direct intervention of the State. This might be the case, for example, when due to the existence of monopolies or oligopolies in the ownership

¹⁰⁶ IACHR, *Declaration of Principles on Freedom of Expression*, October 2000, Principle No. 12: "Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people's right to information."

¹⁰⁷ In this regard, the Inter-American Court has established that "It is the mass media that make the exercise of freedom of expression a reality. This means that the conditions of its use must conform to the requirements of this freedom, with the result that there must be, *inter alia*, a plurality of means of communication, *the barring of all monopolies thereof, in whatever form*, and guarantees for the protection of the freedom and independence of journalists [...]" and "It is equally true that the right to impart information and ideas cannot be invoked to justify the establishment of private or public monopolies of the communications media designed to mold public opinion by giving expression to only one point of view" I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 33.

of communications media, there are established in practice 'means tending to impede the communication and circulation of ideas and opinions.'"¹⁰⁸

118. The Special Rapporteurs on Freedom of Expression also spoke out against monopolies in the media in their joint declarations of 2001,¹⁰⁹ 2002¹¹⁰ and 2007. They specifically maintained in the third declaration that, "in recognition of the particular importance of media diversity to democracy, special measures, including anti-monopoly rules, should be put in place to prevent undue concentration of media or cross-media ownership, both horizontal and vertical."¹¹¹

119. Specifically, the States must prevent monopolies or oligopolies and consider the existence of such conditions when determining the allocation or renewal of licenses. Accordingly, in the Joint Declaration on Diversity in Broadcasting the Special Rapporteurs on Freedom of Expression explained that antitrust measures "should also involve active monitoring, taking ownership concentration into account in the licensing process, where applicable, prior reporting of major proposed combinations, and powers to prevent such combinations from taking place."¹¹²

120. However, the controls and restrictions imposed to prevent monopolies or oligopolies should not unnecessarily limit the growth, development or economic viability of the commercial broadcasting sector. In this respect, Article 13.3 of the American Convention provides: "The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions." The Inter-American Court has also held that "any governmental action that involves a restriction of the right to seek, receive and impart information and ideas to a

¹⁰⁸ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 56; See also: IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2004. OEA/Ser.L/V/II.222. Doc. 5 rev. 23 February 2005. Chapters IV. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=459&IID=1>

¹⁰⁹ "Effective measures should be adopted to prevent undue concentration of media ownership" (Special Rapporteurs on Freedom of Expression of the UN, OAS, and OSCE, Joint Declaration: *Challenges to Freedom of Expression in the New Century*, November 20, 2001).

¹¹⁰ The Special Rapporteurs declared that they were cognizant of "the threat posed by increasing concentration of ownership of the media and the means of communication, in particular to diversity and editorial independence" (Special Rapporteurs on Freedom of Expression of the UN, OAS, and OSCE, *Joint Declaration on Freedom of Expression and the Administration of Justice, Commercialisation and Freedom of Expression, and Criminal Defamation*, December 10, 2002).

¹¹¹ Special Rapporteurs on Freedom of Expression of the UN, OAS, OSCE and ACHPR, *Joint Declaration on Diversity in Broadcasting*, December 12, 2007. Also of interest to the IACHR are the Resolutions adopted by the European Parliament on the matter, such as Resolution 2007/2253 of September 25, 2008, on concentration and pluralism in the media in the European Union, in which the European Parliament: "3. Notes that the European media landscape is subject to continuing convergence, as regards both the media and markets; 4. Highlights that the concentration of ownership of the media system creates an environment favouring the monopolisation of the advertising market, introduces barriers to the entry of new market players and also leads to uniformity of media content; 5. Points out that the development of the media system is increasingly driven by profit-making and that, therefore, societal, political or economic processes, or values expressed in journalists' codes of conduct, are not adequately safeguarded; considers, therefore, that competition law must be interlinked with media law, in order to guarantee access, competition and quality and avoid conflicts of interests between media ownership concentration and political power, which are detrimental to free competition, a level playing field and pluralism." In the same vein, in the Resolution on the risk of breaches of freedom of expression and information in the Union, particularly in Italy (section 2 of Article 11 of the Charter of Fundamental Rights) (2003/2237(INI)), the European Parliament stated that it: "30. Welcomes the contribution of commercial media to innovation, economic growth and pluralism, but notes that the increase in the concentration of the media, including multimedia multinationals and cross-border ownership, threatens media pluralism."

¹¹² Special Rapporteurs on Freedom of Expression of the UN, OAS, OSCE and ACHPR, *Joint Declaration on Diversity in Broadcasting*, December 12, 2007.

greater extent or by means other than those authorized by the Convention” is a violation of freedom of expression.¹¹³

121. In any case, the existence of broadcasting regulations that respect the requirements set forth in the initial sections of this chapter, and the existence of enforcement and oversight authorities that meet the conditions expanded upon in this document, will protect commercial radio and television channels from abusive interference and arbitrary decisions.¹¹⁴

J. Government advertising and other forms of broadcast funding

122. Advertising—including state advertising—is a source of income that is very relevant to the viability or development of the media.¹¹⁵ At the same time, the use of the media to transmit information of public interest is an important and useful tool for States.¹¹⁶ It is therefore essential to ensure that government advertising not be used to punish media that are independent or critical of the government, or as a covert subsidy that benefits, directly or indirectly, the media that are aligned with or agreeable to the authorities.¹¹⁷

123. It is necessary to recall that Principle 5 of the IACHR’s Declaration of Principles on Freedom of Expression states that “prior censorship, *direct or indirect interference in or pressure* exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.” In interpreting the scope of this principle,¹¹⁸ the IACHR has made clear that “According to this principle, it is unacceptable for economically powerful sectors or the State to exert economic or political pressure aimed at influencing or limiting the expression of individuals or the mass media. In this regard, the Inter-American Commission has stated that the use of authority to limit the

¹¹³ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 55.

¹¹⁴ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter IV. para. 107. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

¹¹⁵ “Media outlets’ production costs are high, and the most lucrative way to cover these expenses is through extensive advertising. Traditionally, government advertising budgets have comprised a substantial percentage of media outlets’ total advertising investments. Generally, exact numbers of advertising expenditures are not available to the public. Yet, there are reports from many media outlets that they receive 40-50% of their revenue from the government.” IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2003. OEA/Ser.L/V/II.118. Doc. 70 rev. 2. 29 December 2003. Chapter V. para. 4. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=139&IID=1>

¹¹⁶ “There are two types of government publicity: unpaid and paid. ‘Unpaid’ publicity includes press releases, the texts of legislation or legislative body meetings, and information which carries government support but which may be paid for by a private party. There are often legal obligations for national media sources to release this publicity, as a condition of the media outlets’ use of the state’s available frequencies and airwaves. Such conditions are usually included in states’ fundamental broadcasting and press laws. ‘Paid’ publicity includes paid advertising in the press, on radio and on television, government-produced or -sponsored software and video material, leaflet campaigns, material placed on the Internet, exhibitions, and more.” IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2003. OEA/Ser.L/V/II.118. Doc. 70 rev. 2. 29 December 2003. Chapter V. para. 3. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=139&IID=1>

¹¹⁷ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter IV. para. 77. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

¹¹⁸ IACHR. Declaration of Principles on Freedom of Expression. October, 2000. Section B: Interpretation. para. 27.

expression of ideas lends itself to abuse, since stifling unpopular or critical ideas and opinions restricts the debate that is essential to the effective functioning of democratic institutions.”¹¹⁹

124. Likewise, Principle 13 of the Declaration of Principles on Freedom of Expression provides that “The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

125. On numerous occasions, the IACHR and the Office of the Special Rapporteur for Freedom of Expression have pointed to the use of advertising in the region as one of the possible manifestations of indirect restrictions on the right to freedom of expression.¹²⁰ The Special Rapporteurs from all of the regional and universal systems for the protection of human rights have also warned of this phenomenon throughout the world. Accordingly, in their 2002 Joint Declaration, they affirmed that “governments and public bodies should never abuse their custody over public finances to try to influence the content of media reporting; the placement of public advertising should be based on market considerations.”¹²¹ In their 2007 Joint Declaration on Diversity in Broadcasting, they stated that “It should be illegal for the media to discriminate, on the basis of political opinion or other recognised grounds, in the allocation of and charging for paid political advertisements.”¹²²

126. In that respect, the right to freedom of expression enshrined in Article 13 of the American Convention prohibits the States from making decisions with respect to broadcasting based on a medium's news or editorial line.¹²³ It follows that government advertising cannot be allocated by the States in a discriminatory manner to reward or punish broadcasters according to their expressions or programming.

127. In other words, the IACHR notes that, although there is no intrinsic right to receive State funding through advertising, the discriminatory allocation of government advertising based on the radio or television channel's news or editorial line is a violation of the right to free expression guaranteed by the American Convention.

128. To the contrary, the States should decide what they communicate, and where they communicate their messages to society, based on objective criteria regarding the best way to

¹¹⁹ IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

¹²⁰ See, e.g., IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2003. OEA/Ser.L/V/II.118. Doc. 70 rev. 2. 29 December 2003. Chapter V. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=139&IID=1>

¹²¹ Special Rapporteurs on Freedom of Expression of the UN, OAS, and OSCE, *Joint Declaration on Freedom of Expression and the Administration of Justice, Commercialisation and Freedom of Expression, and Criminal Defamation*, December 10, 2002.

¹²² Special Rapporteurs on Freedom of Expression of the UN, OAS, OSCE and ACHPR, *Joint Declaration on Diversity in Broadcasting*, December 12, 2007.

¹²³ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. para. 230. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20ORELE%20-%20version%20final.pdf>

transmit this information most effectively, and absolutely independently of the news or editorial content of the medium it hires for such purposes.¹²⁴

129. The Office of the Special Rapporteur has found that “in the framework of distribution criteria, there are both negative and positive discriminatory allocations of publicity. Negative allocation would be given to an individual or media outlet in order to induce them to not report unfavorably on those in power. Positive allocation requires the recipient to engage in favorable expression in order to receive government revenue.”¹²⁵ Both of those cases involve a violation of freedom of expression.

130. It is essential for the States to have specific regulations that set prior and objective criteria for the allocation of government advertising, drafted clearly and precisely, so as to establish predictability for broadcasters and obligations for the State. The law should also provide for competitive and transparent procedures.

131. On this point, the Office of the Special Rapporteur has affirmed that “insufficiently precise laws and unacceptable discretionary powers constitute freedom of expression violations. It is indeed when laws pertaining to allocation of official publicity are unclear or leave decisions to the discretion of public officials that there exists a legal framework contrary to freedom of expression.”¹²⁶ Accordingly, it has indicated that “transparency is vitally needed. The criteria used by government decision-makers to distribute publicity must be made public. The actual allocation of advertising and sum totals of publicity spending should also be publicized, to insure fairness and respect for freedom of expression.”¹²⁷

132. Finally, steps should be taken to prevent government advertising from creating government dependency among the private audiovisual media, whether they are non-profit or for profit. With regard to this issue, it is clear that government advertising can in many cases be the only possible funding alternative for certain small media—which do not appear to be commercially profitable options for private advertisers—or for those that criticize powerful economic groups or businesses.¹²⁸ In such cases, the States should ensure alternative sources of funding to promote the plurality of voices.

¹²⁴ “The decision must be made, then, bearing in mind the objective and legitimate purpose that must be accomplished by the publication of the information and not the medium’s affinity to the government which, at any time, has the power to [allocate] it.” IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter IV. para. 77. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

¹²⁵ “Negative allocations are content-based forms of coercion that force media outlets to be silent on issues of public interest, whereas positive allocations may artificially distort a public debate by inducing some who otherwise would have taken a contrary position (or chosen not to speak at all) to support the government’s views.” IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2003. OEA/Ser.L/V/II.118. Doc. 70 rev. 2. 29 December 2003. Chapter V. para. 7. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=139&IID=1>

¹²⁶ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2003. OEA/Ser.L/V/II.118. Doc. 70 rev. 2. 29 December 2003. Chapter V. paras. 23 and 86. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=139&IID=1>

¹²⁷ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2003. OEA/Ser.L/V/II.118. Doc. 70 rev. 2. 29 December 2003. Chapter V. para. 89. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=139&IID=1>. For their part, in their 2007 Joint Declaration, the Special Rapporteurs on Freedom of Expression emphasized that “transparency should be a hallmark of public policy efforts in the area of broadcasting.” (Special Rapporteurs on Freedom of Expression of the UN, OAS, OSCE and ACHPR, *Joint Declaration on Diversity in Broadcasting*, December 12, 2007).

¹²⁸ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2003. OEA/Ser.L/V/II.118. Doc. 70 rev. 2. 29 December 2003. Chapter V. para. 4. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=139&IID=1>

K. The sanctions regime

133. The regulation of broadcasting can provide sanctions for failure to comply with any legal obligation or for the commission of a violation or irregularity in the use of licenses. These sanctions are restrictions to freedom of expression. As such, the regulation and enforcement of these sanctions must respect certain requirements in order to be consistent with the American Convention and with the principles established by the inter-American case law.

134. Sanctions for the irregular use of a radio or television license—particularly if they deal with the revocation of licenses—can seriously jeopardize fundamental rights of the individuals involved and create a silencing or “chilling” effect on democratic speech. Insofar as freedom of expression encompasses two aspects—the right to express thoughts and ideas and the right to receive them—the restriction of this right by means of an arbitrary interference affects not only the individual right to express ideas and information but also the right of the community in general to receive all kinds of information and opinions.¹²⁹

135. Thus, in order to respect the right to freedom of expression, the infractions and sanctions provided under broadcasting regulations must be legitimate and must be enforced through a procedure that observes the due process of law.

1. Legitimacy of sanctions

136. Some earlier sections of this chapter examined in detail the requirements that restrictions to freedom of expression must meet, and those requirements are fully applicable to the system of violations and sanctions that may be established in broadcasting regulations. In general terms, in order to be legitimate, the infractions and sanctions imposed by broadcasting regulations must pass the “three-part test” derived from Article 13.2 of the Convention, established by the case law of the bodies of the inter-American system: (1) the sanctions must have been defined in a precise and clear manner by preexisting law; (2) they must serve compelling objectives authorized by the Convention; and (3) the limitation must be necessary in a democratic society to accomplish the compelling objectives pursued, strictly proportionate to the objective pursued, and appropriate to achieve said compelling objective. Likewise, these conditions must be verified simultaneously, and it is incumbent upon the authority imposing the sanctions to demonstrate that all of the requirements have been met.¹³⁰

137. With respect to the requirement that the sanctions be set forth in a clear and precise law, the Inter-American Court has held that under the rule of law the principle of legality—together with the principle of non-retroactivity—governs the acts of all State bodies, in their respective jurisdictions, particularly where the exercise of their punitive power is concerned.¹³¹ It has therefore specified that the requirements of Article 9 of the American Convention must also be observed in

¹²⁹ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. paras. 30-32; See also: IACHR, *Declaration of Principles on Freedom of Expression*, October 2000, Section B: Interpretation, para. 23.

¹³⁰ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter IV. paras. 135-136. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

¹³¹ I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 177; I/A Court H.R., *Case of Baena-Ricardo et al. v. Panama. Merits, Reparations and Costs*. Judgment of February 2, 2001. Series C No. 72. para. 107; and I/A Court H. R., *Case of Lori Berenson-Mejía v. Peru. Merits, Reparations and Costs*. Judgment of November 25, 2004. Series C No. 119. para. 126.

the case of government-imposed sanctions.¹³² Indeed, the vagueness of infractions or sanctions established in broadcasting regulations could lead to arbitrariness on the part of the enforcement and oversight authority, thereby jeopardizing the freedom of expression enshrined in Article 13 of the American Convention.

138. Second, in order to be legitimate, the sanctions must aim to accomplish compelling objectives authorized by the American Convention. This means, then, that sanctions can neither be established nor applied as punishment for a medium's news or editorial line; nor can licenses be legitimately revoked based on the news or editorial line of the medium. The Office of the Special Rapporteur for Freedom of Expression has maintained that “[t]he use of the [coercive] means of the State to impose a single view of the world or to discourage the open and vigorous deliberation of all matters of public relevance is incompatible with the guiding principles of democratic regimes and, in particular, with the right to freedom of expression enshrined in Article 13 of the American Convention.”¹³³

139. Third, sanctions—including the revocation of a license—must be necessary in a democratic society in order to achieve the compelling aims pursued, strictly proportionate to the aim pursued, and suitable for accomplishing that aim. The standards, firmly rooted in the inter-American system, that sanctions for the abusive use of freedom of expression must always be proportionate, are fully applicable to this issue in that the benefit to the protected interest must outweigh the harm to freedom of expression. The arguments supporting this theory are linked to the imperative of preventing the creation of legal frameworks that allow the State to make arbitrary or disproportionate decisions that have a chilling effect.¹³⁴

140. In particular, the revocation of a license can only be provided for and enforced in cases of serious regulatory noncompliance that has caused real harm to the rights of others. On this point, the inter-American case law has been clear in specifying that when justified restrictions to freedom of expression are established to protect the rights of others, the authorities imposing such limitation must necessarily demonstrate that indeed these rights have been harmed, as, “if there is no clear harm to another’s right, the subsequent imposition of liability is unnecessary.”¹³⁵

141. Likewise, the Inter-American Court and the IACHR have noted on several occasions that the imposition of criminal penalties is extremely onerous to freedom of expression. Insofar as there are alternative measures less restrictive to freedom of expression than provisions that define the violation of broadcasting regulations as criminal conduct, such violations should not give rise to criminal liabilities.

142. The IACHR and the Office of the Special Rapporteur have maintained that the States have “[the] obligation to establish a regulatory framework that promotes free, open, plural and uninhibited speech, which entails the design of institutions that enable, not hinder, the social

¹³² I/A Court H.R., *Case of Baena-Ricardo et al. v. Panama. Merits, Reparations and Costs*. Judgment of February 2, 2001. Series C No. 72. paras. 106-115.

¹³³ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter IV. para. 54. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

¹³⁴ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter IV. para. 57. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

¹³⁵ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. para. 70. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

deliberation of all matters and phenomena of public relevance. None of the above is compatible with the indiscriminate use of criminal law as a mechanism to limiting the free circulation of opinions and information, especially when those refer to public affairs.”¹³⁶

143. In particular, noncompliance with rules set forth in the regulations with respect to content, if they deal with expressions concerning matters of public interest, can never result in criminal sanctions. In addition, the legitimacy of criminal sanctions in cases of broadcasters operating without authorization must be examined in light of the real possibilities of accessing a license. In that regard, delay in the exercise of right to freedom of expression, due, for example, to unjustified or arbitrary obstacles to accessing a license, operates as a clear limit to the potential criminal prosecution of conduct designed to achieve its effect.

2. Due process

144. Because punitive procedures can seriously affect the exercise of freedom of expression, they must provide for all of the due process guarantees enshrined in Articles 8 and 25 of the American Convention.

145. It should be recalled in this regard that, according to the Inter-American Court of Human Rights, “[a]lthough Article 8 of the American Convention is entitled ‘Judicial Guarantees’ [in the Spanish version – ‘Right to a Fair Trial’ in the English version], its application is not strictly limited to judicial remedies, ‘but rather the procedural requirements that should be observed in order to be able to speak of effective and appropriate judicial guarantees’ so that a person may defend himself adequately in the face of any kind of act of the State that affects his rights,” and that “although this article does not establish minimum guarantees in matters relating to the determination of rights and obligations of a civil, labor, fiscal or any other nature, the full range of minimum guarantees stipulated in the second paragraph of this article are also applicable in those areas and, therefore, in this type of matter, the individual also has the overall right to the due process applicable in criminal matters.”¹³⁷

146. Further, the central role that freedom of expression plays in the subsistence of the democratic system dictates that certain restrictions that may be valid in certain administrative proceedings (such as, for example, the non-public nature of some part of the case), cannot be valid when the exercise of this right may be affected.¹³⁸

147. In particular, the sanctions enforcement procedure—especially in cases involving the revocation of licenses—1) must be carried out by a body that meets the previously mentioned requirements, especially impartiality and independence from the political branches of government and the broadcasting sector; 2) must be transparent and public, providing, for example, for public hearings; 3) must allow the exercise of the right of defense before any decision is rendered, expressly permitting the opportunity to be heard and to offer evidence; and 4) must allow for subsequent judicial review.

¹³⁶ IACHR, Press Release No. 57/09, “IACHR and Office of The Special Rapporteur Send Communication to the Venezuelan State Expressing Deep Concern about the Situation of Freedom of Expression,” August 5, 2009. R57/09. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=759&IID=2>.

¹³⁷ I/A Court H.R., *Case of the Constitutional Court v. Peru. Merits, Reparations and Costs*. Judgment of January 31, 2001. Series C No. 71. paras. 69-70.

¹³⁸ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. paras. 72-73.

148. Finally, it is necessary to make clear that the prohibition against prior censorship established in Article 13 of the Convention requires that any sanction for noncompliance with regulatory provisions pertaining to content must be applied only subsequent to the broadcast.

CHAPTER VII CONCLUSIONS Y RECOMMENDATIONS

1. As on previous occasions, the Office of the Special Rapporteur closes its Annual Report with a chapter of conclusions and recommendations. The objective of this practice is to begin a fluid dialogue with Member States that will enable the Americas to emerge as an example for the rest of the world in the area of respect, protection, and promotion of the right to freedom of expression.

A. Violence against journalists and media outlets

2. At least 13 journalists were murdered in the region in 2009 for reasons connected with their work. In addition to these tragic events, there were at least 200 complaints of violence, threats, and intimidation against communicators and media outlets, presumably in connection with their exercise of freedom of expression.

3. It is important to highlight that during 2009 there was also important progress in the investigation, trial, and punishment of some of those responsible for crimes committed against journalists in past years. However, despite these efforts, the majority of these crimes remain in a worrying state of impunity.

4. On this point, the Office of the Special Rapporteur recommends that member States:

- a. Carry out serious, impartial, and effective investigations of the murders, attacks, threats, and acts of intimidation committed against journalists and media workers. These crimes must also be investigated when they are committed with the aim of silencing the exercise of the right to freedom of expression of any other individual.
- b. Try, in impartial and independent tribunals, all those responsible for the murders, attacks, threats, and acts of intimidation based on the exercise of freedom of expression, and provide adequate reparations to the victims and their family members.
- c. Publicly condemn these acts to prevent actions that might encourage these crimes.
- d. Adopt the measures necessary to guarantee the security of those who are attacked and threatened for the exercise of their right to freedom of expression, whether these acts are committed by state agents or by private individuals.
- e. Adopt the necessary measures so that social communicators in situations of risk who have been displaced or exiled can return to their homes in conditions of safety. If these persons cannot return, the States must adopt measures so that they can stay in their chosen place in conditions of dignity, with security measures, and with the necessary economic support to maintain their work and their family lives.

B. Criminalization of expression and promotion of proportionality in subsequent liability

5. The year 2009 saw important progress in reforming criminal defamation laws as they relate to speech on matters in the public interest. However, some Member States still witnessed criminal complaints filed by State officials over the publication of opinions or information related to matters in the public interest. It is true that in some of the cases studied, the criminal proceedings were dismissed. However, in others the judges convicted the journalists, and in at least two cases this year the sentences were partially or completely served. The Office of the Special

Rapporteur verifies that there are still criminal codes in our hemisphere that have yet to be adjusted to inter-American standards on the subject of freedom of expression, and that allow for the imposition of disproportionate measures that can have the kind of chilling effect that is incompatible with a democratic society. Similarly, the Office of the Special Rapporteur received information on the need to adjust civil laws to prevent the disproportionate use of pecuniary sanctions.

6. Likewise, the Office of the Special Rapporteur observes that it is necessary for States to design regulatory frameworks that respect the exercise of social protest. States must not fail to take into account that, when facing institutional frameworks that do not favor participation or that present serious barriers to accessing more traditional methods of mass communication, public protest can become the only method that truly permits sectors that are traditionally discriminated against or marginalized from the public discourse to make their points of view heard and considered.

7. In regard to statutes that criminally or civilly sanction expression, the Office of the Special Rapporteur recommends that Member States:

- a. Promote the repeal of contempt (*desacato*) laws, whatever their form, given that these norms are contrary to the American Convention on Human Rights and restrict public debate, an essential element of democratic functioning.
- b. Promote the modification of laws on criminal defamation with the objective of eliminating the use of penal proceedings to protect honor and reputation when information is disseminated about issues of public interest, about public officials, or about candidates for public office.
- c. Incorporate into their legal regimes standards for evaluating subsequent liability that differentiate for those who disseminate opinions or ideas about issues of general interest or political criticism, including the "actual malice" standard and strict proportionality and reasonability of sanctions, so that proceedings in such cases do not generate a chilling effect that affects democratic debate.
- d. Promote the modification of laws on insult to ideas or institutions with the aim of eliminating the use of penal proceedings to inhibit free democratic debate about all issues.
- e. Establish clear regulations that guarantee the legitimate exercise of social protest and that impede the application of disproportionate restrictions that can be used to inhibit or suppress critical or dissenting expression.

C. Statements of high-level State authorities based on editorial positions

8. In 2009, the Office of the Special Rapporteur continued to receive information on statements made by senior State officials discrediting the journalism work of some communicators and media outlets critical of their administration, accusing them of illicit acts such as conspiracy, terrorism and treason. It is particularly concerning that in some of these cases, the statements were followed by violence against journalists or the opening of administrative procedures that threatened the permanent withdrawal of operating concessions, permits, or licenses of critical media outlets. The Office of the Special Rapporteur urges State authorities to contribute decisively to building an environment of tolerance and respect in which all individuals can express their thoughts and opinions without fear of being attacked, punished, or stigmatized for them.

9. Regarding statements of high-level State officials, the Office of the Special Rapporteur recommends that member States:

- a. Encourage democratic debate through public declarations, practices, and policies that promote tolerance and respect for journalists and communicators, whatever their thoughts or ideas.
- b. Refrain from making public statements that can encourage violence against individuals because of their opinions. In particular, avoid statements that could stigmatize journalists, media outlets, and human rights defenders.

D. Prior censorship

10. The Office of the Special Rapporteur received information about judicial decisions that prohibited the circulation of information of public interest this year. Member States must take into account that Article 13.2 of the American Convention explicitly establishes that the exercise of the right to freedom of expression shall not be subject to prior censorship.

11. On this point, the Office of the Special Rapporteur recommends that member States:

- a. Eliminate any norm that enables prior censorship by any state organ, and also any qualifications that may imply censorship of freedom of expression, such as prior requirements of truthfulness, timeliness, or impartiality of information.

E. Discriminatory distribution of official advertising

12. The Office of the Special Rapporteur received complaints pertaining to distribution of official advertising that was intended to punish or reward media outlets according to their editorial positions. It is necessary for member States to have statutory frameworks that establish clear, transparent, objective, and non-discriminatory criteria for determining the distribution of official advertising.

13. On this point, the Office of the Special Rapporteur recommends that member States:

- a. Abstain from using public power to punish or reward media and journalists in relation to their editorial stance or coverage of certain information, whether through the discriminatory and arbitrary assignment of official publicity or other indirect means aimed at impeding communication and the circulation of ideas and opinions.

F. Progress on access to information

14. During this period, the Office of the Special Rapporteur was encouraged by the incorporation of the inter-American system's standards on access to information by several domestic courts. The Office of the Special Rapporteur was also encouraged by the implementation of measures by public authorities to guarantee compliance with their obligations in this area. However, it can still be said that in several Member States there continue to be difficulties in regulating the exceptions to the exercise of this right.

15. In regard to access to information, the Office of the Special Rapporteur recommends that Member States:

- a. Continue promulgating laws that permit effective access to information and complementary norms that regulate the exercise of this right, in conformity with the international standards in this area.

- b. Guarantee effectively, both *de jure* and *de facto*, the right of *habeas data* of all citizens, this being an essential element of freedom of expression and the democratic system.

G. Allocation of radio frequencies

16. During this period, the Office of the Special Rapporteur continued to emphasize the need for Member States to have a competent authority in charge of broadcasting that is technical, independent of the government, autonomous in the face of political pressure, and subject to due process guarantees and strict judicial review. Also, the Office of the Special Rapporteur took note of the use of the State's regulatory and oversight powers in the absence of compliance with all the guarantees established in Article 13.2 of the American Convention. Finally, the Office of the Special Rapporteur observed this year that in the majority of cases, State regulatory frameworks still have not established processes of allocating licenses or frequencies that are open, public, and transparent; and subject to clear and pre-established rules, and only those requirements that are strictly necessary, just, and equitable.

17. On this point, the Office of the Special Rapporteur recommends that Member States:

- a. Adopt legislation to ensure transparent, public, and equitable criteria for the allocation of radioelectric frequencies and the new digital dividend. This legislation must take into account the current situation of concentration of the ownership of communications media, and assign the administration of the radioelectric spectrum to an independent organ, subject to due process and judicial oversight.
- b. Promote effective policies and practices that permit access to information and the equal participation of all sectors of society so that their needs, opinions, and interests will be contemplated in the design and adoption of public policy decisions. Additionally, adopt legislative and other measures that are necessary to guarantee pluralism, including antitrust laws.
- c. Legislate in the area of community broadcasting, in a manner that will produce an equitable division of the spectrum and the digital dividend to community radio stations and channels. The assignment of these frequencies must take into account democratic criteria that guarantee equal opportunities to all individuals in the access and operation of these media in conditions of quality, without disproportionate or unreasonable restrictions, and in conformity with Principle 12 of the Declaration of Principles and the "Joint Declaration on Diversity in Broadcasting" (2007).
- d. Launch regional efforts to regulate the State's authority to control and supervise the allocation of public goods or resources related directly or indirectly with the exercise of freedom of expression. On this point, the task is to adjust institutional frameworks with two central objectives: first, to eliminate the possibility that State authority is used to reward or punish media outlets according to their editorial positions, and second, to foster pluralism and diversity in the public discourse.

18. The Office of the Special Rapporteur thanks the various Member States that have collaborated with it this year, and the IACHR and its Executive Secretariat for their constant support. The Office of the Special Rapporteur also thanks those independent journalists and media workers who, on a daily basis, carry out the important work of informing society. Finally, the Office of the Special Rapporteur profoundly laments the murders of social communicators who lost their lives defending the right of every person to freedom of expression and information. To them, with admiration and respect, we dedicate this report.

APPENDIX

A. AMERICAN CONVENTION ON HUMAN RIGHTS

(Signed at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969)

Article 13. Freedom of Thought and Expression

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.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
 - a) respect for the rights or reputations of others; or
 - b) the protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

B. INTER-AMERICAN DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION

PREAMBLE

REAFFIRMING the need to ensure respect for and full enjoyment of individual freedoms and fundamental rights of human beings under the rule of law;

AWARE that consolidation and development of democracy depends upon the existence of freedom of expression;

PERSUADED that the right to freedom of expression is essential for the development of knowledge and understanding among peoples, that will lead to a true tolerance and cooperation among the nations of the hemisphere;

CONVINCED that any obstacle to the free discussion of ideas and opinions limits freedom of expression and the effective development of a democratic process;

CONVINCED that guaranteeing the right to access to information held by the State will ensure greater transparency and accountability of governmental activities and the strengthening of democratic institutions;

RECALLING that freedom of expression is a fundamental right recognized in the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights, the Universal Declaration of Human Rights, Resolution 59 (1) of the United Nations General Assembly, Resolution 104 adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Covenant on Civil and Political Rights, as well as in other international documents and national constitutions;

RECOGNIZING that the member states of the Organization of American States are subject to the legal framework established by the principles of Article 13 of the American Convention on Human Rights;

REAFFIRMING Article 13 of the American Convention on Human Rights, which establishes that the right to freedom of expression comprises the freedom to seek, receive and impart information and ideas, regardless of borders and by any means of communication;

CONSIDERING the importance of freedom of expression for the development and protection of human rights, the important role assigned to it by the Inter-American Commission on Human Rights and the full support given to the establishment of the Office of the Special Rapporteur for Freedom of Expression as a fundamental instrument for the protection of this right in the hemisphere at the Summit of the Americas in Santiago, Chile;

RECOGNIZING that freedom of the press is essential for the full and effective exercise of freedom of expression and an indispensable instrument for the functioning of representative democracy, through which individuals exercise their right to receive, impart and seek information;

REAFFIRMING that the principles of the Declaration of Chapultepec constitute a basic document that contemplates the protection and defense of freedom of expression, freedom and independence of the press and the right to information;

CONSIDERING that the right to freedom of expression is not a concession by the States but a fundamental right;

RECOGNIZING the need to protect freedom of expression effectively in the Americas, the Inter-American Commission on Human Rights, in support of the Special Rapporteur for Freedom of Expression, adopts the following Declaration of Principles:

PRINCIPLES

1. Freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society.
2. Every person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights. All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.
3. Every person has the right to access to information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it.
4. Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.
5. Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.
6. Every person has the right to communicate his/her views by any means and in any form. Compulsory membership or the requirements of a university degree for the practice of journalism constitute unlawful restrictions of freedom of expression. Journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State.
7. Prior conditioning of expressions, such as truthfulness, timeliness or impartiality is incompatible with the right to freedom of expression recognized in international instruments.
8. Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.
9. 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.
10. Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public

person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.

11. Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as "*desacato laws*," restrict freedom of expression and the right to information.
12. Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people's right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.
13. The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.

C. JOINT DECLARATION ON DEFAMATION OF RELIGIONS, AND ANTI-TERRORISM AND ANTI-EXTREMISM LEGISLATION

The UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples' Rights) Special Rapporteur on Freedom of Expression and Access to Information,

Having met in Athens on 9 December 2008, under the auspices of *ARTICLE 19, Global Campaign for Free Expression*;

Recalling and reaffirming our Joint Declarations of 26 November 1999, 30 November 2000, 20 November 2001, 10 December 2002, 18 December 2003, 6 December 2004, 21 December 2005, 19 December 2006 and 12 December 2007;

Recognising the importance to democracy, as well as to holding social institutions accountable, of open debate about all ideas and social phenomena in society and the right of all to be able to manifest their culture, religion and beliefs in practice;

Emphasising that there is an important difference between criticism of a religion, belief or school of thought and attacks on individuals because of their adherence to that religion or belief;

Noting that success in promoting equality in society is integrally linked to respect for freedom of expression, including the right of different communities to have access to the media both to articulate their views and perspectives, and to satisfy their information needs;

Aware of the fact that negative social stereotyping leads to discrimination and limits the ability of those subject to it to be heard and to participate in public debate;

Stressing that the primary means to address underlying social problems of prejudice is through open dialogue that exposes the harm prejudice causes and that combats negative stereotypes, although at the same time it is appropriate to prohibit incitement to hatred, discrimination or violence;

Welcoming the fact that a growing number of countries have abolished limitations on freedom of expression to protect religion (blasphemy laws) and noting that such laws are often used to prevent legitimate criticism of powerful religious leaders and to suppress the views of religious minorities, dissenting believers and non-believers, and are applied in a discriminatory fashion;

Concerned about the resolutions on "defamation of religions" adopted by the UN Commission on Human Rights and its successor, the Human Rights Council, since 1999, and the UN General Assembly since 2005 (see General Assembly Res. 60/150, 61/164, 62/154; Commission on Human Rights Res. 1999/82, 2000/84, 2001/4, 2002/9, 2003/4, 2004/6, 2005/3; Human Rights Council Res. 4/9, 7/19);

Concerned also about the proliferation of anti-terrorism and anti-extremism laws in the 21st Century, in particular following the atrocious attacks of September 2001, which unduly restrict freedom of expression and access to information;

Cognisant of the important contribution of respect for freedom of expression to combating terrorism, and of the need to find effective ways to counter terrorism which do not undermine democracy and human rights, the preservation of which is a key reason to fight terrorism in the first place;

Aware of the abuse of anti-terrorism and extremism legislation to suppress political and critical speech which has nothing to do with terrorism or security;

Stressing the importance of the role of the media in informing the public about all matters of public concern, including those relating to terrorism and efforts to combat it, as well as the right of the public to be informed about such matters;

Adopt, on 10 December 2008, the 60th anniversary of the *Universal Declaration of Human Rights*, the following Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation:

Defamation of Religions

- The concept of 'defamation of religions' does not accord with international standards regarding defamation, which refer to the protection of reputation of individuals, while religions, like all beliefs, cannot be said to have a reputation of their own.
- Restrictions on freedom of expression should be limited in scope to the protection of overriding individual rights and social interests, and should never be used to protect particular institutions, or abstract notions, concepts or beliefs, including religious ones.
- Restrictions on freedom of expression to prevent intolerance should be limited in scope to advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.
- International organisations, including the United Nations General Assembly and Human Rights Council, should desist from the further adoption of statements supporting the idea of 'defamation of religions'.

Anti-Terrorism Legislation

- The definition of terrorism, at least as it applies in the context of restrictions on freedom of expression, should be restricted to violent crimes that are designed to advance an ideological, religious, political or organised criminal cause and to influence public authorities by inflicting terror on the public.
- The criminalisation of speech relating to terrorism should be restricted to instances of intentional incitement to terrorism, understood as a direct call to engage in terrorism which is directly responsible for increasing the likelihood of a terrorist act occurring, or to actual participation in terrorist acts (for example by directing them). Vague notions such as providing communications support to terrorism or extremism, the 'glorification' or 'promotion' of terrorism or extremism, and the mere repetition of statements by terrorists, which does not itself constitute incitement, should not be criminalised.
- The role of the media as a key vehicle for realising freedom of expression and for informing the public should be respected in anti-terrorism and anti-extremism laws. The public has a right to know about the perpetration of acts of terrorism, or attempts thereat, and the media should not be penalised for providing such information.
- Normal rules on the protection of confidentiality of journalists' sources of information – including that this should be overridden only by court order on the basis that access to the source is necessary to protect an overriding public interest or private right that cannot be

protected by other means – should apply in the context of anti-terrorist actions as at other times.

Frank LaRue
UN Special Rapporteur on Freedom of Opinion and Expression

Miklos Haraszti
OSCE Representative on Freedom of the Media

Catalina Botero
OAS Special Rapporteur on Freedom of Expression

Faith Pansy Tlakula
ACHPR Special Rapporteur on Freedom of Expression and Access to Information

D. PRESS RELEASES**1. PRESS RELEASE N° R01/09****OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION DEPLORES MURDER OF JOURNALIST IN VENEZUELA AND DEMANDS INVESTIGATION**

Washington, D.C, January 22, 2009 - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the Organization of American States deplores the murder of Orel Sambrano, director of *ABC de la semana* and *Radio América* in Carabobo, Venezuela. The Office of the Special Rapporteur urges Venezuelan authorities to investigate this crime promptly and effectively, and to duly prosecute those responsible.

On the afternoon of January 16, 2009, an unidentified person who was traveling in a motorcycle, shot Sambrano down in front of a video store in the city of Valencia. The reporter died from a gunshot wound on the back of his head. According to the information published by local press and non governmental organizations, Sambrano was highly recognized within the academy and among journalists. In his daily work, the reporter systematically denounced local drug traffic and corruption situations. According to this information, local journalists believe Sambrano may have been killed in retaliation for his reporting.

Under the American Convention on Human Rights, States have the duty to prevent, investigate, and sanction any violation of the rights recognized therein. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that "the murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression."

2. JOINT PRESS RELEASE N° R05/09

THE RAPORTEURS FOR FREEDOM OF EXPRESSION OF THE UN AND OF THE OAS EXPRESS THEIR CONCERN REGARDING COMMENTS MADE BY HIGH AUTHORITIES OF THE COLOMBIAN GOVERNMENT AGAINST JOURNALIST

Geneva – Washington, D.C., February 9, 2009 — The United Nations (UN) Rapporteur for Freedom of Opinion and Expression, Frank La Rue, and the Special Rapporteur for Freedom of Expression of the Inter-American Human Rights Commission (IAHRC) of the Organization of American States (OAS), Catalina Botero, expressed their concern over recent statements made by high authority officials of the Colombian government against the journalist Hollman Morris.

According to the information received, on February 2, 2009, Morris, as a journalist, attended the liberation of four hostages at a clandestine camp of the Revolutionary Armed Forces of Colombia (FARC) in the department of Caquetá. In addition to other statements made by high government authorities, on February 3, 2009, the President of Colombia, Álvaro Uribe, stated in a news conference that Morris "shielded himself by his condition as a journalist to be a permissive accomplice to terrorism, [...], one thing are those friends of terrorism who act as journalists, and another thing are journalists." The head of state added that Morris "took advantage of his situation as a journalist, [...] and he held a terrorist party at an alternate place from that where the soldier and the police were released last Sunday." The UN and OAS rapporteurs do not have knowledge of any evidence that ties the journalist to criminal activities.

After these declarations were made, Morris received threatening telephone calls. In previous instances, Morris had to leave the country after having received threats against his life. Since 2000, Morris has been a beneficiary of precautionary measures that were granted by the IAHRC.

In recent years, the UN and OAS rapporteurs for freedom of expression have repeatedly expressed their concern over statements made by high authority officials of the Colombian government against human rights organizations and journalists who are critical of the government. In 2004, as part of his official visit to evaluate the situation of freedom of expression in Colombia, the UN rapporteur urged the government to "take appropriate measures to prevent the use of stigmatization, especially on the part of its top officials, and the polarization of opinions, two elements that are poisoning the political debate and the exercise of pluralism" (E/CN.4/2005/64/Add.3). In 2005, the OAS rapporteur, taking note of statements made by high State officials that stigmatized human rights defenders and journalists who criticized the government, stated that "these types of excluding measures generate great mistrust and a polarizing attitude that do not contribute to the creation of an environment that permits the development of freedom of expression" (OEA/Ser/L/V/II. Doc.51). As the IAHRC has pointed out, these types of comments not only increase the risks that journalists and human rights defenders face, "but [...] could suggest that the acts of violence aimed at suppressing them in one way or another enjoy the acquiescence of the government" (OEA/Ser.L/V/II/122. Doc.5 rev.1).

On this opportunity, La Rue and Botero reiterated the recommendations of their predecessors concerning the existence of declarations from the highest governmental authorities, "that increase the risk over the life and personal integrity of journalists and human rights defenders, and that generate an effect of intimidation and self-censorship over social communicators in Colombia." The rapporteurs noted that public officers, especially those who hold the highest positions in the State, have the duty to respect the dissemination of information and opinions, even when these may be contrary to their interests and views. In this vein, they must seek the effective promotion of the pluralism and tolerance required by democratic societies.

Finally, the UN and OAS rapporteurs for freedom of expression reminded the State of Colombia its obligation to protect the human rights of all individuals, and in particular, of those exposed to situations of extraordinary risk, such as the journalists and human rights defenders that are threatened or that are beneficiaries of protective measures. La Rue and Botero noted that, in such cases, "the State must not only diligently exercise its duty to guarantee, but must also prevent increasing the level of risk to which these people are exposed. We remind the Colombian State once more that high government officials must abstain from making public statements that stigmatize journalists who are critical of the government and generate an environment of intimidation that gravely affects freedom of expression in the country. This obligation is particularly important in a context of polarization and internal armed conflict, such as Colombia's."

3. PRESS RELEASE N° R15/09

OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION DEPLORES MURDER OF RADIO JOURNALIST IN HONDURAS AND OF TV JOURNALIST IN GUATEMALA. IT DEMANDS INVESTIGATION

Washington, D.C, April 3, 2009 - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the Organization of American States deplores the murder of Rafael Munguía Ortiz, correspondent for Radio *Cadena Voces*, in San Pedro Sula, Honduras, which occurred on March 31, 2009. Likewise, the Office of the Special Rapporteur condemns the murder of Rolando Santiz, reporter of TV channel *Telecentro 13*, which happened on April 1, 2009, in City of Guatemala, Guatemala, and also the attack against cameraman Antonio de León, from the same TV channel, who was seriously wounded. The Office of the Special Rapporteur urges authorities from Honduras and from Guatemala to investigate this crime promptly and effectively, and to duly prosecute those responsible.

According to the information published by local press and non governmental organizations, on the afternoon of March 31, 2009, unidentified persons traveling in a car shot Rafael Munguía, in San Pedro Sula. The reporter died in the place after receiving several gunshots. Munguía was a correspondent for *Radio Cadena Voces* and recently he had been reporting on criminal activities and on organized crime. In October 2007, Carlos Salgado, journalist who had a show also at *Radio Cadena Voces* was shot down when he was leaving the radio in Tegucigalpa.

In City of Guatemala, on April 1 2009, when Rolando Santiz and cameraman Antonio de León were in the channel car, they were attacked by two unidentified men who shot them from a motorcycle. Santiz died immediately because of the gunshots he received. The cameraman was seriously wounded. According to the information published by local press and non governmental organizations, both reporters were coming back from covering a murder case. Santiz used to cover police information, including issues related to organized crime. According to the information received, the journalists would have been threatened in the past, possibly because of his journalistic work.

The Special Rapporteur for Freedom of Expression, Catalina Botero Marino, requested an exhaustive investigation on both murders to the Honduran and Guatemalan authorities. "These crimes are particularly worrisome, as both journalists used to report on stories related to the organized crime. It is of vital importance that these murders do not stay in impunity, that these reporters' families are duly repaired, and that all the necessary measures are adopted in order to avoid what murders are aiming: to silence the press and to keep society uninformed of their crimes. In that sense, authorities of both countries should ensure, in the most effective way, all reporters' safety, so that they could keep reporting on issues that are of enormous public interests, such as organized crime," the Special Rapporteur said.

Under the American Convention on Human Rights, States have the duty to prevent, investigate, and sanction any violation of the rights recognized therein. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that "the murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression." The principle also says: "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."

4. PRESS RELEASE N° R21/09

OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION DEPLORES MURDER OF RADIO JOURNALIST IN COLOMBIA AND DEMANDS INVESTIGATION

Washington, D.C, April 29, 2009 - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the Organization of American States deplores the murder of José Everardo Aguilar, correspondent for *Radio Super*, in Patía, Department of Cauca, Colombia, which occurred on April 24, 2009. The Office of the Special Rapporteur urges Colombian authorities to investigate this crime promptly and effectively, and to duly prosecute those responsible.

According to the information published by local press and non governmental organizations, on April 24, 2009, an unidentified person arrived at the journalist's home with the alleged intention of giving him photos and documents. Once he entered the house, the person shot Aguilar several times. The reporter died at the scene. Aguilar had a long career in journalism and had also worked for national radio stations such as *Radio Caracol* and *RCN*. He was known for reporting on issues related to local politics, and particularly for denouncing alleged cases of corruption. According to his relatives and colleagues, the journalist had been threatened in the previous months.

The Special Rapporteur for Freedom of Expression, Catalina Botero Marino, requested an exhaustive investigation of the murder by Colombian authorities. "The murder of a journalist is the most violent way to violate the right to freedom of expression and to stop the free flow of information in a society. The authorities should solve this crime, duly prosecute those responsible, and compensate the reporter's family, as well as take all the necessary measures to prevent this kind of crime. Those who commit this murder must not achieve their aim of covering up the facts that were being investigated and denounced. Authorities should give journalists and people all the necessary guarantees for them to fully exercise the right to freedom of expression and information," the Special Rapporteur said.

Under the American Convention on Human Rights, States have the duty to prevent, investigate, and sanction any violation of the rights recognized therein. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that "the murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression." The principle also says: "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."

5. PRESS RELEASE N° R22/09**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION DEPLORES MURDER OF JOURNALIST IN MEXICO AND DEMANDS INVESTIGATION**

Washington, D.C, May 7, 2009 - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the Organization of American States deplores the murder of Carlos Ortega, reporter for *El Tiempo de Durango*, which occurred in Durango, México, on May 3, 2009. The Office of the Special Rapporteur urges Mexican authorities to investigate this crime promptly and effectively, and to duly prosecute those responsible.

According to the information published by local press and non governmental organizations, on May 3, 2009, Ortega was going back to his home in Santa María El Oro town, when two vehicles intercepted him, and unidentified persons pulled the reporter out of his car. As he tried to resist the attack, he was shot in the head several times. Ortega died immediately. The reporter was working at the *El Tiempo de Durango*. Days before, Ortega reported in an article that he allegedly had received threats from members of the local government in relation to an article he had published earlier regarding alleged acts of corruption.

The Special Rapporteur for Freedom of Expression, Catalina Botero Marino, requested Mexican authorities initiate an exhaustive and serious criminal investigation in order to duly punish those responsible. "A journalist's murder is the most serious form of censorship. At least four other reporters were killed in the region during 2009, probably in connection with their work. But there does not seem to be satisfactory measures against impunity or suitable mechanisms to protect journalists at risk," she said. "Authorities should guaranty reporters' security, so people like Ortega's murderers do not achieve their goal of silencing them," the Special Rapporteur added.

According to information gathered by the Office of the Special Rapporteur, 20 media professionals were murdered in Mexico between 1995 and 2005 for reasons allegedly related to journalism. During 2006, 9 murders and one disappearance were reported. The following year, 3 homicides and 3 disappearances were reported, and in 2008, 5 murders and one disappearance.

Under the American Convention on Human Rights, States have the duty to prevent, investigate, and sanction any violation of the rights recognized therein. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that "the murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression." The principle also says: "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."

6. PRESS RELEASE N° R24/09**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION PRESENTS ITS 2008 ANNUAL REPORT**

Washington, D.C., May 7, 2009 - The Inter-American Commission on Human Rights (IACHR) presented its annual report before the Committee on Juridical and Political Affairs of the Organization of American States (OAS) today, the second volume of which is the 2008 Annual Report of the Office of the Special Rapporteur for Freedom of Expression. In its evaluation of the status of freedom of expression in the Americas during 2008, the Office of the Special Rapporteur recognized that progress has been made in recent years with respect to freedom of expression. However, it also noted persistent challenges such as violence against journalists, the need for more effective mechanisms for ensuring access to information, and the absence of clear regulations to prevent mechanisms of indirect censorship and to promote pluralism and diversity.

The report from the Office of the Special Rapporteur called attention to violence against journalists, which was evident in 2008 in the murder of at least nine members of the media and in a growing number of threats or attacks against reporters. It also noted the existence of legal provisions that fail to meet international standards with regard to the protection of freedom of expression and enable the imposition of disproportionate measures that may have a chilling effect that is incompatible with democratic societies. The Office of the Special Rapporteur also underscored the need to initiate regional efforts to adjust institutional mechanisms in order to prevent state authority from being used to reward or punish the media according to their editorial positions, and to promote pluralism and diversity in public debate.

In addition to evaluating the status of freedom of expression in the region, the report of the Office of the Special Rapporteur gives an account of the status of the exercise of this right in each country during 2008. It also includes a theoretical chapter that compiles and systematizes the inter-American standards on freedom of expression. The annual report also presents the agenda of the Office of the Special Rapporteur for the 2008-2011 period. It presents general conclusions with regard to the regional status of the issue, based on which it makes a number of recommendations addressed to the OAS Member States for improving the conditions necessary for the full exercise of freedom of expression in the region.

7. PRESS RELEASE N° R29/09

JOINT DECLARATION ON FRAMEWORK FOR MEDIA AND ELECTIONS

Washington, D.C., May 15, 2009 -The four special mandates on freedom of expression – the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples' Rights) Special Rapporteur on Freedom of Expression and Access to Information – today issued a Joint Statement on Media and Elections, with the assistance of ARTICLE 19.

The Joint Statement notes the importance of robust and open debate, as well as access to information, to elections, and the key role of the media in framing electoral issues and informing the electorate. But only a diverse and independent media, including independent public service broadcasting, can only fulfill this role. Among other things, the Declaration calls for:

- Measures to create an environment in which a pluralistic media sector can flourish.
- The repeal of laws that unduly restrict freedom of expression and protection against liability for disseminating statements made directly by political parties or candidates.
- Effective systems to prevent threats and attacks against the media.
- Rules against discrimination in the allocation of political advertisements.
- Any regulatory powers to be exercised only by independent bodies.
- Clear obligations on public broadcasters, including to inform the electorate, to respect strictly rules on impartiality and balance, and to grant all parties and candidates equitable access.

ARTICLE 19 first brought the special mandates on freedom of expression together in 1999 and they have issued a Joint Declaration every year since then, along with a number of other Statements. Each Declaration serves to elaborate on the meaning of freedom of expression in a different thematic area(s). Collectively, the Declarations provide important guidance to those wishing to understand international human rights standards.

8. JOINT PRESS RELEASE N° R33/09

UN AND OAS RAPPORTEURS FOR FREEDOM OF EXPRESSION EXPRESS CONCERN OVER COMMENTS BY HIGH-LEVEL VENEZUELAN GOVERNMENT AUTHORITIES AGAINST PRIVATE TELEVISION STATIONS

Geneva – Washington, D.C., May 22, 2009—The United Nations (UN) Rapporteur for Freedom of Opinion and Expression, Frank La Rue, and the Special Rapporteur for Freedom of Expression of the Organization of American States' Inter-American Commission on Human Rights (IACHR), Catalina Botero, expressed their concern over recent statements made by high-level authorities of the Venezuelan government against the *Globovisión* television network and other privately owned media outlets in that country.

According to the information received, on May 4, 2009, *Globovisión* broadcast—before an official report had been issued on the matter—a news report about an earthquake that hit parts of Venezuela. During the broadcast, the network's director noted that the quake had caused no serious damage and criticized the fact that official information had not been provided in a timely manner. Reports on the earthquake were broadcasted several times during the day. Since that news report, Venezuela's highest-level authorities have publicly accused the privately owned media, and particularly *Globovisión*, for resorting to "terrorism" and "hate speech" with "destabilizing intent." Senior authorities have also urged the National Telecommunications Commission (Conatel) to impose the most drastic sanctions against *Globovisión*.

On May 7, Conatel, an agency of the executive branch of government, began administrative proceedings against *Globovisión*, on the grounds that the information provided to the public on the occasion of the quake could "generate alarm, fear, anxiety, or panic among the population, giving individuals the feeling that they are in danger and without protection." This investigation follows two previous investigations that had been opened against *Globovisión* for the live transmission of statements made by third parties not belonging to the network. According to information provided by the State, these investigations should be at the final decision stage. Those proceedings could lead to the revocation of the network's television license through the application of the Law on Social Responsibility in Radio and Television.

On previous occasions, the UN and OAS rapporteurs for freedom of expression have reminded the authorities of their obligation to respect freedom of expression in the communications media and in radio and television broadcasts, and in particular to respect the media's editorial independence. In this regard, it has been pointed out that in a democracy, criticism, opposition, and contradiction must be tolerated as a condition of the principle of pluralism protected by the right to freedom of expression. The job of authorities is to create a climate in which anyone can express his or her ideas without fear of being persecuted, punished, or stigmatized.

On this occasion, La Rue and Botero express their concern in light of the statements made by the highest-level government authorities, which generate an atmosphere of intimidation in which the right to freedom of expression is seriously limited. In this regard, they recalled that the authorities have a duty to carry out the law as well as a right to respond to criticisms they believe to be unjust or misleading. However, public officials, especially those in the highest positions of the State, have a duty to respect the circulation of information and opinions, even when these are contrary to its interests and positions. They must also promote tolerance and the diversity of ideas and opinions.

Finally, the UN and OAS rapporteurs for freedom of expression call on the State of Venezuela to maintain in full effect the right to freedom of expression established in international instruments adopted by the State, and to adequately protect international guarantees in the proceedings taking

place against privately owned media outlets and in particular against *Globovisión*. On this point, the States must guarantee that administrative proceedings or regulatory powers do not imply acts of indirect censorship prompted by the media outlet's editorial stance.

9. PRESS RELEASE N° R34/09**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION DEPLORES MURDER OF JOURNALIST AND THREATS AGAINST REPORTER IN MEXICO, AND DEMANDS INVESTIGATION AND EFFICIENT MEASURES TO PROTECT JOURNALISTS AT RISK**

Washington, D.C, May 29, 2009 - The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the Organization of American States, Catalina Botero deplores the murder of Eliseo Barrón, reporter for *La Opinión* de Torreón, which occurred in Durango, Mexico, on May 26, 2009. Likewise, the Special Rapporteur calls the State attention to the serious threats received by reporter Lydia Cacho. The Special Rapporteur urges Mexican authorities to adopt all the necessary measures against impunity of crimes suffer by reporters, and to put into effect suitable mechanisms to protect journalists at risk.

According to the information received, on May 25, 2009, Eliseo Barrón was abducted from his home by a group of unidentified and armed persons, in front of his wife and daughters. He was killed that night. On May 26, his body was found. Barrón had been covering police information for *La Opinión* de Torreón for 11 years. According to the newspaper, before his death, the reporter was writing about corruption in Torreón.

In addition, the Office of the Special Rapporteur for Freedom of Expression received information that reporter Lydia Cacho has received serious dead threats and that she is in extraordinary risk for reasons directly related to her work as a journalist. As the National Commission on Human Rights of Mexico said, the reporter was a victim of "acts of torture" and other violations of her human rights. According to the information received, those facts may have happened as retaliation because Cacho published a book in which she denounced the existence of a pederast net.

During this year, at least 6 reporters have been killed in the region during 2009, to prevent them from publishing information on corruption or on organized crime. Two of these reporters were killed in México. During 2006, 9 murders and one disappearance were reported. The following year, 3 homicides, and 3 disappearances were reported, and in 2008, 5 murders, and one disappearance. The Office of the Special Rapporteur has also received information about the extraordinary risk that some journalists face because of their reporting, and whose cases were already denounced to the authorities.

The Special Rapporteur for Freedom of Expression urges Mexican authorities to fully investigate the facts so that the authors of Barrón's murder and of Cacho's human rights' violations can be duly prosecuted and punished. She also calls the State to work on the investigations on crimes and threats against journalists, and to adopt, as soon as possible, all urgent measures needed to protect journalists, such as the strengthening of the Special Attorney Office for the Attention of Crimes Against Journalists, the federalization of the crimes against reporters, and the implementation of permanent and specialized mechanisms to guaranty the life and the integrity of those journalists who are at risk. The Special Rapporteur underlines that Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that the murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.

10. PRESS RELEASE N° R36/09**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION DEPLORES MURDER OF JOURNALIST IN GUATEMALA AND DEMANDS INVESTIGATION**

Washington, D.C, June 11, 2009 - The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the Organization of American States, Catalina Botero Marino, deplors the murder of Marco Antonio Estrada, correspondent for the *Telediario* channel of Chiquimula, Guatemala, which occurred on June 6, 2009. The Special Rapporteur urges Guatemalan authorities to investigate this crime promptly and effectively and to duly prosecute those responsible.

According to the information received, on June 6, when Estrada was parking his motorcycle, an unidentified person approached him and shot him several times. He died immediately. A reporter for more than 20 years, Estrada covered general information for *Telediario*, which usually included reports on organized crime and drug trafficking issues. He is the second journalist killed in Guatemala during 2009. In April, Rolando Santiz, also a television reporter, was shot down when he was returning from covering a police issue. At least seven reporters have been murdered in the region this year for reasons that could be related to their work as journalists.

The Special Rapporteur for Freedom of Expression urges Guatemalan authorities to fully investigate the facts so that those responsible for the murder of Marco Antonio Estrada can be duly prosecuted and punished. She also calls on the State to work on the investigations on crimes and threats against journalists and to adopt all urgent measures needed to guarantee the life and the integrity of those journalists who are at risk.

The Special Rapporteur underlines that Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that the murder, kidnapping, intimidation of and/or threats against social communicators, as well as the material destruction of communications media, violates the fundamental rights of individuals and strongly restricts 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.

11. PRESS RELEASE N° R38/09**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION EXPRESSES ITS SATISFACTION WITH THE RECENT LEGISLATIVE REFORMS IN URUGUAY AND IN QUÉBEC, CANADA, AND WITH THE DECISIONS BY THE HIGHEST COURTS OF BRAZIL AND MEXICO CONCERNING FREEDOM OF EXPRESSION**

Washington, D.C., June 22, 2009 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights expresses its satisfaction with the recent decisions on the issue of freedom of expression adopted by the legislative assemblies of Uruguay and Québec, Canada, and by the highest courts of justice in Brazil and Mexico. The Office of the Special Rapporteur extends its congratulations for the issuance of these exemplary decisions and undertakes to circulate them widely within the framework of its mandate to promote freedom of expression in the Americas.

The Office of the Special Rapporteur is very pleased with the significant amendments to the Criminal Code and the Press Law enacted by the Uruguayan Legislature on June 10, 2009. These amendments eliminate penalties for the dissemination of opinions or information regarding public officials or matters of public interest, except when the person allegedly affected is able to demonstrate the existence of *actual malice*. Although the reform does not repeal all forms of *desacato*, it reduces substantially the scope of application of this offense, and states expressly that no one shall be punished for disagreeing with or questioning the authorities. It also eliminates penalties for offending or insulting patriotic symbols or for attacking the honor of foreign authorities. The new laws state that they constitute governing principles for the interpretation, application and integration of civil, procedural and criminal provisions on freedom of expression and the international treaties on the issue, and they recognize expressly the relevance of the decisions and recommendations of the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights in interpreting and applying those provisions. In this manner, the Legislature incorporated the international standards into its domestic legal system and made clear that the interpretation and application of the provisions in effect must be guided by the highest standards on the issue of freedom of expression.

This reform is in addition to other important decisions adopted in States like Mexico and Panama to repeal so-called press crimes, with the fundamental aim of increasing protection for those who may be at greater risk because of their investigation and dissemination of information or critical opinions on public officials or matters of public interest.

The Office of the Special Rapporteur notes especially the decision of the National Assembly of Québec, in Canada, which amended the Code of Civil Procedure to prevent the abusive use of lawsuits filed to inhibit freedom of expression. The law, which entered into force on June 4, 2009, enables the courts in Québec to shelve lawsuits meant to intimidate and silence individuals including those who publicly criticize the projects and practices of corporations or institutions. The amendment establishes that when lawsuits are used irrationally, to silence critical expressions and prevent public debate, those persons who have abused the court system must reimburse the expenses, pay the court costs and the damages sustained by the defendant. Finally, the amendment specifies that, if the abusive action is initiated by a corporation or legal entity, the director or the managers and officers behind it can be ordered to pay the damages personally. The Office of the Special Rapporteur views this legislative advance positively and considers that it contributes decisively to the protection of freedom of expression and the strengthening of public debate under more fair and democratic conditions.

The Office of the Special Rapporteur also expresses its deep satisfaction with the recent decisions handed down by the Federal Supreme Court of Brazil. First, it extends its congratulations for the judgment of April 30, 2009, which eliminates the 1967 Press Law (*Lei n° 5250/67*). This law had imposed severe penalties for criminal defamation offenses, and enabled prior censorship, among other measures restricting the exercise of freedom of expression. The Court's judgment held that the Press Law was incompatible with the Federal Constitution. In addition, on June 17, 2009, the Federal Supreme Court of Brazil ruled that it was unconstitutional to require a diploma in journalism and registration with the Ministry of Labor as a condition for practicing the profession of journalism. Based expressly on the current inter-American standards, the Court held that this provision was contrary to Article 13 of the American Convention on Human Rights. The abovementioned decisions are an exemplary advance in the field of freedom of expression and highlight the importance of bringing national laws into line with the international standards on the issue.

Finally, the Office of the Special Rapporteur is very pleased with the June 17, 2009 decision of the Supreme Court of Mexico, which ordered the non-enforcement of criminal provisions restricting freedom of expression because of their incompatibility with the Constitution and with international standards. In that decision the Supreme Court revoked a judgment that, based on the right to privacy, imposed a prison sentence against the director of a newspaper who had published an article about the conduct of a public official. The Supreme Court judgment, citing expressly the highest inter-American standards, underscored the need to prevent criminal laws from being used as a mechanism to silence democratic debate on matters of public interest or on public officials. It also held that the Press Law of the State of Guanajuato, due to its extreme vagueness and lack of specificity, was incompatible with the Constitution and with the standards of the inter-American system with regard to freedom of expression.

The Office of the Special Rapporteur expresses its satisfaction with the abovementioned decisions and considers them a momentous advance in the protection and strengthening of freedom of expression in the region. It also urges the authorities to take the measures necessary to enforce them. The Office of the Special Rapporteur undertakes to disseminate, within the framework of its mandate, the previously cited legislative and judicial decisions not only because of their importance to the process of incorporating international standards into domestic law but also because they honor, in exemplary fashion, the State's obligation to ensure the right of all persons to think and express themselves freely.

12. PRESS RELEASE N° R41/09**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION EXPRESSES CONCERN
OVER THE SITUATION OF RADIO IN PERU**

Washington, D.C., June 26, 2009 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights expresses its concern over the Peruvian State's decision to revoke the broadcast authorization of radio *La Voz* of Bagua Grande, province of Utcubama, which was taken on June 8, 2009.

On information timely sent to the Office of the Special Rapporteur, the State of Peru explained the administrative procedure followed. It explained that the decision was taken because the radio failed to comply with certain technical requirements established by law. This failure to meet the requirements was verified by the authorities on December 31, 2008, and would lead to revoke the permission.

On the other hand, members of the radio presented an administrative appeal to reconsider the decision, arguing that there was a procedure underway, allegedly accepted by the State, in order to prove that the radio had fulfilled the legal requirements.

The resolution that revokes the broadcasting permission was taken after the acts of violence that took place in the area on June 5, 2009. According to the information received, some authorities would have said that Bagua's radios instigated these acts. However, the mentioned resolution refers exclusively to the failure of the radio to meet technical requirements, and it is not related to those acts of violence. According to received information, the resolution that revokes *La Voz's* permission may have had a chilling effect on the radios of the area.

The Office of the Special Rapporteur thanks the State for its timely response to the required information, and recognizes the State's right to do technical inspections and serious and effective investigations to assure the compliance of legal dispositions. As the Office of the Special Rapporteur has said in different reports, these procedures must be defined in a precise and clear manner by the law according to the international standards on freedom of expression. The procedures should also be performed by an autonomous and impartial organism and they should guarantee the right to defense. Principle 13 from the Declaration of Principles on Freedom of Expression states that the means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.

Considering what was mentioned before and the administrative appeal introduced by members of *La Voz* radio, the Office of the Special Rapporteur calls the Peruvian State to evaluate this appeal taking into consideration the highest international standards on freedom of expression, established in article 13 of the Human Rights American Convention, when the mentioned administrative appeal will be evaluated. The Office of the Special Rapporteur also offers its collaboration to the State to work on implementation of these standards in the national legislation.

13. PRESS RELEASE N° R44/09**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION CONDEMNS LIMITATIONS TO FREEDOM OF EXPRESSION IN HONDURAS**

Washington, D.C, June 29, 2009 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights strongly condemns the limitations to the freedom of expression in Honduras, after the coup d' Etat and the interruption of the constitutional order in that country. The Office of the Special Rapporteur calls for the absolute respect of the right to freedom of expression, which is in the base of the Inter-American system.

The Office of the Special Rapporteur received information that since June 28, 2009, in Honduras, local and international media have been suffering severe limitations to freely accomplish their work. According to the information received, open broadcast media outlets have been closed; while other cable channels, such as *Telesur* and *CNN en Español* and other radios such as *Globo*, were banned from broadcasting. Moreover, energy was cut off, which prevented television and radio from broadcasting, as well as the access to the Internet. According to the information received, many reporters were attacked while they were working, and others were arbitrarily retained; such was the case of Adriana Sivori, Rudy Quiróz, and other members of *Telesur* team. Cartoonist Allan McDonald would have been detained with his 17-month-old daughter. Finally, it was informed that many journalists would have been receiving threats in order to make them stop reporting.

The Office of the Special Rapporteur demands the absolute respect of the right to freedom of expression, and also demands that journalists and media outlets should have all the guarantees to freely and secure perform their work. In this regard, article 13 from the American Convention on Human Rights says that: "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." The exercise of the right shall not be subject to prior censorship or may not be restricted by indirect methods or means.

14. PRESS RELEASE N° R48/09**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION CONDEMNS MURDER OF JOURNALIST IN HONDURAS**

Washington, D.C, July 6, 2009 - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) deplores the murder of Gabriel Fino Noriega, radio journalist, which occurred on July 3, 2009, in San Juan Pueblo, Honduras. In the current context of the coup d'Etat and the interruption of the constitutional order, the murder of this reporter generates special concern. The Office of the Special Rapporteur urges to fully investigate the crime, to determine whether the murder was related to journalistic activity, and it calls to effectively and duly prosecute those responsible. Once again, the Office of the Special Rapporteur calls for the absolute respect of the right to freedom of expression, and demands to guarantee the security of reporters so they can work.

According to information released by the local press and non governmental organizations, on July 3, 2009, Fino Noriega was leaving radio *Estelar*, after his show, when an unidentified person shot him several times. The reporter, who was also correspondent at *Radio América*, died later.

Principle 9 of the Declaration of Principles on Freedom of Expression states that the "murder, kidnapping, intimidation of and/or threats against social communicators, as well as the material destruction of communications media, violates the fundamental rights of individuals and strongly restricts freedom of expression." Indeed, a situation of this nature not only affects the human rights of the victim, but it also generates a severe effect of intimidation which deeply affects the right to freedom of expression.

The Office of the Special Rapporteur reminds that on June 29, 2009, it strongly condemned the limitations to the freedom of expression in Honduras, after the coup d'Etat and the interruption of the constitutional order in that country. The Office of the Special Rapporteur called for the absolute respect of the right to freedom of expression, which is in the base of the Inter-American system (*Press Release R44-09*). The Office of the Special Rapporteur has been following with special attention the increasing tension in Honduras after the coup d'Etat, particularly those situations related to freedom of expression and information. In that regard, the IACHR has granted precautionary measures to several reporters who were in risk, and has requested information on situations denounced as obstacles to the right to freedom of expression.

In this context demands again the absolute respect for the right to freedom of expression, and also demands that journalists and media outlets should have all the guarantees to perform their work with security and with freedom. In this regard, article 13 from the American Convention on Human Rights says that: "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." The exercise of the right shall not be subject to prior censorship or may not be restricted by indirect methods or means.

15. PRESS RELEASE N° R50/09**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION CONDEMNS DETENTION OF FOREIGN JOURNALISTS IN HONDURAS**

Washington, D.C., July 12, 2009—The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the detentions and acts of intimidation to which members of television news crews from *TeleSUR* and *Venezolana de Televisión (VTV)* were subject in Honduras, incidents that forced the members of the crews to leave the country. These events have taken place in the context of serious violations of the right to freedom of expression as a result of the coup d'état and the interruption of the constitutional order in Honduras. The Office of the Special Rapporteur reiterates its demand for unconditional respect for the right to freedom of expression in Honduras and demands that the safety of members of the communications media be guaranteed so they can do their work.

According to the information received, on the night of July 11, members of the police reportedly detained four members of *TeleSUR* and *VTV* news crews and took them to a police station for the stated purpose of verifying their immigration status. After some hours, those detained were reportedly released. The next morning, members of the police forces reportedly hindered the reporters from leaving the hotel for several hours, giving as a reason that they had to wait for immigration authorities to arrive to verify their status. According to the information received, journalists and members of the *TeleSUR* and *VTV* technical crews had been held as a form of intimidation, due to their coverage of the coup d'état and the process of institutional interruption. According to the information received, the crews from both channels had to leave the country because they believed there was a serious security risk involved in continuing to do their work.

The Office of the Special Rapporteur rejects these acts and reiterates the obligation to unconditionally respect the right to freedom of expression in Honduras. The Office of the Special Rapporteur also demands that all members of the media, independently of their editorial stance, are guaranteed the possibility of expressing their ideas and disseminating the information they obtain. Direct or indirect acts of intimidation or censorship that are based on the coverage or editorial stance of a media outlet for the purpose of silencing it flagrantly violate people's right to express themselves without fear of reprisal, as well as the fundamental right of society to receive pluralistic and diverse information without any type of censorship.

The Office of the Special Rapporteur recalls that on June 29, 2009, it strongly condemned the limitations on freedom of expression in Honduras that took place following the coup d'état and the institutional interruption, and called for unconditional respect for this fundamental right, which underlies the inter-American system (Press Release R44-09). The Office of the Special Rapporteur has closely followed the growing tensions in Honduras following the coup, particularly with respect to situations related to the exercise of freedom of expression and information. In this regard, the IACHR has granted precautionary measures to a number of journalists at risk, and has requested information on reported acts such as obstacles to the exercise of freedom of expression.

In this context, the Office of the Special Rapporteur recalls once again that Article 13 of the American Convention on Human Rights establishes categorically that "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." The exercise of this right may not be subject to prior censorship, nor may it be restricted by indirect methods or means, according to the Convention. Principle 5 of the Declaration of Principles on Freedom of Expression prohibits all forms of prior censorship, interference, or direct or indirect pressure exerted on any expression, opinion, or

information disseminated by any type of media. According to this principle, "restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression." Along these same lines, Principle 13 of the Declaration of Principles states that the communications media "have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression."

16. PRESS RELEASE N° R51/09**OFFICE OF SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION CONCERNED ABOUT PRISON SENTENCE FOR JOURNALIST IN ECUADOR**

Washington, D.C., July 21, 2009—The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights expresses its deep concern over the criminal conviction of Milton Nelson Chacaguasay, editor and director of the weekly *La Verdad*, in the province of El Oro, Ecuador, and over the prison sentence handed down by the judge in the case.

According to the information received, Chacaguasay was charged with libel by a former district attorney because of a story published by *La Verdad* that allegedly linked the former official to a notary whose allegedly illegal business dealings had purportedly harmed several individuals. According to this information, the journalist published an article based on an official report that indicated that the authorities had found, in the notary's house, a check for \$5,000 made out by the former district attorney. The article had the photo of the check. As a result of the publication of this story, the process for libel started and the journalist was sentenced in April 2009 to 30 days in prison. Following an appeal, the sentence was increased to four months. Chacaguasay is serving his sentence in a penitentiary since July 8, 2009. The journalist has denounced serious violations of due process in the course of his case and has requested protection to the authorities, fearing that his life could be at risk in prison.

The Office of the Special Rapporteur considers that the various verdicts issued against the journalist Chacaguasay represent a setback in the progress made in the region, under which it is understood that authorities of the States of the Americas must not use criminal law to punish those who carry out investigations or voice personal opinions about issues of public interest or about public officials. In this regard, the Office of the Special Rapporteur recalls that Principle 11 of the Declaration of Principles on Freedom of Expression establishes that "public officials are subject to greater scrutiny by society" and highlights that the use of criminal law, especially when it is used and applied by the authorities subject to greater scrutiny, has an extremely serious silencing effect which restricts not only democratic debate but also the right of a society to receive diverse and ample information on issues of public relevance.

The Office of the Special Rapporteur expresses its deep concern over the conviction of Chacaguasay and urges the authorities of the State of Ecuador to take into account international standards on the right to freedom of expression, which derive from Article 13 of the American Convention on Human Rights. In particular, the Office of the Special Rapporteur recalls that according to Principle 10 of the Declaration of Principles, laws that guarantee individual rights should neither inhibit nor restrict the investigation and dissemination of information in the public interest. "The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news," Principle 10 states.

17. PRESS RELEASE N° R54/09**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION CONDEMNS MURDER OF JOURNALIST IN MEXICO, AND DEMANDS INVESTIGATION**

Washington, D.C, July 30, 2009 - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the Organization of American States, condemns the death of Juan Daniel Martínez Gil, reporter at W Radio and Radiorama Acapulco, whose body was found on July 28, 2009 in Guerrero, México. The Office of the Special Rapporteur urges Mexican authorities to fully investigate the crime and to determine whether the murder was related to the journalistic activity of the reporter. The Office of the Special Rapporteur also calls to effectively and duly prosecute those responsible. It also urges Mexican authorities to adopt all the necessary measures to protect journalists in all the country.

According to the information released by the local press and non governmental organizations, on July 28, 2008, Martínez Gil's body was found by member of the Police, who had been tipped by an anonymous call. The reporter was found buried in a vacant lot in a town called La Máquina in the state of Guerrero. He had his hands and feet tied, his head was wrapped in a brown tape and had signs of being brutally beaten. Martínez Gil was an anchor of the news show at W Radio and of the show "Guerrero en vivo" at Radiorama Acapulco. Another journalist from the same radio, Amado Ramírez, was murder in 2007.

During this year, at least nine reporters have been killed in the region for reasons that may have been related to their journalistic activity. Three of these reporters were killed in Mexico. During 2006, 9 murders and one disappearance were reported in Mexico. In 2007, three homicides, and three disappearances were reported, and in 2008, five murders, and one disappearance.

The Special Rapporteur for Freedom of Expression, Catalina Botero Marino, urges Mexican authorities to fully investigate the murder of Martínez Gil, and that those responsible are duly prosecuted and punished. She also calls the State to work on the investigations on crimes and threats against journalists, and to take, as soon as possible, all urgent measures needed to protect journalists, such as the strengthening of the Special Attorney Office for the Attention of Crimes Against Journalists, the federalization of the crimes against reporters, and the implementation of permanent and specialized mechanisms to guaranty the life and the integrity of those journalists who are at risk. The Special Rapporteur underlines that Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that the murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation

18. PRESS RELEASE N° 55/09**IACHR EXPRESSES CONCERN ABOUT THE DETERIORATION OF THE SITUATION OF FREEDOM OF EXPRESSION IN VENEZUELA**

Washington, August 3, 2009—The Inter-American Commission of Human Rights (IACHR) is deeply concerned about the deterioration of the situation of freedom of expression in Venezuela. Since 2000, the IACHR has observed a gradual deterioration and restriction on the exercise of this right in Venezuela, as well as a rising intolerance of critical expression. Through information received by the Office of the Special Rapporteur for Freedom of Expression, over the past few days the Commission has known new facts that show that the situation is growing more serious, such as the closing of 34 radio stations, the armed attack on the Globovisión channel and the presentation of a bill that seeks to impose new restrictions on the freedom of expression.

By a July 31, 2009 decision of the National Council of Telecommunications (CONATEL), 34 radio stations operating in AM and FM were forced to cease broadcasting immediately. The decisions that revoked the permits or licenses were allegedly based on technical reasons related to the massive lack of compliance with some of the regulations of the telecommunications law. According to the information received, the competent authorities announced that one of their reasons to proceed with these closures of radio and television stations was that these stations “play at destabilizing Venezuela.”

The IACHR is concerned by the existence of elements that suggest that the editorial stance of these media outlets have been one of the reasons for their closure. The Commission recognizes the Government’s competency to regulate radio frequencies, but emphasizes that this competency has to be used with strict observance of due process and with respect to the Inter-American standards that guarantee freedom of expression of all persons. In particular, the limitations imposed to freedom of expression must not incite intolerance, nor be discriminatory or have discriminatory effects or be based on the editorial line of the media.

Recently, the Attorney General of Venezuela, Luisa Ortega Diaz, presented a bill to the National Assembly with the objective of punishing these “media-related crimes.” The bill sets prison sentences of up to 4 years for persons that disseminate “false” information or information “against the interests of the State.” The bill also establishes sentences of up to 4 years for people who refuse to report “facts or situations in which the lack of disclosure constitutes an infringement of the right of information.” If approved, this bill would be a serious step backwards in the exercise of the right to freedom of expression in Venezuela.

Likewise, the IACHR received information that on August 3, 2009, armed persons entered the headquarters of Globovisión by force and threw tear gas canisters. This attack is one of many acts of violence that have occurred in recent years against journalists and employees of Globovisión and other media organizations that take a critical stance towards the Government. The IACHR urges the State to investigate these acts, punish those responsible and adopt all of the necessary measures to ensure the life and personal integrity of the journalists and employees of Globovisión, and of all of the media organizations in a way in which they can continue their work unrestricted.

The IACHR has repeatedly expressed its serious concern about the situation of freedom of expression in Venezuela. Likewise, the IACHR’s Rapporteurship of Freedom of Expression has voiced its concern and has submitted several communications to the State requesting information and expressing the need of legal and administrative regulations to comply with Inter-American standards on the subject. The closing of 34 radio stations, the threats of further closures, the aggression toward journalists, the attacks on media outlets that take a critical stance and the recent

bill of law all represent serious limitations to the free exercise of the right to freedom of expression in Venezuela.

The IACHR is preparing a report about the general human rights situation in Venezuela. The requests for information about topics regarding freedom of expression form part of the efforts of the Inter-American Commission to obtain materials for the elaboration of its report.

A principal, autonomous body of the Organization of American States (OAS), the IACHR derives its mandate from the OAS Charter and the American Convention on Human Rights. The Inter-American Commission has the mandate to promote respect for human rights in the region and acts as a consultative body to the OAS in this matter. The Commission is composed of seven independent members who act in a personal capacity, without representing a particular country, and who are elected by the OAS General Assembly.

19. PRESS RELEASE N° R57/09**IACHR AND OFFICE OF THE SPECIAL RAPPORTEUR SEND COMMUNICATION TO THE VENEZUELAN STATE EXPRESSING DEEP CONCERN ABOUT THE SITUATION OF FREEDOM OF EXPRESSION**

Washington, D.C., August 5, 2009 - The Rapporteur for Venezuelan Affairs of the Inter-American Commission on Human Rights (IACHR), Commissioner Paulo Sergio Pinheiro, and the IACHR's Special Rapporteur for Freedom of Expression, Catalina Botero Marino, sent a communication today to the Minister of Foreign Affairs of the Bolivarian Republic of Venezuela, Nicolás Maduro, in order to express their deep concern about the deterioration of the situation of freedom of expression, to request information on the recent events in that country and to submit observations with respect to the Special Legislative Bill on Media-Related Crimes proposed by the Attorney General's Office.

In recent months high-ranking State officials have made strong public statements against several media outlets, their directors and journalists, accusing them of practicing "media terrorism" and of encouraging "hate speech" that could affect the "mental health" of the Venezuelan people. Subsequent to such statements, acts of violence have increased against several of these media outlets by private groups tied to the government. On August 3, 2009, *Globovisión*, a television station previously declared a "military objective" by a criminal group, was the target of a serious attack by private groups. The attackers were armed and entered the headquarters of the television station, fired tear gas canisters, intimidated the employees of the station and injured a security guard. In their letter, Commissioner Pinheiro and the Special Rapporteur condemned these serious acts, acknowledged the swift responses of President Hugo Chávez and Tareck El Aissami, Minister of the Interior and Justice, and urged Venezuelan authorities to investigate, identify, prosecute and punish the persons responsible for these violent acts. They reminded the State that, due to the serious threats against them, the journalists, directors and employees of *Globovisión* are protected by the provisional measures ordered by the Inter-American Court of Human Rights in 2004.

In their letter they also expressed their concern about information indicating that on July 3, 2009, the National Council of Telecommunications (Conatel) ordered that the television and radio broadcasting of advertisements critical of a legislative reform bill be canceled. The prohibitive measure indicated that such advertising could constitute a threat to public order, and other authorities stated that it would adversely affect the "mental health" of the inhabitants of Venezuela. Following this decision, the competent authorities would have opened administrative sanctions proceedings against the media outlets that broadcast such advertising and the Attorney General's Office would have filed a criminal complaint against the print media that published it.

In this regard, the Commissioner and the Special Rapporteur reminded the State that, in accordance with the case law of the Inter-American Court, the right to freedom of expression enshrined in Article 13 of the American Convention must be guaranteed not only with regard to the dissemination of ideas and information that is received favorably or considered inoffensive or indifferent but also in cases of speech that is offensive, shocking, unsettling or unpleasant to public officials or to any segment of the population. This is required by the pluralism, tolerance and spirit of openness without which a truly democratic society cannot exist. Likewise, they highlighted that Article 13 of the American Convention prohibits censorship.

The letter also makes reference to the July 31, 2009 decision whereby Conatel ordered that 34 radio stations operating in AM and FM throughout the country cease broadcasting immediately. The Minister of Public Works and Housing, Diosdado Cabello, had previously stated that the stations whose permits or licenses were under review "play at destabilizing Venezuela." These statements suggest that the editorial line of these media was one of the reasons for the decision to shut them

down. Pinheiro and Botero Marino expressed their deep concern about these events and reminded the State that Article 13.3 of the American Convention establishes that: "The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions."

In addition, on July 30, 2009, Venezuelan Attorney General Luisa Ortega Díaz submitted to the National Assembly the so-called "Special Legislative Bill on Media-Related Crimes," which establishes prison sentences for "acts that threaten social peace, the security and independence of the nation, law and order, the stability of State institutions and mental health, which result in a climate of impunity or insecurity, and are committed through a communications medium."

In their letter, the Commissioner and the Special Rapporteur remind the Venezuelan State of its obligation to establish a regulatory framework that promotes free, open, plural and uninhibited speech, which entails the design of institutions that enable, not hinder, the social deliberation of all matters and phenomena of public relevance. None of the above is compatible with the indiscriminate use of criminal law as a mechanism to limiting the free circulation of opinions and information, especially when those refer to public affairs.

The ambiguity of the acts described in the bill presented would end up silencing debate on those very issues that deservedly require greater deliberation and public oversight. Likewise, their enormous breadth could seriously undermine the principle of strict legality that, as the Inter-American Court has indicated, requires States to define expressly, precisely and clearly each one of the acts that may be punishable. In the words of the Court, "Ambiguity in the definition of the crime creates doubt and gives authorities discretion, which is particularly undesirable when establishing the criminal liability of individuals and imposing sentences that have a serious impact on fundamental rights such as life or liberty."

Pinheiro and Botero Marino stated that, "If this bill is passed, no person in the Bolivarian Republic of Venezuela will be able to feel free to express his critical or dissident thoughts without fear of being the target of distressing criminal persecution."

Finally, the Commissioner and the Special Rapporteur reiterated the prior requests for information on the situations described above. They further offered their assistance to the State in the discussion of public policies or standards related to the fundamental right of freedom of expression.

20. PRESS RELEASE N° 60/09**IACHR PRESENTS PRELIMINARY OBSERVATIONS ON ITS VISIT TO HONDURAS**

Tegucigalpa, Honduras, August 21, 2009 — The Inter-American Commission on Human Rights (IACHR) today concludes its on-site visit to Honduras, which took place August 17-21, 2009, and presents its preliminary observations. The purpose of the visit was to observe the human rights situation in the context of the coup d'état of June 28, 2009. The final report will be published in the near future. The delegation was composed of the IACHR President, Luz Patricia Mejía; the First Vice President, Víctor Abramovich; the Second Vice President and Rapporteur for Honduras, Felipe González; Commissioner Paolo Carozza; and Executive Secretary Santiago A. Canton. The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, Catalina Botero, was also part of the delegation.

During its visit, the Commission confirmed the existence of a pattern of disproportionate use of public force, arbitrary detentions, and the control of information aimed at limiting political participation by a sector of the citizenry. The Commission confirmed the use of repression against demonstrations through the placement of military roadblocks; the arbitrary enforcement of curfews; the detentions of thousands of people; cruel, inhuman, and degrading treatment; and poor detention conditions. Particularly serious is the fact that four persons died and several others were injured by firearms. An exhaustive investigation of these deaths is needed, considering that the Commission received information that could link the deaths to actions of agents of the State.

The Commission was also informed about demonstrations that have for the most part been peaceful, with the exception of some cases in which there have been acts of violence, some of them serious, against persons and against property. These include the burning of a restaurant and of a bus, and attacks against a congressional deputy and several journalists.

Information control has been exercised through temporary shutdowns of some media outlets, the military occupation of their installations, a ban on the transmission of signals by certain cable TV stations that were reporting on the coup d'état, the selective use of power outages, which affected the transmissions of audiovisual media reporting on the coup, and attacks and threats against journalists from media outlets with different editorial stances.

The Commission was also able to verify during its visit that the interruption of the constitutional order brought about by the coup d'état has been accompanied by a strong military presence in various spheres of civilian life; the suspension of guarantees through the implementation of a curfew that does not meet the standards of international law; and inconsistency in the effectiveness of judicial remedies to safeguard people's fundamental rights.

The bodies of the inter-American human rights system have maintained on repeated occasions that the democratic system is the principal guarantee for the observance of human rights. In this regard, the Commission considers that only the return to the democratic institutional system in Honduras will make it possible for the conditions to be in place for the effective fulfillment of the human rights of all people of Honduras.

The Commission considers it imperative that the *de facto* government adopt urgent measures to guarantee the right to life, humane treatment, and personal liberty of all persons. It is essential that serious, exhaustive, conclusive, and impartial investigations be done of all cases involving human rights violations. The Commission underscores the need for those who are responsible to be duly prosecuted and punished, and for adequate reparations to be made to the family members and victims of violations that are attributable to agents of the State. To this effect, it is critical that the

Office of the Human Rights Prosecutor continue and expand the task it must carry out to investigate the totality of violations that have occurred in the context of the coup, and that no obstacles are placed in the way.

The Commission would especially like to call attention to the valuable work of human rights defenders. They have played a key role in obtaining information and in working to protect people's rights, under conditions of personal risk.

The Commission will continue to observe the human rights situation in Honduras in the context of the coup d'état and will make its final report on this visit public in the near future.

A principal, autonomous body of the Organization of American States (OAS), the IACHR derives its mandate from the OAS Charter and the American Convention on Human Rights. The Inter-American Commission has the mandate to promote respect for human rights in the region and acts as a consultative body to the OAS in this matter. The Commission is composed of seven independent members who act in a personal capacity, without representing a particular country, and who are elected by the OAS General Assembly.

PRELIMINARY OBSERVATIONS ON THE IACHR VISIT TO HONDURAS

Tegucigalpa, Honduras, August 21, 2009 — The Inter-American Commission on Human Rights (IACHR) today concluded its on-site visit to Honduras, which began on August 17, 2009. The purpose of the visit was to observe the human rights situation in the context of the coup d'état of June 28, 2009. The delegation was composed of the IACHR President, Luz Patricia Mejía; the First Vice President, Víctor Abramovich; the Second Vice President and Rapporteur for Honduras, Felipe González; Commissioner Paolo Carozza; and Executive Secretary Santiago A. Canton. The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, Catalina Botero, was also part of the delegation.

The IACHR requested the visit on June 30, 2009, received consent from the State on July 13, 2009, and came to an agreement with the President of the Supreme Court of Justice to conduct the visit. The preliminary observations presented today are based on information received before and during the visit. The Commission will prepare a final report that it will publish in the near future.

During the visit, the IACHR met with representatives of the *de facto* government and representatives of various sectors of civil society, and received more than one hundred individuals who presented complaints, testimony, and information. In Tegucigalpa, the delegation met with authorities of the three branches of government, human rights defenders, political and social leaders, nongovernmental organizations, and parents of families. On August 19, Commission delegations traveled to Tocoa, in the department of Colón, and to San Pedro Sula, in the department of Cortés, where they held meetings with representatives of civil society and local authorities. In Tocoa, the IACHR received more than 40 teachers, journalists, political leaders, and social leaders, and met with representatives of the police, the Army, and the Public Prosecutor's Office, as well as with local business owners and students. In San Pedro Sula, the Commission received more than 50 representatives of civil society organizations, met with members of the media, heard testimony from individuals injured during the suppression of demonstrations, and met with authorities from the municipality, the police, and the armed forces. On August 20, Commission delegations traveled to the towns of El Paraíso and Comayagua. In El Paraíso, meetings were held with civil society organizations and the mayor's office, and testimony was received regarding the events of July 24-27, 2009, when a continual curfew was imposed for three days. In Comayagua, the IACHR received information about the events of July 30, 2009, when a demonstration was suppressed and

nearly 150 people were detained for a period of 6 to 14 hours. The IACHR obtained this information by taking testimony from those affected and from witnesses, as well as from local police and Army authorities and the regional Office of the Public Prosecutor. The Commission thanks everyone who facilitated the organization of this visit.

Right to Freedom of Expression

The guarantee and protection of freedom of expression is an essential condition for the defense of all human rights and for the very existence of any democratic society. The American Convention on Human Rights establishes the right to freedom of expression in its Article 13, which states that “everyone has the right to freedom of thought and expression” and indicates that this 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.” Meanwhile, Article 72 of the Constitution of Honduras recognizes the freedom to express thoughts “by any means of dissemination, without prior censorship.”

The Inter-American Court has consistently stressed the importance of this right, holding that:

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a condition sine qua non for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.

The IACHR has received information about situations that have arisen since the coup d’état that constitute serious violations of the right to freedom of expression. During the visit, it was confirmed that on June 28, 2009, various media outlets—in particular, television channels and radio stations—were forced, by military occupations of their facilities, to suspend their broadcasts. In some cases, they were subject to technical restrictions such as power outages and takeovers of broadcast repeaters and transmitters, which made it impossible for them to report on what was happening. It was also verified that several cable channels were taken off the air and that TV programs that took a critical view of the coup were suspended. Other mechanisms for controlling information have included calls from various public officials, especially members of the public forces, about the inadvisability of transmitting information or opinions against the *de facto* government. There have also been detentions, attacks, and the destruction of equipment that reporters use to do their jobs, as well as violent attacks and death threats by private individuals against the media.

The IACHR has been able to note that following the coup d’état, the communications media in Honduras have become polarized. The publicly owned media, due to their inadequate institutional design, are not independent from the executive branch; as a result, they are openly biased in favor of the *de facto* government. Journalists and media outlets that are perceived to be closely aligned with the government have been targets of strong acts of aggression, presumably by people who oppose the coup d’état. Other media outlets that are perceived as backing the resistance movement have seen their journalistic efforts constantly affected both by agents of the State as well as by private individuals who restrict their reporting work. In the current sharply polarized environment, there are few media outlets that have made a public commitment to civil organizations that they will present pluralistic information without having their editorial position affect their reporting. However, the task of providing information freely is not easy to sustain, as the *de facto* government has powerful mechanisms for interference and intimidation that can be used either openly or covertly, with the excuse of formally applying pre-existing laws. In addition, the threats and violent attacks by private individuals have seriously hampered the exercise of the journalistic profession.

Closure of Media Outlets

The IACHR was informed that on June 28, military personnel occupied the installations for the transmission antennas of various television and radio channels in the vicinity of Cerro de Canta Gallo, in Tegucigalpa, and kept technicians from turning on the transmitters for several hours. The transmission antennas of Channels 5 and 3, Channel 57, Channel 9, Channel 33, Channel 36, Channel 30, Channel 54, and Channel 11 are all in that area. This measure, along with the constant cutoffs of electric power, hampered the ability of these channels to transmit signals. On another matter, the State-owned Channel 8 did not transmit for more than a day. When it resumed its transmission, its management had changed, as well as its programming. The signals of several private channels—Channel 6, Channel 11, Maya TV, and Channel 36 in Tegucigalpa; and La Cumbre and Televisora de Aguán, channel 5, in the department of Colón—were interrupted by military takeovers or on instructions from the Army.

Also occupied or surrounded by members of the public forces were Radio Progreso, in the city of El Progreso, department of Yoro; Radio Globo, in Tegucigalpa; Radio Juticalpa, in the department of Olancho; and Radio Marcala, in the department of La Paz. In this last case, members of the military tried to shut down the radio station, but residents in the area blocked their path and the station kept transmitting.

Besides this situation, it was confirmed that the National Telecommunications Commission (CONATEL) gave instructions to cable television providers that either directly or indirectly led them to remove from their lineup international channels or national programs transmitted by local channels. Such was the case of CNN en Español, Telesur, Cubavisión Internacional, Guatevisión, and Ticavisión, among others.

Power Outages

In the morning hours of June 28, there were selective power outages, according to complaints received by the IACHR. The power outages hampered the ability of radio and television stations to transmit freely, included sectors where the transmission towers operated, and affected telephone services for both land lines and cellular phones.

Detentions of Members of the Media

The IACHR received information to the effect that several journalists were detained, attacked, and threatened for reasons directly linked to the exercise of their profession. On June 28, 2009, cartoonist Allan McDonald was detained along with his 17-month-old daughter, by soldiers belonging to the Armed Forces who broke into his house and burned his cartoons and drawing materials. That same day, members of the public forces held a group of reporters from Telesur and The Associated Press in Tegucigalpa to question them about their visa status. This operation, against Telesur and VTV, was repeated on July 11. The following morning, members of the police forces kept the reporters from leaving the hotel for several hours. The crews from both channels left Honduras the next day because they believed that their security was at risk.

The journalists illegally detained and beaten by members of the public forces included: Naún Palacios, in Tocoa, Colón, on June 30, 2009; Mario Amaya, a photographer from the *Diario Hoy*, on July 2; Rommel Gómez, in San Pedro Sula; the director of Radio Coco Dulce, Alfredo López, on August 12 in Tegucigalpa; and journalist Gustavo Cardoza of Radio Progreso, on August 14, in

Cortés. At that same demonstration, an independent journalist from Tela, Edwin Castillo, was beaten by security forces.

Attacks and Threats against the Media

The IACHR received information about serious and multiple attacks suffered by journalists due to acts carried out by public forces or private individuals, but always for the purpose of preventing them from freely doing their work. Thus, for example, Juan Ramón Sosa of the daily newspaper La Tribuna was beaten and insulted when he covered a demonstration on June 29 in Tegucigalpa. According to the information received, photojournalist Wendy Olivo of the Agencia Bolivariana de Noticias was assaulted by members of the public forces when she tried to photograph people who had been detained at a police station and refused to turn over her camera. On July 30, a number of journalists and cameramen were allegedly assaulted by members of the police in the context of security forces' response to the demonstration that day in Tegucigalpa. According to the information received, Karen Méndez, a journalist from Telesur, was pushed and threatened by a police officer, while a cameraman from the same station, Roger Guzmán, was also attacked and had work materials seized. José Oseguera and Luis Andrés Bustillo, cameramen from the Maya TV program "Hable como Habla," were allegedly beaten in the Durazno area, on the northern exit out of Tegucigalpa, on July 30, 2009. Edgardo Castro, a journalist from the Televisora Hondureña de Compayagua, allegedly was assaulted on July 30, 2009, when he was filming police actions against protestors at the demonstration in Tegucigalpa. His equipment was also allegedly damaged. On August 5, 2009, a photographer from the daily Tiempo, Héctor Clara Cruz, was covering a student demonstration at the National Autonomous University of Honduras and was beaten by members of the police so that he would stop taking pictures of the confrontation. On August 12, 2009, Richard Cazulá, a Channel 36 cameraman, allegedly was beaten by members of the public forces and his camera was allegedly damaged, when he was filming a demonstration in Tegucigalpa. On August 14, 2009, during a demonstration, a group of police attacked photographer Julio Umaña from the daily Tiempo—who had shown them his accreditation—and confiscated his materials.

In terms of attacks against journalists that stem from actions of private individuals, the IACHR observes that for the most part these took place while they were covering demonstrations. In Tegucigalpa, three journalists from the Channel 42 program "Entrevistado" allegedly were attacked on June 28, 2009, by a group of demonstrators, who also knocked them down and broke their cameras. On June 29, 2009, El Heraldó photographer Johnny Magallanes allegedly was attacked when he was covering a demonstration in front of the Presidential House in Tegucigalpa. On July 1, some demonstrators who presumably belonged to the resistance movement assaulted Carlos Rivera, a correspondent for Radio América in the city of Santa Rosa de Copán. Henry Carvajal and Martín Rodríguez, a photographer and journalist from the newspaper La Tribuna, reported that they had been subject to acts of aggression by demonstrators belonging to the resistance on July 26 in the department of El Paraíso.

In addition, information was received indicating that several members of the media have been threatened since the coup d'état as a result of their work in journalism. The threats have come from different sectors and have been made via the telephone, electronically, or in person, when the journalists cover demonstrations or news events related to the political crisis. The IACHR was able to note that threats to prevent the free exercise of journalism have been on the rise in recent weeks. Members of the media who have been subject to serious threats include, among others: Madeleine García and other members of the Telesur crew; Esdras Amado López (Channel 36); Eduardo Madonado ("Hable como Habla" on Maya TV); Jorge Otts Anderson (La Cumbre channel in Tocoa, Colón); Johnny Lagos (El Libertador); José Luis Galdámez ("Tras la Verdad" program on Radio Globo); Andrés Molina (Radio Juticalpa); Carlos Lara, Wilfredo Paz, and Rigoberto Mendoza (in Tocoa, Colón); members of Radio Progreso; members of Radio La Voz Lenca, among other

independent or community radio stations; Francisco Montero (Radio Sonaguera); and Héctor Castellanos (a program on Radio Globo), to name some examples of threats coming from members of the public forces or from sectors presumably associated with the *de facto* government. In addition, Carlos Mauricio Flores and Fernando Berrios, of El Heraldo, received death threats in the context of violent attacks on the newspaper for which they work; these presumably came from radical groups opposed to the coup d'état. Finally, Dagoberto Rodríguez of Radio Cadena Voces has also suffered acts of aggression and threats presumably made by groups that belong to the resistance movement.

Attacks on Media Outlets

As has been stated previously, the IACHR observed a growing polarization that has manifested itself, among other ways, in the form of violent attacks by private individuals against the communications media. Such attacks appear to have intensified in recent weeks.

Information was received about an attempted attack on Radio América on June 30, when a bomb was placed on the broadcaster's premises in Tegucigalpa. On the night of July 4, in Tegucigalpa, an unidentified individual allegedly left an explosive device in the Centro Comercial Prisa, the shopping center where the offices of the newspaper Tiempo and Channel 11 are located. At the end of July, an explosive device was found against the Channel 6 facilities in San Pedro Sula. On August 14, hooded and armed individuals burned a vehicle that was delivering the newspaper La Tribuna. The next day, unidentified persons launched five Molotov cocktails against the building of the daily El Heraldo; these nearly caused a fire in the newspaper's offices.

Based on Article 13 of the American Convention on Human Rights, the State has the international obligation to guarantee and protect freedom of expression. It should refrain from using direct or indirect mechanisms of intimidation and should protect the life and physical integrity of members of the media, whatever their editorial stance. Consequently, the Commission urges the State to respect the free exercise of this right; refrain from using direct or indirect forms of intimidation or censorship; investigate acts of aggression to which members of the media and media outlets have been victims; protect the life and physical integrity of members of the media as well as the installations of media outlets; and promote an atmosphere of tolerance and pluralism that allows for the widest possible debate on public issues.

21. PRESS RELEASE N° R62/09**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION DEPLORES MURDER OF DOCUMENTALIST IN EL SALVADOR**

Washington, D.C, September 4, 2009 - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) deplores the murder of Christian Poveda, a French-Spaniard documentalist, which occurred on September 2 in El Salvador. The Office of the Special Rapporteur urges Salvadorian authorities to investigate this crime promptly and effectively and to duly prosecute those responsible.

According to the information received, on September 2, 2009, local authorities found Poveda, who had been shot several times in the face. The reporter's body was lying near his vehicle, in a suburban area, north of San Salvador. Poveda, who was living in El Salvador, was finishing a documental on criminal gangs ("maras") that was supposed to be released at the end of September. Months before the crime, Poveda, a reporter for several international media outlets, allegedly received dead threats related to his documental. At least 10 reporters have in the region this year for reasons that could be related to their work as journalists.

The Office of the Special Rapporteur considers that Poveda's murder could have a chilling effect that may affect the right to freedom of expression. The Office of the Special Rapporteur also recognizes the quick reaction of the Salvadorian President, who condemned the crime. Likewise, the Office of the Special Rapporteur urges authorities to fully investigate the facts so that those responsible for the murder of Poveda can be duly prosecuted and punished. It also calls on the State to adopt all urgent measures needed to guarantee the life and the integrity of those journalists who are at risk.

The Office of the Special Rapporteur underlines that Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that the murder, kidnapping, intimidation of and/or threats against social communicators, as well as the material destruction of communications media, violates the fundamental rights of individuals and strongly restricts 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.

22. PRESS RELEASE N° R66/09**SPECIAL RAPPORTEURSHIP FOR FREEDOM OF EXPRESSION CONDEMNS RESTRICTIONS TO FREEDOM OF EXPRESSION IN HONDURAS**

The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights condemns the restrictions to freedom of expression that representatives of the public sector have imposed in the last few days in Honduras. The Special Rapporteurship urges the *de facto* authorities to adopt urgent measures necessary to guarantee that all communication media in the country are able to operate, without distinction, independently of their editorial stand.

According to the information received, starting on September 21, several power outages in Tegucigalpa have intermittently affected the broadcasting of TV Channel 36 and Globo Radio. The Office of the Special Rapporteur also received information indicating that members of the military occupied the power control center in Tegucigalpa, which controls the transmission of electric power in the region of the capital city. Moreover, Esdras Amado López, director of Channel 36, informed that on September 23 the satellite that retransmits the TV signal for the rest of the country was blocked.

In addition, Radio Progreso, of the Yoro Department, decided not to transmit during the hours of the curfew decreed by the *de facto* government, on account of reasons directly associated with the security of its employees. A Radio Progreso journalist said that on September 22 and 24 military contingents were deployed to the radio, whose editorial stand is contrary to the *de facto* regime, aiming to intimidate journalists and technicians.

The Special Rapporteurship expresses its deep concern for the restrictions to freedom of expression through indirect methods such as the power outages, the satellite interferences, the intimidations through disproportionate displays of the public force, or any other method that has the effect to prevent the free functioning of the mass media, independently of their editorial stands.

The Special Rapporteurship for Freedom of Expression demand absolute respect of the right to freedom of expression, and call on the *de facto* authorities to ensure all guarantees so that journalists and media outlets may freely and securely perform their work of informing the public.

Article 13 of the American Convention on Human Rights says that: "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." It also says that: "the right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions."

23. PRESS RELEASE N° R67/09**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION EXPRESSES CONCERN FOR THE MURDER OF JOURNALIST IN COLOMBIA**

Washington D.C., September 25, 2009 The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its concern for the murder of journalist and cameraman Diego Rojas Velásquez, which took place on the afternoon of September 22, 2009, in Supía, a locality in the Caldas Department, Colombia.

According to the information received, Rojas was working in the community TV station Supía when he received a telephone call related with the coverage of news in the Municipality of Caramanta, Antioquia Department. The information also indicates that the journalist left the TV station around 6:30 pm local time, and a few blocks from the station, he was intercepted by a group of unidentified persons, who shot him four times, causing his immediate death. According to the information received, the local authorities said they did not know any threats against the community journalist.

The Special Rapporteurship urges the Colombian State to investigate the crime, judge and adequately punish those responsible, and pay reparations to his relatives.

In this regard, the Rapporteurship recalls that Principle 9 of the Declaration of Principles on Freedom of Expression states that the "murder, kidnapping, intimidation of and/or threats against social communicators, as well as the material destruction of communications media, violates the fundamental rights of individuals and strongly restricts 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."

24. PRESS RELEASE N° R70/09**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION CONDEMNS KILLING OF JOURNALIST IN MEXICO**

Washington, D.C., September, 29, 2009- The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of journalist Norberto Miranda Madrid, editor of the digital media outlet Radio Visión, which took place on September 23 in the city of Nuevo Casas Grandes, in Chihuahua, Mexico. The Special Rapporteur calls on the Mexican authorities to adopt effective mechanisms to prevent impunity in cases of crimes against journalists and to implement adequate mechanisms to protect journalists who are at risk.

According to the information received, on Wednesday, September 23, at 10:20 p.m., a heavily armed group of individuals burst into the newsroom of the online media outlet and fired several shots at the journalist. Miranda Madrid, who wrote a column under the pen name "El Gallito" (Little Rooster), had recently called attention to the lack of security in the north of Mexico, especially around Casas Grandes, where 25 people had allegedly been killed since the beginning of September. According to reports, Miranda Madrid had also told other journalists that he had been threatened after publishing a news item related to the arrest of members of the Juárez Cartel.

The Office of the Special Rapporteur for Freedom of Expression urges the Mexican authorities to investigate the killing of Miranda Madrid and to ensure that those responsible are duly tried and punished. It also calls on the State to resolutely advance existing investigations into crimes and threats against journalists, and to act as soon as possible to adopt urgent measures such as strengthening the Office of the Special Prosecutor for Crimes against Journalists; making crimes against journalists federal offenses; and implementing permanent, specialized protection measures to guarantee the life and physical integrity of journalists who are at risk.

In addition to Miranda Madrid, seven other journalists have been killed in Mexico since January 2009.

The Office of the Special Rapporteur reminds that Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that "the murder, kidnapping, intimidation of and/or threats against social communicators, as well as the material destruction of communications media, violates the fundamental rights of individuals and strongly restricts 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."

25. PRESS RELEASE N° R71/09**THE OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION CONDEMNS THE
SUSPENSION OF GUARANTEES IN HONDURAS AND THE VIOLATIONS OF THE RIGHT TO
FREEDOM OF EXPRESSION**

Washington, D.C., September 29, 2009 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission of Human Rights (IAHCR) expresses its most energetic rejection of the executive decree number PCM-M-016-2009 dictated by the Honduras *de facto* government and the violations of the right to freedom of expression caused by its application.

On September 22nd, the Honduras *de facto* government adopted Executive Decree Number PCM-M-016-2009, published in the official journal *La Gaceta* on September 26th. This decree suspended, among others, the constitutional right to freedom of expression, by banning all the publications that may "offend human dignity, Government employees, or may threaten the law, and the government resolutions." This decree authorized the National Commission of Telecommunications (*Comisión Nacional de Telecomunicaciones*, CONATEL) to immediately interrupt, through the use of State security forces, the broadcasting of any radio station, television channel or cable television system that in its opinion may violate the aforementioned dispositions. In application to the decree, in the early hours of September 28th, State security forces raided the offices of television Channel 36 and Radio Globo, media outlets that have been consistently critical of the *de facto* government, and seized their transmission equipment.

Moreover, the Guatemaltecan news broadcasters Alberto Cardona, a journalist from Guatevisión and Rony Sánchez, a cameraman from Guatevisión and the Mexican channel Televisa, were beaten by the security forces as they covered the shut down of Radio Globo. The Rapporteurship received information that the security forces confiscated the video of the shut down of the radio station and damaged the video camera.

According to information received, the Honduran Congress allegedly asked the Executive Decree to be revoked. However, despite the fact that the *de facto* government has indicated this is a possibility, at the time of issuing this press release the decree was still in effect and the very serious restrictions to freedom of expression registered under it have not been corrected.

The Office of the Special Rapporteur for Freedom of Expression makes an urgent call for the re-establishment of the radio stations and television channels that have been shut down, the devolution of the seized equipment in excellent condition and the protection of the affected journalists, as well as the re-establishment of all the necessary guarantees for the full exercise of the right to freedom of expression in Honduras.

The Office of the Special Rapporteur reminds that article 13 of the American Convention on Human Rights prescribes that: "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." Any restriction to this right, even under a state of emergency, must be adopted by a legitimate government and must be proportionate and strictly necessary to protect the functioning of the democratic system. In this case, none of the requirements have been proved. Particularly, the prohibition of any dissenting opinion or criticism through the imposition of charges of contempt, under its most extended meaning, and the authorization to security forces to raid media outlets and seize transmission equipments when administrative authorities determine violations of the executive decree, completely suppress, in an arbitrary, unnecessary and disproportionate way, the right of all Hondurans to freely express and receive diverse and plural information.

For the abovementioned reasons, the Office of the Rapporteur urges the Congress and the Supreme Court of Honduras to suspend immediately the enforcement of Executive Decree PCM-M-016-2009 and to remedy the consequences of its enforcement, for flagrantly contradicting the international standards for freedom of expression.

26. PRESS RELEASE N° R72/09**SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION EXPRESSES CONCERN OVER WAVE OF ATTACKS AGAINST JOURNALISTS IN ECUADOR**

Washington, D.C., October 1, 2009—The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its concern regarding the growing wave of attacks against media outlets and journalists in Ecuador, and calls on the authorities to investigate these incidents. It cautions that the creation of an atmosphere of intolerance and social polarization poses risks for freedom of expression and, more generally, for citizens' peaceful coexistence and the strengthening of democracy.

The Office of the Special Rapporteur has received information about the serious assault suffered by the TeleSUR television network's correspondent in Ecuador, Elena Rodríguez. The journalist was attacked in Quito on the evening of Wednesday, September 16, by persons that are allegedly opposed to the current government, when she was driving her own vehicle. According to the information received, the assailants struck her with the butt of a revolver, forced her out of the vehicle, and kicked her on the ground, causing trauma to her head and bruising all over her body. Rodríguez said the attack was related to her profession, since the next day she found a note in her car that accused her of working for the government of President Rafael Correa and indicated that "next time you won't be spared."

The Office of the Rapporteur has also been informed about the serious attacks suffered by journalist Rafael Castro and cameraman Jorge Cabezas of the program *En busca de respuestas* ("In Search of Answers"), which is broadcast by the Ecuador TV station. The two men were severely beaten on Thursday, September 24, allegedly by students who were protesting during demonstrations organized by the teachers union in the city of Guayaquil. Others who were also severely attacked during the protests were cameraman Mauricio Cerón, of the television station Ecuavisa; photojournalist César Muñoz of the newspaper *Diario Hoy*; and a journalist with State-run media outlets who requested anonymity out of fear of retaliation.

The Office of the Special Rapporteur urges the State of Ecuador to investigate and clarify the serious acts of violence recorded against journalists and calls on the authorities to promote a culture of respect for diversity of thought and to abstain from making statements that could in any way foster a climate of social intolerance.

Moreover, the Office of the Special Rapporteur received information on the threats received by several journalists, including Yamila Murillo Zaldúa, of *Diario Correo*, in the locality of Machala, and Aquiles Arismendi, of *Radio La Voz de su Amigo*, in the city of Esmeraldas.

As the Office of the Rapporteur has stated on numerous occasions, diversity, pluralism, and respect for the dissemination of all ideas and opinions is a necessary condition for the functioning of any democratic society. Therefore, the authorities must work resolutely to help build a climate of tolerance and respect in which everyone can express his or her thoughts and opinions without fear of being attacked, punished, or stigmatized for doing so. Moreover, the State's duty to create conditions that allow for the free circulation of all ideas or opinions includes the obligation to investigate and adequately punish those who use violence to silence members of the media or media outlets.

In this regard, the Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that the "murder, kidnapping, intimidation of and/or threats against social communicators, as well as the material destruction of communications media, violates the

fundamental rights of individuals and strongly restricts 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."

27. PRESS RELEASE N° R76/09**OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION CONDEMNS KILLING OF JOURNALIST IN MEXICO AND URGES THE STATE TO INVESTIGATE**

Washington, D.C., November 4, 2009 The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of journalist Jose Bladimir Antuna Garcia, reporter of the newspaper El Tiempo, of Durango, whose body was allegedly found the night of November 2 in Durango, Mexico. Before his assassination, he had repeatedly indicated that he had received death threats, due to his investigations on corruption and organized crime. The Office of the Special Rapporteur calls on the Mexican authorities to investigate this crime and to duly arrest, judge and sanction all those responsible. The Special Rapporteurship also calls on the Mexican authorities to implement adequate mechanisms to protect journalists who are at risk in all its territory, and to adopt effective mechanisms to end impunity in cases of crimes against journalists.

The Office of the Special Rapporteur received information according to which Antuna Garcia was kidnapped the morning of the day he was killed. His body was allegedly found with a message whose contents have not been revealed by the authorities. The information adds that Antuna Garcia, who covered police and judicial news, had said that he had met with Mexican journalist Eliseo Barron, of newspaper La Opinion, shortly before Barron was killed on May 26, 2009 (see Rapporteurship's Press Release 34/09). The meeting was to exchange information on police corruption and organized crime. Days after the killing of Eliseo Barron, Antuna García allegedly indicated that he had been receiving death threats on his cellular phone and in the news room of El Tiempo. He said the threats were delivered by the criminal organization Los Zetas, linked to the Golfo Cartel. According to the information received, Antuna Garcia's residence had been attacked with fire arms on April 28, 2009.

At least nine journalists were killed this year in Mexico for reasons related to their professional activity. In the State of Durango were assassinated Antuna Garcia and Eliseo Barron, and also, on May 3, 2009, Carlos Ortega, who also worked for newspaper El Tiempo. Nine journalists were killed and one disappeared in Mexico in 2006; in 2007, three reporters were killed and three disappeared; in 2008, five journalists were killed and one disappeared.

The Office of the Special Rapporteur for Freedom of Expression urges the Mexican authorities to investigate the killing of Antuna Garcia and to ensure that those responsible are duly tried and punished. It also calls on the State to resolutely advance existing investigations into crimes against journalists, and to act as soon as possible to adopt urgent measures to protect persons working with the media, such as strengthening the Office of the Special Prosecutor for Crimes against Journalists, making crimes against journalists federal offenses; and implementing permanent, specialized protection measures to guarantee the life and integrity of journalists who are at risk.

The Office of the Special Rapporteur reminds that Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that "the murder, kidnapping, intimidation of and/or threats against social communicators, as well as the material destruction of communications media, violates the fundamental rights of individuals and strongly restricts 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

28. PRESS RELEASE N° R79/09**SPECIAL RAPORTEURSHIP FOR FREEDOM OF EXPRESSION EXPRESSES ITS DEEP CONCERN REGARDING THE SITUATION OF FREEDOM OF EXPRESSION IN HONDURAS**

Washington DC, November 26, 2009- The Office of the Special Rapporteur for Freedom of Expression expresses its deepest concern regarding the attacks against freedom of expression registered in Honduras in the last few days, particularly the constant interruptions and interferences to the broadcasting signal of TV Channel 36 and the explosion in the building of Channel 10.

According to information received by the Special Rapporteurship, in the last few days the broadcast signal of Channel 36 has been interrupted several times, impeding it from broadcasting normally. Also, the director of Channel 36, Esdras Amado López, reported to the Special Rapporteurship that he has received information according to which the TV channel's installations could be controlled by the military on Sunday, November 29 during the election, and that the channel's announcers could be temporarily detained by security forces to prevent them from working that day.

The Special Rapporteurship received information that in the early hours of November 25, an explosive detonated in the installations of Channel 10. The explosion caused damages to the building, but no injuries were reported.

The Special Rapporteurship expresses its special concern regarding interference of broadcasts by media critical of the de facto government, as well as the repeated attacks against private media. Consequently, it urges the de facto government and all authorities of Honduras in general, to adopt all necessary measures to ensure that journalists in the country can work freely, and to guarantee the conditions that allow individuals to freely express their ideas and opinions without fear of being attacked, incarcerated or stigmatized.

In this respect, the Special Rapporteurship recalls that article 13.1 of the American Convention on Human Rights, of which the Honduran state is a signatory, indicates that "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

29. PRESS RELEASE N° R83/09**SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION REITERATES ITS DEEP CONCERN REGARDING THE LACK OF GUARANTEES TO FREEDOM OF EXPRESSION IN HONDURAS**

Washington, December 9, 2009 – The Office of the Special Rapporteur for Freedom of Expression once more expresses its deep concern regarding the constant interferences against the transmission of TV Channel 36 during its main news program, *Así se Informa*, which broadcasts 5:30 to 7:00 pm.

The Special Rapporteurship received information that in the last few days -the transmission of Channel 36 has been repeatedly interrupted- both at the local and the national level. Regrettably, these kind of attacks against freedom of expression have been frequent in Honduras since the coup d'état of June 28, 2009. Since then, the Special Rapporteurship has on six occasions publicly complained different attacks against journalists and media outlets in Honduras. Channel 36's staff and officials, as well as other journalists in Honduras, are protected by precautionary measures granted by the Inter-American Commission on Human Rights (IACHR).

The Office of the Special Rapporteur was also informed that in the morning of Saturday, December 5, 2009, two masked individuals entered the newsroom of the El Libertador newspaper, in Tegucigalpa, threatened the workers with firearms, and took a computer and a photographic camera.

The Special Rapporteurship reiterates once again its call to the de facto government and, in general, to all Honduran authorities to adopt all necessary measures to guarantee the conditions that allow all persons to freely express their ideas and opinions without fear of being attacked, sent to jail or stigmatized as a result.

The Office of the Special Rapporteur recalls that article 13.1 of the American Convention on Human Rights, of which the Honduran state is a signatory, indicates that: "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."

30. PRESS RELEASE N° R87/09**OFFICE OF THE SPECIAL RAPPORTEUR EXPRESSES PROFOUND CONCERN AT THE MURDER OF ANOTHER JOURNALIST IN MEXICO**

Washington, December 29, 2009 The Inter-American Commission on Human Rights (IACHR) Office of the Special Rapporteur for Freedom of Expression expresses profound concern at the murder of journalist José Alberto Velázquez López, owner of daily newspaper *Expresiones de Tulum*, in the state of Quintana Roo, Mexico. The Office of the Special Rapporteur urges the Mexican authorities to investigate this crime quickly and efficiently and to properly punish those responsible.

According to the information received by the Office of the Special Rapporteur, on Tuesday, December 22, Velazquez was driving his car in the city of Cancun when he was struck by several shots fired by individuals riding a motorcycle. The information indicates that the journalist was taken to a nearby hospital where he died several hours later. Representatives of the newspaper indicated that it had received several death threats over the last few weeks in response to the publication of reporting on alleged corruption among local authorities. In addition, the newspapers printing facilities had been attacked with a firebomb in November.

During 2009, at least 10 journalists were murdered in Mexico for reasons related to their work as journalists. The Office of the Special Rapporteur calls urgently on the Mexican authorities to investigate Velázquez murder and to capture and adequately punish those responsible.

The Office of the Special Rapporteur repeats its call for the Mexican State to expedite existing investigations on crimes against media workers and to take any necessary measures to protect the press as soon as possible. Such measures might include the strengthening of the Special Prosecutor for Crimes against Journalists (*Fiscalía Especial Para la Atención de Delitos Cometidos Contra Periodistas*), the classifying of crimes against journalists as federal crimes, and the implementation of permanent mechanisms of special protection to guarantee the life and physical integrity of at-risk media workers.

The Office of the Special Rapporteur reminds that Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that "the murder, kidnapping, intimidation of and/or threats against social communicators, as well as the material destruction of communications media, violates the fundamental rights of individuals and strongly restricts 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.

31. PRESS RELEASE N° R88/09**SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION EXPRESSES CONCERN OVER AN ATTACK AGAINST JOURNALISTS OF THE TELEAMAZONAS NETWORK IN ECUADOR**

Washington, D.C., December 31, 2009 - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its concern regarding the assault suffered by journalists of the Teleamazonas television network in Ecuador. The Office of the Special Rapporteur cautions that these kinds of assaults poses risks for freedom of expression and, more generally, for citizens' peaceful coexistence and the strengthening of democracy. It also highlights the fact that Ecuador officials have condemned the reported assault and calls on the authorities to investigate these incidents quickly and effectively, in order to subject those responsible to due trial under the law.

According to the information received, on Tuesday, December 29, 2009, journalist Ana María Cañizares, cameraman Manuel Tumbaco and assistant Francisco Quizno, of the Teleamazonas TV network, were allegedly assaulted while they were driving back towards the network's headquarters, after covering an event in the National Assembly. According to the information received, the journalists were intercepted by a pick-up truck that cut them off, after which its occupants assaulted the cameraman and his assistant.

The Office of the Special Rapporteur urges the State of Ecuador to investigate and clarify this serious act of violence against journalists who work at the Teleamazonas network, acknowledges the condemnation of the assault made by government officials and calls on the authorities to promote a culture of respect for diversity of thought and to abstain from making statements that could in any way foster a climate of social intolerance.

As the Office of the Rapporteur has stated, diversity, pluralism, and respect for the dissemination of all ideas and opinions is a necessary condition for the functioning of any democratic society. Therefore, the authorities must work resolutely to help build a climate of tolerance and respect in which everyone can express his or her thoughts and opinions without fear of being attacked, punished, or stigmatized for doing so. Moreover, the State's duty to create conditions that allow for the free circulation of all ideas or opinions includes the obligation to investigate and adequately punish those who use violence to silence members of the media or media outlets.

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

E. RESOLUTIONS OF THE GENERAL ASSEMBLY OF THE ORGANIZATION OF AMERICAN STATES 2009

1. AG/RES. 2514 (XXXIX-O/09)

ACCESS TO PUBLIC INFORMATION: STRENGTHENING DEMOCRACY¹

(Adopted at the fourth plenary session, held on June 4, 2009)

THE GENERAL ASSEMBLY,

RECALLING resolutions AG/RES. 1932 (XXXIII-O/03), AG/RES. 2057 (XXXIV-O/04), AG/RES. 2121 (XXXV-O/05), AG/RES. 2252 (XXXVI-O/06), AG/RES. 2288 (XXXVII-O/07), and AG/RES. 2418 (XXXVIII-O/08), "Access to Public Information: Strengthening Democracy";

HAVING SEEN the Annual Report of the Permanent Council to the General Assembly as it pertains to the status of implementation of resolution AG/RES. 2418 (XXXVIII-O/08), "Access to Public Information: Strengthening Democracy" (AG/doc.4992/09 add. 1) ;

CONSIDERING that Article 13 of the American Convention on Human Rights provides that "[e]veryone 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";

CONSIDERING ALSO that Article 19 of the Universal Declaration of Human Rights includes the right "to seek, receive and impart information and ideas through any media and regardless of frontiers";

RECALLING that the Plan of Action of the Third Summit of the Americas, held in Quebec City in 2001, indicates that governments will ensure that national legislation is applied equitably to all, respecting freedom of expression and access to public information by all citizens;

¹ The Bolivarian Republic of Venezuela reaffirms the statement made in the footnote to resolution AG/RES. 2288 (XXXVII-O/07) as we consider that access to public information in the hands of the state must be consonant with Article 13 of the American Convention on Human Rights, which establishes that: "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." Venezuela maintains that a democratic system must guarantee access to public information and must allow all citizens, without exception, to seek, receive, and impart information. When a citizen seeks information, he or she exercises, consciously and fully, the right to access information and the state must foster the adoption of legislative provisions that guarantee that right. Furthermore, the state must guarantee that same right for the poor, the underprivileged, and the socially excluded, based on the principle of equality before the law. Accordingly, it is necessary "to instruct the IACHR to conduct a study on how the state can guarantee to all citizens the right to receive public information in the framework of the principle of transparency and objectivity, in full exercise of the right to freedom of expression and as an effective mechanism of participation." Along those lines, we underscore the conclusions and reflections of the special meeting on the right to public information, held on April 28, 2006, within the framework of the OAS, in which it was recognized that the media are responsible for ensuring that citizens receive, without distortions of any type, information provided by the state. Venezuela laments the fact that the message transmitted by the poor is again falling on deaf ears and it shares the views of those who denounce that denying access to information to the poor perpetuates their social and economic ostracism. For that reason, Venezuela again urges the Inter-American Commission on Human Rights to take the initiative and, under the powers vested in it by the American Convention on Human Rights, conduct the aforementioned study and report its findings to the General Assembly of the Organization of American States at its next regular session.

EMPHASIZING that Article 4 of the Inter-American Democratic Charter states that transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy;

REAFFIRMING the public nature of the acts and decisions of government organs and of the reasons for them, the documents supporting them or constituting a direct and essential complement to them, and the procedures used to promulgate them, without prejudice to exceptions that may be established in accordance with domestic law;

NOTING that, in the Declaration of Nuevo León, the Heads of State and Government affirmed that access to information held by the state, subject to constitutional and legal norms, including those on privacy and confidentiality, is an indispensable condition for citizen participation and promotes effective respect for human rights, and that, in that connection, they are committed to providing the legal and regulatory framework and the structures and conditions required to guarantee the right of access to public information;

CONSIDERING that the General Secretariat has been providing support to member state governments in dealing with the topic of access to public information;

NOTING the work accomplished by the Inter-American Juridical Committee on this issue, in particular resolution CJI/RES. 123 (LXX-O/07), "Right to Information," attached to which is the report entitled "Right to Information: Access to and Protection of Information and Personal Data in Electronic Form" (CJI/doc.25/00 rev. 2), and resolution CJI/RES. 147 (LXXIII/08), "Principles on the Right of Access to Information";

RECOGNIZING that the goal of achieving an informed citizenry must be rendered compatible with other societal aims, such as safeguarding national security, public order, and protection of personal privacy, pursuant to laws passed to that effect;

RECOGNIZING ALSO that democracy is strengthened through full respect for freedom of expression, access to public information, and the free dissemination of ideas, and that all sectors of society, including the media, through the public information they disseminate to citizens, may contribute to a climate of tolerance of all views, foster a culture of peace and non-violence, and strengthen democratic governance;

TAKING INTO ACCOUNT the important role civil society can play in promoting broad access to public information;

TAKING NOTE of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights (IACHR); and of the Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE (Organization for Security and Cooperation in Europe) Representative on Freedom of the Media, the Special Rapporteurship on Freedom of Expression of the Inter-American Commission on Human Rights, and the ACHPR (African Commission on Human and Peoples' Rights) Special Rapporteur on Freedom of Expression, adopted in 2006;²

². Reservation by Nicaragua: The Government of Nicaragua wishes to place on record its commitment to the promotion and protection of human rights, as enshrined in the Political Constitution of our country. At the same time, it considers it necessary for the Inter-American Commission on Human Rights not to apply a double standard in its analysis of the situation of human rights in the region. The elements of transparency, veracity of sources of information, and the impartiality and universality thereof would contribute to greater objectivity in the work of the Commission; therefore, its recommendations should not be used as an instrument to pressure some states.

TAKING NOTE ALSO of the reports of the IACHR Special Rapporteurship on Freedom of Expression on the situation of access to information in the Hemisphere for 2003, 2004, 2005, 2006, 2007, and 2008;

TAKING NOTE FURTHER of the report of the special meeting of the Committee on Juridical and Political Affairs (CAJP), held at the headquarters of the Organization of American States on December 15, 2008, with the participation of the member states, the General Secretariat, and civil society representatives, to examine the possibility of preparing an inter-American program on access to public information (CP/CAJP-2707/09);

RECALLING initiatives taken by civil society regarding access to public information, in particular, the Declaration of Chapultepec, the Johannesburg Principles, the Lima Principles, and the Declaration of the SOCIUS Peru 2003: Access to Information, as well as the outcomes of the Regional Forum on Access to Public Information, of January 2004; the Atlanta Declaration and Plan of Action for the Advancement of the Right of Access to Information, sponsored by the Carter Center, which addresses ways of advancing the implementation and exercise of the right of access to information; and the results of the International Seminar on Press, Litigation, and the Right to Public Information, held in Lima, Peru, on November 28, 2007;

BEARING IN MIND therefore the Americas Regional Conference on the Right of Access to Information, organized by the Carter Center and held in Lima, Peru, from April 28 to 30, 2009;

RECALLING that the media, the private sector, and political parties can likewise play an important role in facilitating access by citizens to information held by the state;

TAKING INTO ACCOUNT the Report on the Questionnaire regarding Legislation and Best Practices on Access to Public Information (CP/CAJP-2608/08), which is a contribution to the study of best practices concerning access to public information in the Hemisphere; and

WELCOMING WITH INTEREST the study "Recommendations on Access to Information," submitted to the CAJP on April 24, 2008 (CP/CAJP-2599/08), a study organized by the Department of International Law pursuant to resolution AG/RES. 2288 (XXXVII-O/07), "Access to Public Information: Strengthening Democracy,"

RESOLVES:

1. To reaffirm that everyone has the right to seek, receive, access, and impart information and that access to public information is a requisite for the very exercise of democracy.
2. To urge member states to respect and promote respect for everyone's access to public information and to promote the adoption of any necessary legislative or other types of provisions to ensure its recognition and effective application.
3. To encourage member states, in keeping with the commitment made in the Declaration of Nuevo León and with due respect for constitutional and legal provisions, to prepare and/or adjust their respective legal and regulatory frameworks, as appropriate, so as to provide the citizenry with broad access to public information.
4. Also to encourage member states, when preparing or adjusting their respective legal and regulatory frameworks, as appropriate, to provide civil society with the opportunity to participate in that process; and to urge them, when drafting or adjusting their national legislation, to take into account clear and transparent exception criteria.

5. To encourage member states to take the necessary measures, through their national legislation and other appropriate means, to make public information available electronically or by any other means that will allow ready access to it.

6. To encourage civil society organizations to make information related to their work available to the public.

7. To encourage states to consider, when they are designing, executing, and evaluating their regulations and policies on access to public information, where applicable, with the support of the appropriate organs, agencies, and entities of the Organization, implementing the recommendations on access to public information contained in the study organized by the Department of International Law of the Secretariat for Legal Affairs and submitted to the Committee on Juridical and Political Affairs (CAJP) on April 24, 2008.

8. To instruct the Permanent Council, in the framework of the CAJP, to:

- a. Convene in the second half of 2010 a special meeting with the participation of the member states, the General Secretariat, and representatives of civil society to examine the possibility of preparing an inter-American program on access to public information, bearing in mind the recommendations contained in the aforementioned study;
- b. Update the Report on the Questionnaire regarding Legislation and Best Practices on Access to Public Information (CP/CAJP-2608/08), requesting to that end contributions from member states, the Special Rapporteurship for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), the Inter-American Juridical Committee (CJI), the Department of International Law, the Department of State Modernization and Good Governance of the Secretariat for Political Affairs, interested entities and organizations, and civil society representatives; and
- c. Include in the study mentioned in the preceding subparagraph the right of all citizens to seek, receive, and disseminate public information.

9. To instruct the Department of International Law to draft, in cooperation with the CJI, the Special Rapporteurship for Freedom of Expression of the IACHR, and the Department of State Modernization and Good Governance, and with the cooperation of the member states and civil society, a model law on access to public information and a guide for its implementation, in keeping with international standards in this field.

10. To instruct the Department of State Modernization and Good Governance, and to invite the Special Rapporteurship for Freedom of Expression of the IACHR, to support the efforts of member states that request such support in the design, execution, and evaluation of their regulations and policies with respect to access by citizens to public information.

11. To instruct the Department of International Law to update and consolidate the studies and recommendations on access to public information and the protection of personal data, using as a basis the contributions of member states, the organs of the inter-American system, and civil society.

12. To instruct the Special Rapporteurship for Freedom of Expression of the IACHR to continue to include in the Commission's Annual Report a report on the situation regarding access to public information in the region.

13. To instruct the General Secretariat to identify new resources to support member states' efforts to facilitate access to public information; and to encourage other donors to contribute to this work.

14. To request the Permanent Council to report to the General Assembly at its fortieth regular session on the implementation of this resolution, the execution of which shall be subject to the availability of financial resources in the program-budget of the Organization and other resources.

2. AG/RES. 2523 (XXXIX-O/09)

RIGHT TO FREEDOM OF THOUGHT AND EXPRESSION AND THE IMPORTANCE OF THE MEDIA

(Adopted at the fourth plenary session, held on June 4, 2009)

THE GENERAL ASSEMBLY,

HAVING SEEN the Annual Report of the Permanent Council to the General Assembly (AG/doc.4992/09 and addenda);

TAKING INTO ACCOUNT resolutions AG/RES. 2237 (XXXVI-O/06), AG/RES. 2287 (XXXVII-O/07), and AG/RES. 2434 (XXXVIII-O/08), "Right to Freedom of Thought and Expression and the Importance of the Media";

UNDERSCORING the Declaration of Santo Domingo: Good Governance and Development in the Knowledge-Based Society [AG/DEC. 46 (XXXVI-O/06)], adopted on June 6, 2006;

RECALLING that the right to freedom of thought and expression, which includes the freedom to seek, receive, and impart information and ideas of all kinds, is recognized in Article IV of the American Declaration of the Rights and Duties of Man, Article 13 of the American Convention on Human Rights, the Inter-American Democratic Charter (including in Article 4), the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and other international instruments and national constitutions, as well as in United Nations General Assembly resolution 59 (I) and resolution 104 of the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO);

RECALLING ALSO that Article IV of the American Declaration of the Rights and Duties of Man states that "[e]very person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever";

RECALLING FURTHER that Article 13 of the American Convention on Human Rights states that:

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.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
 - a. Respect for the rights or reputations of others; or
 - b. The protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the

dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law;

BEARING IN MIND principles 10 and 11 of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), of 2000, which refer to the decriminalization of "*desacato*" (offensive expressions directed at public officials);

RECALLING the relevant volumes of the annual reports of the IACHR for 2004, 2005, 2006, 2007, and 2008 on freedom of expression, as well as the comments by member states during meetings at which said reports were presented;

TAKING INTO ACCOUNT resolutions 2004/42 and 2005/38, "The Right to Freedom of Opinion and Expression," of the United Nations Commission on Human Rights; and

RECALLING the significance of the studies and contributions approved by UNESCO regarding the contribution of the media to strengthening peace, tolerance, and international understanding, to promoting human rights, and to countering racism and incitement to war,

RESOLVES:

1. To reaffirm the right to freedom of thought and expression and to call upon member states to respect and ensure respect for this right, in accordance with the international human rights instruments to which they are party, such as the American Convention on Human Rights and the International Covenant on Civil and Political Rights, *inter alia*.
2. To reaffirm that freedom of expression and dissemination of ideas are fundamental for the exercise of democracy.
3. To urge member states to safeguard, within the framework of the international instruments to which they are party, respect for freedom of expression in the media, including radio and television, and, in particular, respect for the editorial independence and freedom of the media.
4. To urge those member states that have not yet done so to consider signing and ratifying, ratifying, or acceding to, as the case may be, the American Convention on Human Rights.
5. To reaffirm that free and independent media are fundamental for democracy, for the promotion of pluralism, tolerance, and freedom of thought and expression, and for the facilitation of dialogue and debate, free and open to all segments of society, without discrimination of any kind.
6. To urge member states to promote a pluralistic approach to information and multiple points of view by fostering full exercise of freedom of thought and expression, access to the media, and diversity in the ownership of media outlets and sources of information, through, *inter alia*,

transparent licensing systems and, as appropriate, effective regulations to prevent the undue concentration of media ownership.

7. To urge member states to consider the importance of including, in their domestic legal systems, rules about the establishment of alternative or community media and safeguards to ensure that they are able to operate independently, so as to broaden the dissemination of information and opinions, thereby strengthening freedom of expression.

8. To call upon member states to adopt all necessary measures to prevent violations of the right to freedom of thought and expression and to create the necessary conditions for that purpose, including ensuring that relevant national legislation complies with their international human rights obligations and is effectively implemented.

9. To urge member states to review their procedures, practices, and legislation, as necessary, to ensure that any limitations on the right to freedom of opinion and expression are only such as are provided by law and are necessary for respect of the rights or reputations of others or for the protection of national security, public order (*ordre public*), or public health or morals.

10. To recognize the valuable contribution of information and communication technologies, such as the Internet, to the exercise of the right to freedom of expression and to the ability of persons to seek, receive, and impart information, as well the contributions they can make to the fight against racism, racial discrimination, xenophobia, and related and contemporary forms of intolerance, and to the prevention of human rights abuses.

11. To request the Inter-American Commission on Human Rights (IACHR) once again to follow up on and deepen its study of the issues addressed in the relevant volumes of its 2004, 2005, 2006, 2007, and 2008 annual reports on freedom of expression, on the basis, *inter alia*, of the inputs on the subject that it receives from member states.

12. To invite member states to consider the recommendations concerning defamation made by the Office of the Special Rapporteur for Freedom of Expression of the IACHR, namely by repealing or amending laws that criminalize *desacato*, defamation, slander, and libel, and, in this regard, to regulate these conducts exclusively in the area of civil law.

13. To request the Permanent Council to hold a meeting of national authorities in this field with a view to exchanging experiences and information and engaging in political dialogue among the member states on new trends and debates regarding the right to freedom of thought and expression, the importance of the media in the Hemisphere, and the right of every individual to seek, receive, and impart information. Invitees to that meeting will include members of the Inter-American Court of Human Rights and of the Inter-American Commission on Human Rights, including the Special Rapporteur for Freedom of Expression, and experts from the member states, all for the purpose of sharing their experiences with these issues.

14. To take into consideration the findings of, and views expressed at, the special meetings on freedom of thought and expression, held on February 28 and 29, 2008, and April 23 and 24, 2009, in the framework of the Committee on Juridical and Political Affairs; and to request the Special Rapporteur of the IACHR to report on the conclusions and recommendations issued by the experts at those special meetings, in order to follow up on the matter.

15. To request the Permanent Council to report to the General Assembly at its fortieth regular session on the implementation of this resolution, the execution of which shall be subject to the availability of financial resources in the program-budget of the Organization and other resources.