Organization of American States

IACHR 50 years defending HUMAN RIGHTS

OEA/Ser.L/V/II.
Doc. 5
4 March 2011
Original: Spanish

# ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 2010

## REPORT OF THE OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION

**Dr. Catalina Botero**
**Special Rapporteur for Freedom of Expression**

Go Back

**ANNUAL REPORT OF THE OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION**
**2010**

**INDEX**

Page

**TABLE OF ACRONYMS AND REFERENCES** ..... VII

**INTRODUCTION** ..... 1

**CHAPTER I GENERAL INFORMATION** ..... 3
A. Creation of the Office of the Special Rapporteur for Freedom of Expression and Institutional Support ..... 3
B. Mandate of the Office of the Special Rapporteur ..... 6
C. Principal Activities of the Office of the Special Rapporteur ..... 7
*1. Individual Case System: Strategic Litigation on Freedom of Expression within the inter-American System* ..... 7
*2. Precautionary Measures* ..... 11
*3. Public Hearings* ..... 12
*4. Official Visits* ..... 12
*5. Seminars and Workshops with Strategic Actors in the Region* ..... 14
*6. Annual Report and development of expert knowledge* ..... 19
*7. Special statements and declarations: using the bully pulpit* ..... 20
D. Staff of the Office of the Special Rapporteur ..... 22
E. Funding ..... 23

**CHAPTER II EVALUATION OF THE STATE OF FREEDOM OF EXPRESSION IN THE HEMISPHERE** 25
A. Introduction and methodology ..... 25
B. Evaluation of the state of freedom of expression in the Member States ..... 26
*1. Argentina* ..... 26
*2. Bahamas* ..... 34
*3. Belize* ..... 35
*4. Bolivia* ..... 35
*5. Brazil* ..... 41
*6. Canada* ..... 48
*7. Chile* ..... 52
*8. Colombia* ..... 55
*9. Costa Rica* ..... 69
*10. Cuba* ..... 70
*11. Ecuador* ..... 75
*12. El Salvador* ..... 85
*13. United States* ..... 88
*14. Guatemala* ..... 96
*15. Guyana* ..... 99
*16. Haiti* ..... 99
*17. Honduras* ..... 101
*18. Jamaica* ..... 111
*19. Nicaragua* ..... 112

Page


*20. Panama* ..... 113
*21. Paraguay* ..... 118
*22. Peru* ..... 120
*23. Dominican Republic* ..... 126
*24. Suriname* ..... 129
*25. Trinidad y Tobago* ..... 129
*26. Uruguay* ..... 129
*27. Venezuela* ..... 131
*28. Mexico: 2010 Special Report on Freedom of Expression in Mexico* ..... 165

*29. Proposed Categories and Standards for the Special Country Reports of the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights* ..... 259

**CHAPTER III ACCESS TO INFORMATION ON HUMAN RIGHTS VIOLATIONS ..... 283**

The right of the victims of human rights violations to access information in state archives on such violations ..... 283

*1. Do the victims of serious human rights violations or their relatives have the right to access information on such violations when it is in the archives of State security forces?* ..... 283
*2. The positive obligations of the State in relation to access to information on mass human rights violations* ..... 288
*3. The obligation to adapt States' normative framework to international obligations* ..... 290
*4. The Court's judgment in the case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil and the right of access to information* ..... 292

**CHAPTER IV JUDICIAL BEST PRACTICE WITH RESPECT TO ACCESS TO INFORMATION IN THE AMERICAS ..... 295**

A. Introduction ..... 295
B. Judicial best practice with respect to human rights ..... 296
C. National Decisions that Constitute Judicial Best Practice with respect to Access to Information ..... 297

*1. Case law on the nature and scope of the right of access to information as a fundamental autonomous right* ..... 298
*2. Case law on universal entitlement to the right of access to information* ..... 301
*3. Case law on the principle of maximum disclosure* ..... 303
*4. Case law on the application of the principle of maximum disclosure to order access to information on government advertising* ..... 304
*5. Case law on access to information regarding the funding of political parties* ..... 304
*6. Case law on the right to know salaries or incomes paid from public funds* ..... 305
*7. Case law on the publicity of statistical data* ..... 306
*8. Case law on access to personal information on the beneficiaries of social programs* ..... 307
*9. Case law on the principle of maximum disclosure as a guarantee of participation and citizen oversight in a democratic State* ..... 307
*10. Principle of maximum disclosure as a limit to banking and stock exchange secrecy when public funds are involved* ..... 309

Page


*11. Case law on the obligation to have a simple, prompt, and free administrative procedure for access to information* ..... 310
*12. Case law on access to information and the duty to create and maintain archives* ..... 313
*13. Case law on the State's duty to justify any denial of a request for access to information* ..... 313
*14. Case law on the right of access in the event of a request for information that is especially burdensome to the State* ..... 314
*15. Case law on access to personal information: definition of "personal information"* ..... 314
*16. Case law on access to public records and archives containing the requester's information* ..... 316
*17. Case law on the right of access to information on individuals who are or have been government employees* ..... 318
*18. Case law on restrictions to the right of access to information: general system of limitations to the right of access to information* ..... 318
*19. Case law on the requirements that limitations be set forth by law* ..... 321
*20. Case law on the requirement that the confidentiality of information be set for limited and reasonable periods of time* ..... 321
*21. Case law on proof of harm and the need to perform a strict proportionality test when the confidentiality of information is invoked* ..... 322
*22. Case law on the restrictive application of the concept of national security* ..... 324
*23. Case law on access to information contained in documents directly related to the commission of violations of human rights and international humanitarian law* ..... 325

**CHAPTER V PRINCIPLES ON THE REGULATION OF GOVERNMENT ADVERTISING IN THE INTER-AMERICAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS ..... 328**
A. The case of government advertising ..... 330
B. Guiding principles on government advertising ..... 336
*1. Establishment of specific, clear, and precise laws* ..... 336
*2. Legitimate objectives of government advertising* ..... 337
*3. Criteria for the allocation of government advertising* ..... 338
*4. Adecuate planning* ..... 340
*5. Contracting mechanisms* ..... 340
*6. Transparency and access to information* ..... 340
*7. External oversight of the allocation of government advertising* ..... 342
*8. Media pluralism and government advertising* ..... 343

Page

**CHAPTER VI CONCLUSIONS AND RECOMMENDATIONS** ..... **346**
A. Violence against journalists and media outlets ..... 346
B. Criminalization of expression and promoting proportionality in the application of subsequent liability ..... 346
C. Statements of high-level State authorities based on editorial positions ..... 347
D. Prior censorship ..... 348
E. Discriminatory distribution of government advertising ..... 348
F. Progress on access to information ..... 348
G. Allocation of radio frequencies ..... 349

**APPENDIX** ..... **351**
A. AMERICAN CONVENTION ON HUMAN RIGHTS - ARTICLE 13 ..... 351
B. INTER-AMERICAN DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION ..... 352
C. JOINT DECLARATIONS ..... 355
*1. TENTH ANNIVERSARY JOINT DECLARATION: TEN KEY CHALLENGES TO FREEDOM OF EXPRESSION IN THE NEXT DECADE* ..... 355
*2. JOINT STATEMENT ON WIKILEAKS* ..... 360
D. PRESS RELEASES ..... 362

## TABLE OF ACRONYMS AND REFERENCES

| | |
|---|---|
| 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 Organzation |
| 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 |

# ANNUAL REPORT OF THE OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION
# 2010

## 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. Since its inception, 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 2010 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 twelve years of operation, and the activities carried out in 2010.

4. Chapter II presents the now-customary evaluation of the situation of freedom of expression in the hemisphere. In 2010, 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, Chapter II of 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 provide reparation to 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 recognition of a number of judicial best practices regarding the right to access to information; the advancement of the right to access to information with respect to information on human rights violations contained in State archives; the importance of reforming some mechanisms – such as government advertising – which could be applied as forms of indirect censorship; the necessity of establishing a standard methodology that allows for adequate monitoring of the situation of the right to freedom of expression; and others.

6. The intense efforts of the Office of the Special Rapporteur have allowed it to become an expert office 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 with regard to 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 this reason, its sustainability 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[.]"

7. The Office of the Special Rapporteur is grateful for the financial contributions received during 2010 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.

8. 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.

9. 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 journalists 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 by the Commission as a permanent, independent office that acts within the framework and with the support of the IACHR. 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 ensure that national legislation on freedom of expression is consistent with international legal obligations.[3]

---

[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.

[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

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. 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.

9. 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, 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.

---

[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&lID=1

[5] IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2005. OAS/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&lID=1

10. 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), 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]

11. 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.

12. In 2008, 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.

13. 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.

14. In that same resolution, the General Assembly entrusted the Department of International Law, along with the collaboration of the Office of the Special Rapporteur, the Inter-American Juridical Committee and the Department of State Modernization and Governance, as well as the cooperation of Member States and civil society, with drafting a Model Law on Access to Public Information and a guide for its implementation, in keeping with the inter-American standards established on the issue. In order to comply with this mandate, a group of experts was formed - in which the Office of the Special Rapporteur took part - that met three times during the year to discuss, edit and finalize the documents. The final versions of the two instruments were approved by a group of experts in March 2010 and presented to the Committee on Political and Juridical Affairs of the Permanent Council in April of 2010. In May of 2010, the Permanent Council submitted a resolution and the text of the Model Law to the General Assembly, which

[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

issued resolution AG/RES 2607 (XL-O/10) in June of 2010. This resolution approved the text of the Model Law[7] and reaffirmed the importance of the annual reports of the Office of the Special Rapporteur.

15. 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 along with their family members.

**B. Mandate of the Office of the Special Rapporteur**

16. 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.[8]

17. 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 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 ombudsman'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 IACHR Annual Report, presented annually to the General Assembly.
j. Gather all the information necessary to prepare the aforementioned reports and activities.

18. 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 Chairman Paolo Carozza. The competition was closed in June 2008, 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.[9] The new Special Rapporteur assumed the post on October 6, 2008.

---

[7] The Model Law and its Implementation Guide are available at: http://www.oas.org/dil/access_to_information_model_law.htm

[8] See Articles 40 and 41 of the American Convention and Article 18 of the Statute of the IACHR.

[9] IACHR Press Release No. 29/08. Available at: http://www.cidh.org/Comunicados/English/2008/29.08eng.htm

### C. Principal Activities of the Office of the Special Rapporteur

19. During its 12 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.

20. This part of the report summarizes very generally the tasks that have been accomplished, with particular emphasis on the activities carried out in 2010.

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

21. 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.

22. The appropriate advancement of individual petitions not only provides justice in the specific case, but also helps call attention to paradigmatic 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.

23. 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”). The most relevant cases in the area are:

- *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 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. This case addresses the State's refusal to provide Marcelo Claude Reyes, Sebastián Cox Urrejola and Arturo Longton Guerrero with certain information that they requested from the Foreign Investment Committee regarding forestry company Trillium and the Río Cóndor project, a deforestation project that was being carried out in Chile. In this ruling, the Inter-American Court recognized that the right to access to information is a human right protected under 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 journalist's punishment was disproportionate and violated the victim's right to freedom of expression. In its decision, the Inter-American Court ordered the State to, among other things, provide the victim with reparations and 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 Rios 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 the 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.

- *Case of Manuel Cepeda Vargas v. Colombia*. Judgment dated May 26, 2010. This case refers to the extrajudicial execution of Senator Manuel Cepeda Vargas, who was a leader in the National Council of the Colombian Communist Part and a prominent figure in the political party Unión Patriótica. The Court held that in cases like this one, it is possible to illegally restrict freedom of expression through *de facto* conditions that put the person exercising freedom of expression at risk. The Court found that the State, "must abstain from acting in a way that fosters, promotes, favors or deepens such vulnerability[10] and it has to adopt, whenever appropriate, the measures that are necessary and reasonable to prevent or protect the rights of those who are in that situation[11]." Likewise, the Court found that effects on the right to life or personal integrity that are attributable to the State can mean a violation of Article 16(1) of the Convention when the cause is connected with the legitimate exercise of the victim's right to freedom of association[12]. In this sense, the Court highlighted that opposition voices are "essential in a democratic society" and indicated that "in a democratic society States must guarantee the effective participation of opposition individuals, groups and political parties by means of appropriate laws, regulations and practices that enable them to have real and effective access to the different deliberative mechanisms on equal terms, but also by the adoption of the required measures to guarantee its full exercise, taking into consideration the situation of vulnerability of the members of some social groups or sectors[13]." Finally, the Court found

[10] 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. 118; 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. 194, para. 107. Also, *inter alia,* I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrants.* Advisory Opinion OC-18/03. Series A No. 18, paras. 112 to 172; *Case of the "Mapiripán Massacre" v. Colombia.* Preliminary Objections, Merits, Reparations and Costs. Judgment of March 7, 2005. Series C No. 122, paras. 173 to 189.

[11] 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. 194, para. 107; 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. 118.

[12] I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v.* Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 147.

[13] 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. 201; I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrants.* Advisory

Continued…

that although Senator Cepeda Vargas was able to exercise his political rights, his freedom of expression and freedom of association, "the fact that he continued to exercise them was obviously the reason for his extrajudicial execution," meaning that the State "did not create either the conditions or the due guarantees for Senator Cepeda (...) to have the real opportunity to exercise the function for which he had been democratically elected; particularly, by promoting the ideological vision he represented through his free participation in public debate, in exercise of his freedom of expression. In the final analysis, the activities of Senator Cepeda Vargas were obstructed by the violence against the political movement to which he belonged and, in this sense, his freedom of association was also violated."

- *Case of Gomes Lund et. al. v. Brazil.* Judgment dated November 24, 2010. The case addresses the arbitrary detention, torture and forced disappearance of 70 people as the result of operations of the Brazilian army between 1972 and 1975. The purpose of the operations was to eradicate the so-called Araguaia Guerrillas. The operations took place in the context of the Brazilian military dictatorship. The case also addressed the damage to the right to access to information that the family members of the victims suffered. In this respect, the Inter-American Court reiterated its jurisprudence on the right to freedom of thought and expression, which has held that Article 13 of the American Convention protects the right of all individuals to request information held by the State, with the safeguards permitted under the Convention's regime of exceptions. In addition, the Inter-American Court established that in cases of violations of human rights, State authorities cannot resort to citing State secrecy, the confidentiality of information, or public interest or national security in order to avoid turning over the information required by the judicial or administrative authorities in charge of the investigation. Likewise, the Court held that when the investigation of a crime is at issue, the decision whether to classify the information as secret and refuse to turn it over - or to determine if the documentation even exists - can never depend exclusively on a state body whose members have been accused of committing the illicit act. Finally, the Court concluded that the State cannot resort to the lack of evidence of the existence of the documents requested by the victims or their family members. On the contrary, it must back up its denial of documents by demonstrating that it has taken all available measures to prove that, in effect, the requested information does not exist. In this sense, the Court indicated that in order to guarantee the right to access to information, government authorities must act in good faith and diligently carry out the actions necessary to ensure the effectiveness of the right to freedom of thought and expression, especially when the request for information involves learning the truth of what happened in cases of serious human rights violations like forced disappearance and extrajudicial execution, as was the case here.

24. 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 2010. A detailed report of the petitions and cases is presented in Chapter III of the IACHR's 2010 Annual Report.

25. 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 thought and 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.

---

…continuation
Opinion OC-18/03. Series A No. 18, para. 89; I/A Court H.R., *Juridical Condition and Human Rights of the Child.* Advisory Opinion OC-17/02 dated August 28, 2002. Series A No. 17, para. 46.

### 2. Precautionary Measures

26. The Office of the Special Rapporteur has worked with the IACHR Protection Group with regard to 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*,[14] (ii) *Herrera Ulloa v. Costa Rica*;[15] (iii) *López Ulacio v. Venezuela*;[16] (iv) *Peña v. Chile*;[17] (v) *Globovisión v. Venezuela*;[18] (vi) *Tristán Donoso v. Panama*;[19] (vii) *Yáñez Morel v. Chile*,[20] (viii) Pelicó Pérez v. Guatemala,[21] and (ix) *Rodríguez Castañeda v. Mexico.*[22] 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.

27. In 2010, the Office of the Special Rapporteur collaborated in, among other things, a study on the precautionary measures granted to journalist Rodrigo Calleas Bedoya and his family (Colombia), journalist Leiderman Ortiz Berrio and his family (Colombia), Reina Luisa Tamayo Danger (Cuba), and Edwin Róbilo Espinal (Honduras). The Office of the Special Rapporteur also participated in a study on the broadening of measures for the members of Radio Progreso in Honduras: Inmer Genaro Chévez and Lucy Mendoza; Karla Patricia Rivas Sánchez; José Pablo Peraza Chávez; Rita Suyapa Santamaría Velásquez; Alfredo Bográn, Iolany Mariela Pérez Parada; Rommel Alexander Gómez; Lesly Castro; José Domingo Miranda; Héctor Hernández; Victor Emilio Borjas; Leticia Castellanos; Pablo Ordónez; and Edwin Róbilo Espinal.

---

[14] 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.

[15] 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.

[16] 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.*

[17] 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.

[18] 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 trial in this case.

[19] 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 divulged taped conversations telephone calls.

[20] 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.

[21] 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 Pelicó 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.

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

28. A more detailed description of these facts can be found in the IACHR's 2010 Annual Report.

### 3. Public Hearings

29. The IACHR received various requests for hearings and working meetings 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.

30. During the IACHR's 138th Period of Sessions, held in March of 2010, the following hearings were held on freedom of expression: attacks on journalists in Mexico; the situation of radio broadcasting in Latin America; complaints regarding the criminalization and repression of social protest in Peru; Case 12.632, Adriana Beatriz Gallo, Ana María Careaga and Silvia Christin de Maluf v. Argentina; the situation of freedom of expression in Ecuador; the situation of the right to freedom of expression, information and the right to association in Venezuela; and the situation of the right to freedom of expression in the Andean Region.

31. In the IACHR's 140th Period of Sessions, held from October 20 to November 5, 2010, the following hearings on freedom of expression were held: the right to freedom of expression, assembly, association, and free movement in Canada; the situation of the right to freedom of expression in Honduras; the situation of the right to freedom of expression in Bolivia; the situation of the right to freedom of expression in Ecuador; the situation of the right to freedom of expression and information in Venezuela; the presentation of "The 40 principles for guaranteeing diversity and pluralism in radio broadcasting in audio-visual communications services;" indirect censorship and government advertising in the Americas; regulation of community radio stations in Chile; and regulation of community radio stations in Paraguay.

### 4. Official Visits

32. 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.

33. The official visits allow the Special Rapporteur and her team to meet with a country's principal actors linked to the defense of freedom of expression. The work agendas include meetings with government authorities, members of the legislature, and representatives of the justice system, as well as nongovernmental organizations and media workers, among others. There are also meetings with potential beneficiaries of the inter-American human rights system or with individuals who already benefit from it. During the visits, improvements to legislation on issues of freedom of thought and expression are encouraged, along with the improvement of the corresponding policies or practices for implementing the rules in force that enshrine and guarantee this right.

34. During 2010, the Office of the Special Rapporteur made two official visits, as described in the following paragraphs.

35. On May 16-19, 2010, the Special Rapporteur and attorney Ramiro Álvarez Ugarte formed part of a mission representing the IACHR during an official visit to Honduras. The purpose of the visit was to follow up on the complaints received during the on-site visit in August of 2009, as well as to verify the country's current human rights situation.

36. During the visit, the Office of the Special Rapporteur met with journalists, media outlet directors, freedom of expression defenders, foreign correspondents and activists. The purpose of the visit was to receive up-to-date information, especially from the individuals who were affected by the June 2009

coup d'etat. The Office of the Special Rapporteur held meetings with public officials and took part in the official IACHR meetings with members of the Supreme Court, the Congress, the National Police, the Attorney General, and the Special Public Prosecutor for Human Rights. The Office of the Special Rapporteur also met with members of the Truth and Reconciliation Commission.

37. On May 19, at the end of the visit, the IACHR issued a public statement expressing concern at the complaints it had received of violations of human rights. On June 7, 2010, the IACHR published a report of *Preliminary Observations* following the on-site visit to Honduras. The Office of the Special Rapporteur took part in preparing the section of the report on the violations of Article 13 of the American Convention.

38. On August 9-24, Rapporteur Catalina Botero and attorneys Alejandra Negrete Morayta and Michael Camilleri made an official visit to Mexico in order to observe the freedom of expression situation in the country. The visit was carried out together with the United Nations Special Rapporteur on Freedom of Opinion and Expression, Frank La Rue, and his team. As part of the visit, the Office of the Special Rapporteur visited Mexico City and the states of Chihuahua, Sinaloa, Guerrero and Mexico. The rapporteurs and their work teams met with officials representing more than 40 state and federal public institutions belonging to the executive, legislative and judicial branches. They also met with representatives of autonomous bodies.

39. Among the meetings carried out with public federal officials, the Office of the Special Rapporteur met with the Secretary for Governance, the Attorney General, the Subsecretary for Prevention and Relations to Human Rights of the Ministry of Public Security, the Human Rights Director of the Ministry of National Defense, the ministers of the National Supreme Court of Justice, the magistrates of the Electoral Tribunal of the Judicial Power of the Federation, members of the Congress of the Union, the president of the Federal Telecommunications Commission, the president of the National Council for the Prevention of Discrimination, the commissioners of the Federal Institute for Access to Public Information, and officials with the National Human Rights Commission. Also, at the local level the rapporteurs met with the governors of the States they visited, with the head of Mexico City's government, and with several autonomous state and local authorities and bodies.

40. The rapporteurs also held meetings with more than 100 journalists, representatives of civil society organizations, families of murdered journalists, and members of the international community based in Mexico.

41. In addition to the gatherings and work meetings, the rapporteurs carried out two academic events entitled "Inter-American Standards and an Overview of Freedom of Expression in Mexico." The first was carried out on August 10, 2010 in Mexico City. Its purpose was to expound on inter-American and international standards on freedom of expression. Approximately 40 journalists and representatives of human rights and freedom of expression organizations attended the event. The second event was carried out on August 19, 2010 at the Universidad Loyola del Pacífico in the city of Acapulco, Guerrero. Its purpose was to expound on inter-American and international standards on freedom of expression. Approximately 30 journalists and representatives of human rights and freedom of expression organizations from different areas of the state of Guerrero attended the event.

42. On the final day of the visit, the rapporteurs presented a preliminary report to the federal and state authorities who participated in the visit[23]. The report included the most worrying issues and put forward some conclusions and recommendations. This report was also presented the same day during a press conference attended by more than 50 journalists representing both local and international media. Various representatives of civil society and the international community took part in the meeting.

[23] Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, United Nations Special Rapporteur on Freedom of Expression and Opinion. August 24, 2010. Official Joint Visit to Mexico: Preliminary Report. Available at: http://www.cidh.org/Comunicados/Spanish/2010/RELEMexicoEng.pdf

### 5. Seminars and Workshops with Strategic Actors in the Region

43. Seminars are a 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 12 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.

44. 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.

45. 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.

46. The following is a summary of the principal seminars and workshops held by the Office of the Special Rapporteur during 2010.

47. On February 3, 2010, the Office of the Special Rapporteur, together with the UN Special Rapporteur, the OSCE representative, and Article 19, participated in the presentation of the Tenth Anniversary Joint Declaration: Ten key challenges to freedom of expression in the next decade, prepared by the four freedom of expression rapporteurs. This presentation took place at American University in Washington, D.C.

48. At the end of February 2010, the Special Rapporteur made an academic visit to Colombia with the purpose of participating in the official launch and initial on-the-ground activities of a pilot research project on access to information in the region. This project is funded by the British Embassy in Colombia and will take place over one year. In carrying out activities for this project, the Special Rapporteur participated in the *Semana Forum* on access to information, titled “More information: Better campaigns and parties.” The event was attended by 110 persons, including magistrates and officials of the National Election Council, Congressional candidates and campaign staff, campaign staff for the presidential candidates, regulatory officials - particularly from the Procurator General’s Office and the Comptroller’s Office - attorneys, non-governmental organizations, members of political parties, and members of the national media. In the framework of this same project, the Rapporteur participated in a training seminar entitled, “Inter-American Standards on Freedom of Thought and Expression and Access to Information,” aimed at social organizations supported by the British Embassy in Colombia. Several institutions participated in this event, including Medios para la Paz, Transparencia por Colombia, the Fundación para la Libertad de Prensa, the Antonio Nariño Project, the Corporacion Nuevo Arco Iris, and the CIDER Research Center of the Universidad de los Andes. Likewise, the Special Rapporteur participated in an event held in the Luis Ángel Arango library with several world-renowned cartoonists titled, “International Cartoonists in the Framework of Freedom of Expression.” Finally, the Rapporteur gave the following conferences: “The Challenges of Freedom of Expression,” in the Camilo Torres Auditorium at the Universidad Nacional; “The Challenges of the Academy with regard to Freedom of Expression,” at the Universidad de los Andes; “The Role of Freedom of Expression in Transitional Justice Proceedings,” at the Universidad Jorge Tadeo Lozano.

49. On March 6, 2010, Michael Camilleri, an attorney with the Office of the Special Rapporteur, participated in a panel discussion entitled *“Principles and Politics: The Future of the Inter-American Human Rights System”*, carried out within the framework of the 13th Annual Harvard Latino Law and Public Policy Conference, *“Justice and Power: A Dialogue”,* at Harvard University. The event was organized the Harvard Law School group *La Alianza and the Latino Caucus of Harvard’s John F.*

*Kennedy School of Government*. As a panelist, Michael Camilleri gave a presentation entitled *"The Inter-American human rights system: Challenges and Opportunities."*

50. On March 16-18, the Office of the Special Rapporteur participated in the preparation of a final draft on the Model Inter-American Law on Access to Information and Implementation Guide, which was presented to OAS member States on April 29. More than 20 experts, representatives of civil society and administrative bodies in charge of guaranteeing the right to access to information in some countries in the Americas, and academics participated in the process.

51. On March 19-20, 2010, the Special Rapporteur participated in the Americas Experts Round Table on Freedom of Expression, organized by the United Nations Office of the Special Rapporteur on Freedom of Opinion and Expression, the OAS Office of the Special Rapporteur for Freedom of Expression, American University's Washington College of Law, and the Central American Research Institute for Social Democracy (DEMOS). The meetings at the event focused on "Vulnerable Groups, Freedom of Opinion and Expression, and the Struggle against Discrimination," and "Principles for Establishing Permissible Restrictions or Legal Limitations to the Freedom of Opinion and Expression."

52. On March 29, 2010, the Special Rapporteur participated as a presenter in a symposium entitled "Freedom of Expression in Latin America," at the University of Notre Dame, giving a presentation entitled "Overview of Freedom of Expression in Latin America." Likewise, she commented on a presentation by Christine Cervenak entitled "Access to Official Information in Chile."

53. On April 19-23, 2010, the Special Rapporteur, project manager Flor Elba Castro Martínez, and attorney Ramiro Álvarez Ugarte made an academic visit to El Salvador. There, they gave four seminars and carried out various publicity and training events on issues related to freedom of expression and access to information in the inter-American system. Likewise, they met with representatives of community broadcasters and with the Transparency and Anti-Corruption Secretariat. At that time, the Special Rapporteur also participated in the National Convention of Judges, giving a presentation entitled "The right to access to information and judicial independence," which was attended by 640 judges and magistrates from all over the country.

54. On April 29, 2010, the Office of the Rapporteur participated in the presentation of the final draft of the Model Law on Access to Public Information and Implementation Guide to the OAS Committee on Political and Juridical Affairs. The matters under discussion included the methodology for developing the Model Law, the mandate for carrying out the project, the content and scope of the Law, the characteristics of the right to access to information, proactive actions, procedures and conditions for response, exceptions, appeals, the burden of proof, and the guide for implementation.

55. On April 30, 2010, the Special Rapporteur attended a discussion workshop entitled, "Freedom of Expression and Criminal Law: The right to protest," organized by the Center for Studies in Freedom of Expression and Access to Information (CELE, in its Spanish acronym) of the Universidad de Palermo, Argentina. This workshop addressed the issue of the criminalization of social protest. The event featured a presentation of an ongoing study by CELE entitled, "Freedom of Expression and Criminal Law," and proposed the possibility of creating a network of professors and researchers who are specialists on the topic to build tools and launch research initiatives.

56. On May 3-4, 2010, the Special Rapporteur participated in an international workshop entitled "Strengthening Cooperation between the International System and Regional Mechanisms for Promoting and Protecting Human Rights," in Geneva, Switzerland. The workshop was organized by United Nations Office of the High Commissioner of Human Rights. During this workshop, the Rapporteur participated in a panel entitled, "Possible joint activities between existing regional human rights mechanisms and the universal human rights system." Also, the Rapporteur presented a summary of the first work day, which dealt with the progress made in the cooperation between the universal system and the regional human rights mechanisms, as well as the role of National Human Rights Institutions and Non-Governmental Organizations in the interaction between the universal system and regional human rights mechanisms.

57. On May 12, 2010, the Special Rapporteur attended the "Program on Transparency, Integrity, and Accountability," organized by the World Bank Institute's Governance Practices Department. The Special Rapporteur participated in an expert panel entitled "Access to Information and Transparency in the Judicial System," to discuss issues of access to judicial information with members of the highest courts of Brazil, Costa Rica, Paraguay, and Uruguay.

58. On May 20-21, the Special Rapporteur and attorney Alejandra Negrete Morayta took part in an IACHR delegation which presented the case *Gomes Lund et. al. v. Brasil* before the Inter-American Court of Human Rights in the framework of its LXXXVII Ordinary Period of Sessions, held in San Jose, Costa Rica.

59. On May 24-25, 2010, the Special Rapporteur participated in the Second Meeting of the Working Group on Democratic Governance, organized by Inter-American Dialogue, International IDEA (Institute for Democracy and Electoral Assistance) and the Organization of American States. In this work group, progress and challenges in Latin America's transition to democracy were analyzed.

60. On May 26-27, 2010 attorney Michael Camilleri participated in the "28th Annual Journalists and Editors Workshop" of the Latin America and Caribbean Center of Florida International University in Coconut Grove, Florida. Journalists and academics from the United States and various countries in Latina America and the Caribbean attended the event. Michael Camilleri gave a presentation on press freedom and journalism in Latin America, in which he discussed the challenges to press freedom in the hemisphere.

61. On May 28, 2010, the Special Rapporteur acted as judge in the final round of the Inter-American Human Rights Moot Court Competition at American University's Washington College of Law. The contest brought together law students from throughout the hemisphere to argue the merits of a hypothetical case prepared by the Rapporteur and attorney Camilo Sánchez. Also, the Rapporteur and attorney Alejandra Negrete Morayta participated in a question and answer session on the hypothetical case with moot court participants.

62. On June 9, 2010, attorney Michael Camilleri held a training seminar on the mandate of the Office of the Special Rapporteur and the inter-American standards on freedom of expression for a group of nine journalists from the western hemisphere, invited by the International Visitor Leadership Program of the State Department of the United States of America.

63. On June 16-17, 2010, attorney Michael Camilleri attended, on behalf of the Office of the Special Rapporteur, an Expert Meeting on Human Rights and the Internet. The meeting took place in Stockholm, Sweden, and was organized by the United Nations Office of the Special Rapporteur on Freedom of Opinion and Expression, the Swedish Ministry of Foreign Relations, and the Raoul Wallenberg Human Rights Institute of Lund University.

64. On June 16, 2010, the Rapporteur gave a presentation on the progress made and challenges faced in the right to freedom of expression in the framework of a hearing entitled "Freedom of the Press in the Americas," organized by the Western Hemisphere Subcommittee of the House of Representatives of the United States of America.

65. On June 18, 2010, the Special Rapporteur participated as an honorary judge in awarding the "Human Rights Essay Prize," whose theme this year was the right to freedom of thought and expression.

66. On June 25-27, 2010, the Special Rapporteur attended the Sol Linowitz Forum, which each year gathers 100 members of Inter-American Dialogue and independent experts to discuss matters related to the defense and guarantee of the right to freedom of thought and expression.

67. From July 20-24, 2010, attorney Michael Camilleri traveled to Mexico City, Mexico, where he led a seminar on inter-American legal standards regarding the right to access to information for approximately 30 journalists and members of civil society from eight states and the capital city. The seminar was followed by a panel discussion on access to information in Mexico, which included the participation of the press, civil society and the Federal Institute of Access to Information (IFAI).

68. On July 22, 2010, the Special Rapporteur participated via video conference in the official launch of debate on the development of a new Radio and Television Law in Uruguay, organized by Uruguay's National Telecommunications Directorship.

69. On September 20-24, 2010, the Special Rapporteur made an academic visit to Guatemala accompanied by project manager Flor Elba Castro and attorney Michael Camilleri. During the visit, the Office of the Rapporteur, in coordination with the Supreme Court of Justice's Appeals and Pretrial Chamber, gave a training seminar entitled, "Inter-American Standards on Freedom of Expression and Access to Information" to 40 magistrates, attorneys, and judicial officials of the aforementioned Court. With the support of the Center for Informative Reports on Guatemala (CERIGUA in its Spanish acronym), the Office of the Rapporteur also held a seminar on freedom of expression aimed at civil society organizations. That seminar included the participation of 45 representatives of social organizations and grass-roots groups: women, indigenous, human rights defenders, and youths. Likewise, the Office of the Rapporteur and CERIGUA organized a seminar on inter-American standards on the right to freedom of expression, which was attended by 40 members of social organizations and local state bodies. The Office of the Special Rapporteur also organized a seminar on access to public information in Casa Ariana. The event was attended by 25 people, 15 of which represented Guatemalan state entities and 10 of which were members of social organizations. Also, in coordination with the DEMOS Institute and the United Nations Office of the High Commissioner of Human Rights for Guatemala (OACNUDH), the Office of the Rapporteur held a public forum attended by more than 120 members of social organizations, journalists, diplomats, state officials and representatives of various UN organizations. Also during the course of this visit, the Office of the Rapporteur held a training course transmitted by video conference to the four campuses of Universidad Landivar on inter-American standards on freedom of expression and access to information. The event included the participation of close to 100 participants from different sectors: journalists, state officials, members of international organizations, professors, and graduate students studying human rights and constitutional law at the University in four different cities: Guatemala City, Quetzaltenango, Huhuetenango, and Cobán. Likewise, through its project manager, Flor Elba Castro, the Office of the Special Rapporteur carried out 12 visits to civil society organizations in order to learn about the projects and activities that they are carrying out in the defense and promotion of the right to freedom of expression. Finally, attorney Michael Camilleri conducted a seminar in El Progreso, El Progreso on inter-American standards regarding freedom of expression and access to information, attended by local journalists, civil society organizations and public officials.

70. On September 29, 2010, the Rapporteur participated in a conversation organized by a work group on media outlets known as the "Third Meeting of the Dialogue Forum between Prominent Citizens of Andean Countries and the United States of America," organized by the Carter Center, in Washington, D.C. Attendees of that meeting discussed the role of media outlets in relations between Bolivia, Colombia, Ecuador, Peru, and Venezuela, with the purpose of promoting new relationships and mutual understanding between the journalists of these countries.

71. On October 5-9, the Special Rapporteur and attorney Ramiro Alvarez Ugarte conducted a visit to the Dominican Republic. During that visit, the Office of the Rapporteur held a seminar entitled, "The Right to Freedom of Expression and the Inter-American Human Rights System's Mechanisms for Protection," in coordination with Universidad UNIBE. The event was attended by 35 representatives of social organizations, the academy, and state entities. Also, the Office of the Rapporteur organized and carried out a seminar entitled, "The Right to Freedom of Expression and the Inter-American Human Rights System's Mechanisms for Protection," in coordination with the OAS representation in the Dominican Republic. The seminar was targeted at journalists. The event saw the participation of 20 journalists from different regions throughout the country: Santiago de los Caballeros, Azua, Sosúa,

Monseñor Nouel, Hato Mayor del Rey, El Seybo, Monte Plata, Moca, Puerto Plata, Dajabón and Santo Domingo.

72. On October 12, 2010, the Special Rapporteur participated in a roundtable discussion entitled, “Media Outlets and Freedom of Expression.” The discussion took place in the framework of the Latin American Democracy Forum, organized by the Organization of American States, the United Nations Development Program, and the Mexico’s Federal Electoral Institute. The forum took place in Mexico City.

73. On October 15, 2010, the Special Rapporteur participated via video conference in the Senior Diploma in Constitutional Law, put on by Ecuador’s Constitutional Court and the Universidad Central del Ecuador. She gave a four hour course on the right to freedom of expression.

74. On October 25, 2010, attorney Alejandra Negrete Morayta held a training session on the Office of the Special Rapporteur’s mandate and inter-American standards on freedom of expression for a group of 14 journalists from the western hemisphere, invited by the US State Department’s International Visitor Leadership Program.

75. On November 3, 2010, attorney Michael Camilleri represented the Office of the Special Rapporteur in a conference titled, “A Free Press for a Global Society” at Columbia University in New York City. Michael Camilleri participated in a panel entitled “Building Global Legal Norms” and gave a presentation on the achievements of the inter-American system on the issue of freedom of expression and the challenges that still persist with regard to this issue.

76. On November 4, 2010, the Special Rapporteur participated via video conference in a seminar presenting the results of a study entitled, “Defeating the Culture of Secrecy,” carried out by Uruguay’s Access to Public Information Unit and the Archives and Access to Public Information Center (CAInfo, according to its Spanish acronym). The study addressed the obstacles found in practice in the legal procedures for accessing public information. The seminar commemorated the two year anniversary of the passage of Uruguay’s first law on access to public information.

77. On November 12, 2010, the Special Rapporteur participated in a radio program on access to information. The broadcast was carried out by the Colombian Culture Ministry's National Citizen's Radio Program and by the organization Transparency for Colombia. These programs are broadcast by more than 160 community radio stations throughout Colombia. The Special Rapporteur discussed the right to access to information as a tool for exercising other rights and fighting corruption.

78. On November 23, 2010, the Rapporteur gave an educational conference during the inaugural session of the “International Seminar on Access to Information and Human Rights,” organized by Brazil’s Reference Center on Political Struggles (1964-1985): Memories Revealed, in Rio de Janeiro, Brazil. The purpose of this seminar was to exchange reflections and experiences on legal and archival questions related to access to information, analyzed from the perspective of countries that experienced totalitarian regimes. The seminar especially addressed the issue of archives related to repression during military regimes in Latin America.

79. From November 24 through December 1, the Special Rapporteur carried out an academic visit to Colombia, accompanied by project manager Flor Elba Castro Martínez, attorney Alejandra Negrete Morayta, and press coordinator Mauricio Herrera Ulloa. During the visit, the Office of the Rapporteur held the following events: On November 25, in coordination with Transparency for Colombia and the support of Pontificia Universidad Javeriana, the Office of the Rapporteur held an international training seminar entitled, "Inter-American Standards on Access to Information." Forty-five magistrates, attorneys, judicial officials and public officials attended the seminar, representing 12 Latin American countries. On November 26, also with the coordination of Transparency for Colombia and the support of Pontífica Universidad Javeriana, the Office of the Rapporteur held a workshop for exchanging experiences. Twelve international guests participated in the workshop, from 12 different countries (Mexico, Chile, Guatemala, Nicaragua, Costa Rica, Paraguay, Ecuador, Peru, the Dominican Republic, and Uruguay). Auxiliary magistrates from Colombia's Constitutional Court also attended. The purpose of

the seminar was to share the progress made and challenges faced in the hemisphere with regard to judicial protection for the right to access to information. As a result, a comparative analysis was prepared of the different regulations, rules and standards on the right to access to information in each of the countries. On November 29, in coordination with the Universidad de los Andes, the Special Rapporteur held a seminar entitled, "The Right to Freedom of Expression and Access to Information in the Inter-American Human Rights System." The seminar was aimed at journalists and organizations that work in freedom of expression, teachers, academics, and graduate students studying law, communications, and similar fields. On November 30, the Office of the Special Rapporteur and the Freedom of the Press Foundation (FLIP) organized a workshop for validating methodology for the preparation of diagnostic reports on freedom of expression. The workshop brought together two local specialists who discussed a document prepared by the Office of the Special Rapporteur containing a methodological proposal for monitoring work on the subject of freedom of expression. Finally, on December 1, in coordination with the Universidad de los Andes, the Office of the Special Rapporteur held a seminar entitled, "The Right to Freedom of Expression and Access to Information in the Inter-American Human Rights System," at the Universidad Jorge Tadeo Lozano, in Cartagena. The purpose of the seminar was to impart knowledge on the inter-American human rights system and international standards on the right to freedom of expression.

80. On December 6, 2010, the Special Rapporteur participated via video conference in the "Summit on Violence against Journalists along the Mexican Border." The summit was held by the American Society of Newspaper Editors (ASNE) and the Inter-American Press Association (IAPA). During the conference, the Rapporteur addressed current challenges to freedom of expression. The summit was held with the purpose of discussing the violence facing journalists who work on the Mexico-United States border.

81. On December 13, 2010, the Special Rapporteur participated in a special session of the OAS Committee on Political and Juridical Affairs, attended by Member States and representatives of civil society. The purpose of the session was the review the possibility of carrying out an inter-American program on the right to access to information, taking into consideration, *inter alia*, the Model Inter-American Law on Access to Information.

**6. Annual Report and development of expert knowledge**

82. 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 state of enjoyment of the right to freedom of expression 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.

83. 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), Colombia (2005), Honduras (2009) and Venezuela (2009). In 2010, the Office of the Rapporteur prepared special reports on the state of the right to freedom of thought and expression in Honduras and México, the former incorporated into the IACHR's general reports and the latter forming part of Chapter II of this report.

84. The Office of the Special Rapporteur has also prepared thematic reports that have led to a significant process of debate in the region, as well as the implementation of legislative and administrative reforms in many States throughout the Americas. During 2010, the Office of the Special Rapporteur issued the following publications:

i. Inter-American Framework on the Right to Freedom of Expression

85. This publication is a continuation of the Office of the Special Rapporteur's practice of presenting studies on case law on the issue of freedom of expression. The purpose of this publication is

to systematically present and update the inter-American case law that defines the scope and content of this right. Among the most important subjects to highlight are the importance, function, characteristics, and limitations of the exercise of the right to freedom of expression, as well as the kinds of speech protected; the prohibition of censorship and indirect restrictions; journalists and social media outlets; the freedom of expression of public officials; and freedom of expression in the context of electoral processes.

86. This publication is available in electronic format through the following link: http://www.cidh.org/pdf%20files/Inter%20American%20Legal%20Framework%20english.pdf

ii. Freedom of Expression Standards for Free and Inclusive Broadcasting

87. This publication examines the guidelines and directives that have been developed by both the Inter-American Court and the Inter-American Commission with regard to the necessity for adequate regulation of the electromagnetic spectrum to ensure free, democratic, independent, vigorous, plural and diverse broadcasting. This ensures the greatest enjoyment of this right for the greatest number of persons, and therefore the greatest circulation of opinions and information.

88. This publication is available in electronic format through the following link: http://www.cidh.org/pdf%20files/Standards%20for%20free%20and%20inclusive%20Boadcating.pdf

iii. The Inter-American Legal Framework with regard to the Right to Access to Information

89. This publication explains the principles that should govern the design and implementation of a legal framework that guarantees the right to access to information. Likewise, it describes the minimum contents of this right according to regional doctrine and case law. Finally, it presents some domestic rulings from countries in the region that, according to the criteria of the Office of the Special Rapporteur, constitute best practices on the subject of access to information and that should therefore be publicized and discussed.

90. This publication is available in electronic format through the following link: http://www.cidh.org/pdf%20files/Access%20to%20information.pdf.

iv. A Hemispheric Agenda for the Defense of Freedom of Expression

91. In addition to containing a review of inter-American standards on the subject of freedom of expression, this publication recognizes the progress made in the Americas with regard to the full guarantee of the right to freedom of expression, shows the enormous challenges that confront the region with regard to this subject, and presents a series of specific, viable and feasible recommendations that the Office of the Rapporteur considers necessary for facing these challenges.

92. This publication is available in electronic format through the following link: http://www.cidh.org/pdf%20files/Access%20to%20information.pdf

**7. Special statements and declarations: using the bully pulpit**

93. 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 mechanisms.

94. 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 releases to advocating that the IACHR grant precautionary measures in serious situations that may so warrant.

95. 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 Organization for Security and Co-operation in Europe (OSCE); the Special Rapporteur of the OAS; and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights. When the issues are regional in nature, the declarations are signed by the Rapporteurs for the UN and the OAS.

96. 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); diversity in access, ownership, and content of the media, particularly radio and television (2007); and the defamation of religions and anti-terrorist and anti-extremist legislation (2008); and media and elections (2009)[24]. Ten key challenges to freedom of expression in the next decade (2010); y Joint Statement on Wikileaks from the Special Rapporteurs for Freedom of Expression of the IACHR and the United Nations [25].

97. On February 2, 2010, the UN, OAS, OSCE, and African Commission rapporteurs for freedom of expression issued the "Tenth Anniversary Joint Declaration: Ten key challenges to freedom of expression in the next decade." In this declaration, they set forth the most important challenges regarding freedom of expression with relation to: 1) the existence of illegitimate government mechanisms for controlling media outlets; 2) the existence of criminal laws that criminalize criticism; 3) the growth of violence against journalists and communicators; 4) the need for strengthening the enjoyment and implementation of the right to access to information; 5) discrimination in the exercise of the right of freedom of expression; 6) economic pressures that limit freedom of expression; 7) the lack of a regulatory framework guaranteeing the existence, independence and adequate support for public and community broadcasters; 8) the disproportionate restriction of freedom of expression in the name of national security; 9) the risks that exist for new technologies, the Internet in particular; and 10) the urgency of guaranteeing Internet access to everyone[26].

98. In 2010, the Office of the Special Rapporteur issued 45 press releases[27] calling attention to events related to freedom of thought and expression. These statements call attention to issues of

---

[24] The abovementioned joint declarations are available at: http://www.cidh.oas.org/relatoria/docListCat.asp?catID=16&lID=1

[25] The abovementioned joint declarations are available at: http://www.cidh.org/relatoria/docListCat.asp?catID=16&lID=1 and http://www.cidh.org/relatoria/artListCat.asp?year=2010&countryID=1&lID=1&catID=1

[26] "Tenth Anniversary Joint Declaration: Ten key challenges to freedom of expression in the next decade." February 15, 2010. Available at:http://www.cidh.oas.org/relatoria/showarticle.asp?artID=784&lID=2

[27] The following press releases were prepared during 2010: Office of the Special Rapporteur - IACHR. January 11, 2010. Press Release R02/10; Office of the Special Rapporteur - IACHR. January 11, 2010. Press Release R03/10; Office of the Special Rapporteur - IACHR. January 23, 2010. Press Release R07/10; Office of the Special Rapporteur - IACHR. January 24, 2010. Press Release R08/10; Office of the Special Rapporteur - IACHR. February 3, 2010. Press Release R16/10; Office of the Special Rapporteur - IACHR. February 4, 2010. Press Release R18/10; Office of the Special Rapporteur - IACHR. March 5, 2010. Press Release R24/10; Office of the Special Rapporteur - IACHR. March 15, 2010. Press Release R28/10; Office of the Special Rapporteur - IACHR. March 15, 2010. Press Release R29/10; Office of the Special Rapporteur - IACHR. March 22, 2010. Press

Continued…

particular concern as well as to local best practices and explain the respective regional standards. The 2010 press releases can be consulted on the Office of the Special Rapporteur's Web page: http://www.cidh.oas.org/relatoria/artListCat.asp?catID=1&lID=1

### D. Staff of the Office of the Special Rapporteur

99. 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 donor agreements. The Office of the Special Rapporteur has had support from specialized external consultants in the preparation of some technical reports.

100. The Office of the Rapporteur's current team is comprised of Catalina Botero Marino, Special Rapporteur; Flor Elba Castro Martínez, Project Manager; Michael John Camilleri, Alejandra Negrete Morayta, Ramiro Álvarez-Ugarte and Lorena Cristina Ramírez Castillo; Human Rights Specialists; Mauricio Herrera Ulloa, Press Coordinator; and. Also, this year attorney Citlalli Villanueva Amador and press coordinator Pablo Sandino Martínez Cardozo worked with the Office of the Rapporteur.

101. This team's expertise and professional commitment have enabled the Office of the Special Rapporteur to have advised the IACHR in 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 country 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.

---

…continuation
Release R34/10; Office of the Special Rapporteur - IACHR. March 25, 2010. Press Release R36/10; Office of the Special Rapporteur - IACHR. March 25, 2010. Press Release R37/10; Office of the Special Rapporteur - IACHR. March 27, 2010. Press Release R39/10; Office of the Special Rapporteur - IACHR. March 31, 2010. Press Release R40/10; Office of the Special Rapporteur - IACHR. April 12, 2010. Press Release R41/10; Office of the Special Rapporteur - IACHR. April 15, 2010. Press Release R43/10; Office of the Special Rapporteur - IACHR. April 22, 2010. Press Release R45/10; Office of the Special Rapporteur - IACHR. April 30, 2010. Press Release R48/10; Office of the Special Rapporteur - IACHR. June 14, 2010. Press Release R61/10; Office of the Special Rapporteur - IACHR. June 16, 2010. Press Release R62/10; Office of the Special Rapporteur - IACHR. June 24, 2010. Press Release R65/10; Office of the Special Rapporteur - IACHR. July 2, 2010. Press Release R66/10; Office of the Special Rapporteur - IACHR. July 8, 2010. Press Release R67/10; Office of the Special Rapporteur - IACHR. July 15, 2010. Press Release R70/10; Office of the Special Rapporteur - IACHR. August 4, 2010. Press Release R78/10; Office of the Special Rapporteur - IACHR. August 10, 2010. Press Release R80/10; Office of the Special Rapporteur - IACHR. August 13, 2010. Press Release R81/10; Office of the Special Rapporteur - IACHR. August 19, 2010. Press Release R82/10; Office of the Special Rapporteur - IACHR. August 24, 2010. Press Release R83/10; Office of the Special Rapporteur - IACHR. August 25, 2010. Press Release R84/10; Office of the Special Rapporteur - IACHR. August 26, 2010. Press Release R85/10; Office of the Special Rapporteur - IACHR. August 27, 2010. Press Release R87/10; Office of the Special Rapporteur - IACHR. August 30, 2010. Press Release R88/10; Office of the Special Rapporteur - IACHR. September 10, 2010. Press Release R92/10; Office of the Special Rapporteur - IACHR. September 17, 2010. Press Release R95/10; Office of the Special Rapporteur - IACHR. September 20, 2010. Press Release R96/10; Office of the Special Rapporteur - IACHR. October 7, 2010. Press Release R100/10; Office of the Special Rapporteur - IACHR. October 8, 2010. Press Release R101/10; Office of the Special Rapporteur - IACHR. October 22, 2010. Press Release R106/10; Office of the Special Rapporteur - IACHR. November 3, 2010. Press Release R108/10; Office of the Special Rapporteur - IACHR. November 9, 2010. Press Release R111/10; Office of the Special Rapporteur - IACHR. November 15, 2010. Press Release R113/10; Office of the Special Rapporteur - IACHR. December 8, 2010. Press Release R119/10; Office of the Special Rapporteur - IACHR. December 15, 2010. Press Release R122/10; Office of the Special Rapporteur - IACHR. December 21, 2010. Joint Press Release; Office of the Special Rapporteur - IACHR. December 29, 2010. Press Release R125/10.

102. The Office of the Special Rapporteur has also benefited from the presence of interns or fellows, 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 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. The Office of the Special Rapporteur appreciates the work and contributions of Dinka Benítez Piraino (Chile), Luz Ángela Patiño Palacios (Colombia) y Filiberto David Hernández Nava (Mexico).

### E. Funding

103. 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 staff 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.

104. 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.

105. In 2010, the “Project to Strengthen Freedom of Expression in the Americas” received significant funding from the European Commission in the amount of US$425,000; from the Government of the United Kingdom of Great Britain in the amount of US$222,782; from Switzerland in the amount of US$40,000; from the Swedish Foundation for Human Rights in the amount of US$109,965; from Costa Rica in the amount of US$2,790; from the “OAS Democracy Unprogrammed Funds” of the United States of America for the amount of US$250,000; and from France in the amount of US$8,073.

106. 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 2010, the Office of the Special Rapporteur notes in particular the projects that were well executed thanks to the contributions of the European Commission, Costa Rica, the United States of America, France, the 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.

Exit

# CHAPTER II

## EVALUATION OF THE STATE OF FREEDOM OF EXPRESSION IN THE HEMISPHERE

### A. Introduction and methodology

1. The right to freedom of expression is a universal right of all individuals, without which the most important of liberties—the right to think for oneself and shares one's views with others—is denied. The full exercise of the right to express one's own ideas and opinions, to share information that is available, and to deliberate openly and without restrictions regarding the issues that concern us all is an indispensable condition for the consolidation, functioning and preservation of democratic regimes.[1]

2. This chapter describes some of the most important aspects of freedom of expression in the hemisphere during 2010. 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.

3. 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, collected during official visits,[2] 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 eventually cause irreparable effects.

4. 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 government advertising, among others.

5. 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 yet been made public.

---

[1] IACHR, Office of the Special Rapporteur for Freedom of Expression. Inter-American Framework on the Right to Freedom of Expression. OEA/Ser.L/V/II IACHR/RELE/INF. 2/09. December 30, 2009, paras. 7-8. Available at http://www.cidh.org/pdf%20files/Inter%20American%20Legal%20Framework%20english.pdf

[2] Towards the end of this chapter, the methodology used by the Office of the Special Rapporteur to collect, classify and assess the information gathered on official visits is presented as an annex.

6. In preparing this chapter of its 2010 Annual Report, the Office of the Special Rapporteur generally took into account information received until December 1, 2010. However, the report includes some particulary serious incidents that occurred during the month of December as well as events that began before but concluded in December. Information regarding incidents that occurred after December 1 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).

7. 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. Argentina

8. The Office of the Special Rapporteur observes with satisfaction that on July 5, the Argentine State carried out a public ceremony to recognize its responsibility for the violation of the human rights of journalist Eduardo Kimel.[3] Kimel had been sentenced in March of 1999 to one year in prison, suspended, and the payment of damages for criticizing the actions of a judge in his book *The San Patricio Massacre.* The book was the result of an investigation that was published in November 1989 on the murder of five followers of the Pallotine Society of Apostolic Life. In complying with the judgment, in 2009 the Argentine State eliminated the application of defamation laws to expression that is in the public interest.

9. The Office of the Special Rapporteur values the May 19, 2010, judgment of the Supreme Court of Justice of the Nation in the case of Miguel Ángel Di Salvo versus newspaper *El Diario La Mañana.* The judgment struck down a ruling from the National Chamber of Civil Appeals against the newspaper. The Supreme Court's civil judgment reiterated the doctrine of actual malice, according to which, "With regard to information referring to public figures, when the news item contains false or inaccurate expressions, those who consider themselves affected must demonstrate that those who made said expression or accusation knew the news item was false and acted with the knowledge that it was false or with evident recklessness with regard to its veracity."[4]

10. Likewise, the Office of the Special Rapporteur hails the June 8, 2010, judgment of the Supreme Court of Justice of the Nation in the case of Canavesi versus the newspaper *El Día*. That ruling overturned a conviction against the newspaper for publishing false information on a private individual based on information provided by a government source.[5]

---

[3] Página 12. July 5, 2010. *CFK leads tribute to Eduardo Kimel.* Available at: http://www.pagina12.com.ar/diario/ultimas/20-148895-2010-07-05.html; La Nación. July 5, 2010. *President blames courts for holdup in Media Law.* Available at: http://www.lanacion.com.ar/nota.asp?nota_id=1281836

[4] The case began in March 2003 with a publication that gave inaccurate information on the size of properties owned by Di Salvo, a provincial senator, former mayor, and former council member. Although the newspaper corrected the information several days later, Di Salvo insisted that it had intentionally offended him. A lower court judge rejected the lawsuit; however, Chamber A of the National Civil Appeals Chamber overturned the lower court's ruling and sentenced the newspaper *La Mañana* to pay $20,000 and publish the operative part of the sentence on the front page of its Sunday edition. Supreme Court of Justice of the Nation. Republic of Argentina. May 19, 2010. Di Salvo, Miguel Ángel v. Diario La Mañana on damages. Case File D 281. XLIII. Available through: http://www.csjn.gov.ar/jurisprudencia.html. Association of Argentine Journalism Entities. May 27, 2010. *Sebastián Borda. Ruling of the Supreme Court strengthens freedom of press.* Available at: http://www.adepa.org.ar/secciones/reportajes/nota.php?id=426. Judicial Information Center. May 20, 2010. Supreme Court upholds protection of freedom of expression. Available at: http://www.cij.gov.ar/imprimir.html?nid=4126

[5] The majority ruling of the Supreme Court appropriates an opinion of the Office of the State's Attorney which states that, "The simple reproduction of news provided for distribution by public authorities does not, even when false, cross beyond what is the regular exercise of the right to report, as the status of the source excuses the press from having to confirm the truth of the facts, and because prior confirmation of the news under these circumstances would limit this right, establishing a true restriction on the

Continued…

11. The Office of the Special Rapporteur was informed of a June 15, 2010, ruling by the Supreme Court of Justice of the Nation approving the system for placement of government advertising in the Neuquén Province government, in compliance with a paradigmatic judgment handed down by the Supreme Court in September 2007 in favor of the newspaper *Río Negro.* The case originated in a writ of constitutional appeal filed by the newspaper over the suspension of official advertising by the provincial government following the newspaper's publication of articles raising questions about the Neuquén governor in December 2002.[6]

12. The Office of the Special Rapporteur recognizes the importance of the fact that the Congress of the Nation of Argentina took up once again in 2010 discussion of the Access to Information Act. The bill was passed by the Senate on September 30 and continues to be processed through the Chamber of Deputies.[7] However, it is crucial that the project move forward and the State put in place a legal framework for accessing information that hews to international standards on the subject.

13. Although Argentina does not yet have a general access law, it has seen several important judicial rulings that it is relevant to highlight. The Office of the Special Rapporteur learned that on November 2, the Adversarial Administrative Federal Chamber[8] upheld a ruling by the adversarial administrative federal court ordering the Media Secretary of the Nation to turn over information requested on official advertising spending in 2009 to the organization Association for Civil Rights.[9]

14. Likewise, the National Institute of Social Services for Pensioners and the Retired (PAMI in its Spanish acronym) refused to hand over public information on the budget for government advertising, requested by the Association for Civil Rights in July of 2009. The agency had denied the information on the grounds that because it is a public non-state entity, it was not covered by the obligation to turn over the requested information. A ruling by the National First Instance Adversarial Administrative Federal Court

---

…continuation
freedom of information." Supreme Court of Justice of the Nation. June 8, 2010. Canavesi, Eduardo Joaquín et al. v. Newspaper 'El Día' Soc. Impr. Platense SACI on damages. Case File C. 3548. XLII. Available at: http://www.mpf.gov.ar/biblioteca/newsletter/n223/canvesi.pdf. Argentine Journalism Forum (FOPEA in its Spanish acronym). June 8, 2010. *Supreme Court overturns conviction against La Plata newspaper.* Available at: http://www.fopea.org/Libertad_de_Expresion/Casos_registrados/Junio_2010/La_Corte_Suprema_revoco_una_condena_a_diario_platense

[6] In its ruling issued on June 15, 2010, the Supreme Court found that the provincial government's system for placing official advertising had "sufficient basis to satisfy the order of the final judgment." Supreme Court of Justice of the Nation. June 15, 2010. Editorial Río Negro S.A. v. Neuquén Province on writ of constitutional protection (amparo). Case File E. 1. XXXIX. Available through: http://www.csjn.gov.ar/jurisprudencia.html. Boletín Oficial. Neuquén Province. Republic of Argentina. October 29, 2010. Edition No. 3217. Decree No. 2034 dated October 22, 2010. Available at: http://www.censuraindirecta.org/web_files/download/publicaciones/archivo/Decreto-2034-pdf-1627.pdf

[7] Diario Judicial. November 3, 2010. *Access to information will be more public (at a cost).* Available at: http://www.diariojudicial.com/contenidos/2010/11/03/noticia_0002.html; Clarín. October 1, 2010. *Deputies look to fast-track law on access to public information*. Available at: http://www.clarin.com/sociedad/Diputados-apurar-acceso-informacion-publica_0_345565569.html; Diario Judicial. September 30, 2010. *Senate passes Access to Public Information Act.* Available at: http://www.diariojudicial.com/contenidos/2010/09/30/noticia_0007.html

[8] According to the ruling upholding the lower court judgment, "It was not argued that the requested information was personal or sensitive, for which reason making its disclosure contingent upon the prior consent of contractors is manifestly arbitrary." Adversarial Administrative Federal Chamber. November 2, 2010. Association for Human Rights et al. v. En- SMC - on Writ of constitutional protection (Amparo) Law 16.986. Available at: http://www.censuraindirecta.org.ar/images/fck/file/Sentencia%20de%20C%C3%A1mara%20Secretar%C3%ADa%20de%20Medios%20(511-2010).pdf. Association for Civil Rights. November 8, 2010. *Ruling against the Media Secretary over official advertising upheld*. Available at: http://www.adc.org.ar/sw_contenido.php?id=791

[9] Said information was requested by non-governmental organizations "Poder Ciudadano" and "Asociación por los Derechos Civiles". Argentina Actual. March 23, 2010. *National government refuses to disclose spending on official advertising.* Available at: http://argentina-actual.com.ar/actualidad/el-gobierno-nacional-niega-la-difusion-del-gasto-publicitario-oficial/; Clarín. September 7, 2010. *Government advertising: Up to 780 times more advertising given to friendly media.* Available at: http://www.clarin.com/politica/gobierno/Publicidad-oficial-veces-medios-amigos_0_331166934.html

on December 14, 2009, ordered the information be turned over, and an August 2010 judgment from the Federal Adversarial Administrative Chamber upheld the ruling.[10]

15. The Office of the Special Rapporteur observes with satisfaction that on December 3, 2009, the legislature of the Autonomous City of Buenos Aires passed Law 3391, regulating the production, content, expenditure, contracting, and distribution of government advertising for the city's entire public administration. However, Chief of City Government Mauricio Macri partially vetoed said law on January 25, 2010.[11]

16. The Office of the Special Rapporteur takes note of a resolution of the Office of the Public Prosecutor for Administrative Investigations of La Pampa to the effect that state television channel *Canal 3* of the La Pampa province should guarantee pluralism, ordering the station to follow international human rights standards, supervise the news area, set rules for the operations of the news management, and establish a mission, principles, and objectives for the organization. The resolution was the result of action taken by the broadcaster's employees to denounce alleged practices of manipulation, censorship, and labor persecution, as well as actions that allegedly made opposition to the sitting government invisible on the channel.[12]

17. The Office of the Special Rapporteur highlights the progress made by the Office of the Public Prosecutor in its investigation into anonymous threats and intimidation received during the month of April by journalist Ricardo Montacuto, director of news portal *MDZ Online.* According to the information received, the Office of the Public Prosecutor has charged the mayor of Mendoza with the crime of "aggravated threats" after a court investigation found proof that the calls had originated from a telephone line assigned to him.[13]

18. Despite the progress reported, the Office of the Special Rapporteur has received information on serious attacks and threats against journalists. In particular, the Office of the Special Rapporteur expresses its profound concern over the murder of journalist and community leader Adams Ledesma Valenzuela, who was killed on September 4 in a lower-class neighborhood of Buenos Aires. Ledesma was a correspondent with the newspaper *Mundo Villa* and was working on the launch of television channel *Mundo TV Villa*, which was going to be carried into community homes via cable. In statements given to an Argentine newspaper in June of 2010, Ledesma announced the launch of the

---

[10] Association for Civil Rights. August 31, 2010. *Courts order PAMI and Media Secretary to turn over information on government advertising.* Available at: http://www.censuraindirecta.org.ar/sw_contenido.php?id=578. Judicial Branch of the Nation. December 14, 2009. Case File 18.078/2009. Civil Rights Association v. EN-PAMI-(Dto 1172/03) on Writ of constitutional protection (Amparo) Law 16986. Available at: http://www.censuraindirecta.org/web_files/download/publicaciones/archivo/Asociacion-por-los-Derechos-Civiles-c-1624.pdf

[11] The law establishes the following principles for matters related to government advertising: General interest and public utility; transparency in the contracting process; equality of distribution and plurality of media outlets; reasonable expenditures; clear, effective and efficient message. Legislature of the Autonomous City of Buenos Aires. Law 3391. December 3, 2009. Available at: http://www.cedom.gov.ar/es/legislacion/normas/leyes/ley3391.html The partial veto questions, among other points, the assertion that the prohibition against "including the name, voice, image or any other element that is identifiable with public employees of the Autonomous City of Buenos Aires" limits the accountability of public servants to the people, and that specifying the purposes that should be served by government advertising unreasonably restricts "information relating to policies, programs and services that are at preliminary stages [prior to the execution phase]." Government of the Autonomous City of Buenos Aires. Veto of Act 3.391. Decree No. 122/010. BOCBA No. 3353 of February 2, 2010. Available at: http://www.cedom.gov.ar/es/legislacion/normas/leyes/anexos/dvl3391.html

[12] Argentine Journalism Forum (FOPEA in its Spanish acronym). August 26, 2010. *Fopea hails resolution to make state television channel guarantee true and pluralist content in its news programs.* Available at: http://www.fopea.org/Inicio/Fopea_saluda_resolucion_que_intima_a_canal_estatal_a_garantizar_el_contenido_veridico_y_pluralista_de_sus_noticieros; Argentine Press Workers' Association. September 6, 2010. *La Pampa: Canal 3 required to democratize content.* Available at: http://www.fatpren.org.ar/noticias/la-pampa-intiman-a-democratizar-contenidos-de-canal-3.html

[13] Argentine Journalism Forum (FOPEA in its Spanish acronym). September 14, 2010. *FOPEA hails court ruling that defends freedom of expression.* Available at: http://www.fopea.org/Inicio/Fopea_saluda_decision_judicial_que_defiende_la_libertad_de_expresion; Perfil.com. September 14, 2010. *Mendoza mayor accused of threatening journalist.* Available at: http://www.perfil.com/contenidos/2010/09/14/noticia_0019.html

television channel and said he intended to do investigative journalism to "film the famous people" who came to the neighborhood to buy drugs. The Office of the Rapporteur has learned that the community work Ledesma did was closely linked to his journalism work. The Office of the Rapporteur was informed that Ledesma had received a call in the early morning hours to help a neighbor repair an electrical problem, but upon leaving his house he was murdered. Family members of the journalist were threatened by unknown individuals when they tried to help him. At the funeral, they were also warned to abandon the neighborhood.[14] The Office of the Special Rapporteur was informed that the State has granted police protection to the journalist's family and ordered the arrest of a suspect.[15]

19. The Office of the Special Rapporteur also expresses its concern over other violent incidents against journalists that should be investigated and whose perpetrators must be punished. According to the information received, on February 9, 2010, journalist Dante Gustavo Fernández was attacked by individuals allegedly aligned with the local mayor's office in Leonesa, Chaco province. According to the information received, Fernández, who is the director of radio station *FM Frontera* where he hosts the program "La Mañana de Todos," was beaten while he tried to cover a neighborhood protest demanding that areal fumigation of rice plantations using agricultural chemicals be halted.[16]

20. According to the information received, on August 24, a fire set intentionally destroyed the vehicle of journalist Carlos Villanueva, giving his son burns and causing damage to his home and to FM radio station *Cerrillos 90.9*, which operated from the same property in San José de los Cerrillos, Salta province. The perpetrators also stole broadcasting equipment, which left the broadcaster off the air.[17] The Office of the Special Rapporteur was informed that on November 26, Carlos Villanueva was attacked again when four unidentified individuals fired three times at his house.[18]

21. The Office of the Special Rapporteur received information on an arson attack suffered by journalist Adela Gómez, in Caleta Olivia, Santa Cruz, on March 28. Unknown individuals sprayed her

---

[14] Office of the Special Rapporteur for Freedom of Expression. September 10, 2010. Press Release No. R91/10. *The Office of the Special Rapporteur Condemns Murder of Journalist in Argentina.* Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=817&lID=1. Committee to Protect Journalists. September 10, 2010. *Argentina: Journalist stabbed to death in Buenos Aires.* Available at: http://cpj.org/es/2010/09/argentina-periodista-muere-apunalado-en-buenos-air.php#more; Argentine Journalism Forum (FOPEA in its Spanish acronym). September 6, 2010. *Fopea condemns murder of Villa 31 journalist and social leader and calls for urgent security measures, as his family is still being threatened.* Available at: http://www.fopea.org/Comunicados/2010/Fopea_condena_el_asesinato_del_periodista_y_dirigente_social_de_la_Villa_31_y_pide_urgentes_medidas_de_seguridad_ya_que_la_familia_sigue_siendo_amenazada; Página 12. September 5, 2010. *Death in the early morning hours.* Available at: http://www.pagina12.com.ar/diario/elpais/1-152635-2010-09-05.html

[15] Perfil.com. September 12, 2010. *IACHR calls for crime against journalist from 31 to be investigated.* Available at: http://www.diarioperfil.com.ar/edimp/0503/articulo.php?art=24240&ed=0503; Online-911. October 4, 2010. *Demands made to Cristina and Macri one month after the crime against Ledesma.* Available at: http://911-online.com.ar/leer.php?s=1&id=10750&t=A-un-mes-del-crimen-de-Ledesma-reclaman-ante-Cristina-y-Macri. NP Agencia de Noticias Paraguayas. October 12, 2010. *Paraguayan ordered arrested for crime against Bolivian journalist.* Available at: http://www.noticiasparaguayas.com/uninot.php?esc=2691

[16] Argentine Journalism Forum (FOPEA in its Spanish acronym). February 17, 2010. *Fopea repudiates aggression against Journalist in La Leonesa, Chaco.* Available at: http://www.fopea.org/Inicio/Fopea_repudia_agresion_a_periodista_en_la_Leonesa_Chaco. Reporters without Borders. February 25, 2010. *Attacks against press in regions under the yoke of industrial toxins.* Available at: http://www.rsf.org/Ataques-a-la-prensa-en-regiones.html

[17] Argentine Journalism Forum (FOPEA in its Spanish acronym). August 25, 2010. *Argentina: Press worker wounded and Salta broadcaster silenced in attack.* Available at: http://www.periodistas-es.org/correos-al-editor/argentina-trabajador-de-prensa-herido-y-emisora-de-salta-silenciada-en-un-atentado. La Hora de Salta. August 24, 2010. *Attack against Cerrillos radio station repudiated, safeguards sought.* Available at: http://www.lahoradesalta.com.ar/index.php?option=com_content&view=article&id=12988:repudian-atentado-contra-una-radio-de-cerrillos-y-exigen-garantias&catid=44:cerrillos&Itemid=62

[18] Argentine Journalism Forum (FOPEA in its Spanish acronym) / International Freedom of Expression Exchange (IFEX). November 29, 2010. *Shots fired at Radio FM Cerrillos in Salta*. Available at: http://www.ifex.org/argentina/2010/11/29/fm_cerrillos_attack/

automobile with flammable liquid and set it on fire. Gómez is a reporter with broadcaster *Radio 21* in that area. Prior to the attack she had reported on alleged corruption among local authorities.[19]

22. The Office of the Special Rapporteur was also informed of several attacks against journalists by environmental demonstrators in the Catamarca province. According to the information received, on December 19, 2009, a group of individuals verbally attacked cameraman Carlos Romero and reporter Nicolás Ziggiotto, with TV Cable Andalgalá and the newspaper El Ancasti, forcing them to leave and preventing them from doing their jobs. On February 15, participants in an anti-mining protest struck Ziggiotto and the journalist Lucas Olaz, throwing them to the floor and taking the video camera that had recorded the incident. The Office of the Public Prosecutor investigated the facts and in August put an individual suspected of participating in the attack and committing the theft on trial. Also, on April 7, demonstrators once again attacked cameraman Carlos Romero with blows. The attack took place in Andalgalá, in the north of Catamarca province.[20]

23. According to the information received, on April 28, a member of the City Council of the city of Rosario de Lerma, in the province of Salta, physically attacked Jaime Barrera, a reporter with the newspaper *El Tribuno*. The attack was a reaction to one of the journalist's articles that was critical of the council members' work.[21]

24. Also, the Office of the Special Rapporteur was informed that on July 2, Daniel Villamea, a journalist with Canal 8, and camerman Aníbal Romero were attacked by a farmer and his son in Oberá, Misiones province, as they were doing research into alleged mistreatment of individuals who were living on the farmer's property. The communicators suffered blows and various abrasions.[22]

25. The Office of the Special Rapporteur received information on a series of attacks against different radio stations. The Office of the Special Rapporteur was informed that on January 9, 2010, the antenna of radio station *Radio Arco Iris* in the Loncupué area of the Neuquén province was damaged by unknown individuals.[23] On July 2, unknown individuals knocked down the antenna of radio station *Amplitud 770*, in the Buenos Aires province, by cutting the cables that held it up.[24] On July 27, an

---

[19] Argentine Journalism Forum (FOPEA in its Spanish acronym) / International Freedom of Expression Exchange (IFEX). April 1, 2010. *Journalist's car set on fire.* Available at: http://www.ifex.org/argentina/2010/04/01/gomez_car_fire/; Perfil.com. April 6, 2010. *Adela Gómez: "In Santa Cruz, you can't do journalism that offers criticism."* Available at: http://www.perfil.com/contenidos/2010/04/05/noticia_0021.html; Online-911. March 29, 2010. *Santa Cruz: Journalist's car burned in Caleta Olivia.* Available at: http://www.online-911.com/leer.php?s=1&id=5823

[20] Latin American Federation of Social Communication Workers (FELATRACS in its Spanish acronym). April 20, 2010. *Report 1047. Environmentalists attack journalists.* Available at: http://www.felatracs.net/portal/index.php?option=com_content&view=article&id=264:reporte-1047&catid=15:ola&Itemid=46; F.M. Platinum 96.5 Andalgalá. May 27, 2010. *Local Police reports: The escalation of environmental group protests.* Available at: http://fmplatinum965andalgala.blogspot.com/2010/05/locales-policiales-la-escalada-en-la.html; El Ancasti. August 25, 2010. *Case against environmentalist brought to trial.* Available at: http://www.elancasti.com.ar/nota.php?id=78543; El Esquiú. September 8, 2010. *Five environmentalists brought to trial.* Available at: http://www.elesquiu.com/notas/2010/9/8/policiales-175322.asp

[21] El Tribuno. April 29, 2010. *Cowardly attack on journalist of daily El Tribuno.* Available at: http://webcache.googleusercontent.com/search?q=cache:-0y8Gini-FcJ:www.eltribuno.info/salta/diario/2010/04/29/salta/cobarde-agresion-contra-un-periodista-del-diario-el-tribuno+sajama+barrera+salta+golpe&cd=1&hl=en&ct=clnk&gl=us. Noticias Iruya.com. April 29, 2010. *President of Rosario de Lerma City Council attacks journalist.* Available at: http://noticias.iruya.com/sociedad/sucesos/2593-concejal-agrede-periodista-salta.html

[22] Misiones Líder. July 4, 2010. *Journalist and cameraman from Oberá media outlet denounce attacks by farmers.* Available at: http://www.misioneslider.com.ar/?modulo=extendido&id=8048; InforMate Digital. July 4, 2010. *FoPreMi (Misiones Press and Communication Workers Forum) and InforMate Digital reject attacks against Oberá journalists.* Available at: http://informatedigital.com.ar/ampliar3.php?id=38438&PHPSESSID=a99ddaa36387d1af55b0f713d0eedaa6

[23] The attack took place in the context of a dispute between mining companies and environmental groups back by the broadcaster. Argentine Journalism Forum (FOPEA in its Spanish acronym). January 9, 2010. *Neuquén radio station FM Arco Iris attacked again*. Available at: http://www.fopea.org/Inicio/Atacan_nuevamente_a_la_radio_neuquina_FM_Arco_Iris. Reporters without Borders. February 25, 2010. *Attacks against press in regions under the yoke of industrial toxins.* Available at: http://www.rsf.org/Ataques-a-la-prensa-en-regiones.html

[24] Radio Continental. July 5, 2010. *Accusations that radio station AM 770 stopped broadcasting due to an attack.* Available at: http://www.continental.com.ar/nota.aspx?id=1322783; La Noticia 1.com. July 7, 2010. *Media law: Fight with Radio*

Continued…

intentional fire damaged the facilities of radio station *FM Belgrano*, in Junín, Buenos Aires province.[25] In another incident, on November 18, the broadcasting equipment of community radio station *FM Nueva Generación* in San Martín, Buenos Aires, was stolen, taking the broadcaster off the air. The perpetrators did not take any other electronic equipment.[26] Finally, in the early morning hours of November 30, unknown individuals broke into the broadcasting facilities of *Radio Nacional San Martín de los Andes*, in Neuquén, and destroyed equipment necessary for broadcasting the signal. The individuals did not steal anything else. According to the information received, the attack took place several days after the broadcaster had put a new transmitter in place that amplified the signal's strength.[27]

26. The Office of the Special Rapporteur was informed of the April 20 police detention of Gustavo Torres, a photographer with newspaper *El Diario de la Región* in the El Chaco province. Torres was arrested as he was covering a story related to the police. According to the information received, the authorities also ordered him to erase the images he had captured. Union leaders had also intimidated Alcides Quiroga, a photographer with newspaper *La Prensa* in Santa Cruz, forcing him to erase images of a protest being held on April 16 in Caleta Olivia.[28]

27. The Office of the Special Rapporteur also received information on alleged police harassment of José Piedra, a journalist with radio station *FM Chaco*, in the city of Tartagal, Salta province. Piedra was harassed over information that he distributed on a crime committed in that area involving the local police. Piedra denounced that on May 12, a group of men - including a police officer - broke down the door of his house and terrified his family. Afterwards he was followed and intimidated by police vehicles and officers.[29]

28. The Office of the Special Rapporteur was informed of telephoned threats and intimidation received on April 6 by Juan Federico, a journalist with newspaper *La Voz del Interior;* Tomás Méndez, host of the program ADN, on *Canal 10*, in Córdoba; and Méndez' producer, Guillermo Bahr, after they publicized investigations related to drug dealing in the province of Córdoba.[30]

---

…continuation
*Cooperativa over AM 770 frequency.* Available at: http://www.lanoticia1.com/noticia/ley-de-medios-polemica-por-la-frecuencia-de-radio-am-770-307106550.html

[25] Diario Democracia. July 28, 2010. *Fire at FM Belgrano considered attack.* Available at: http://www.diariodemocracia.com/diario/articulo.php?idNoticia=21492; Hoy en Día Chacabuco. July 28, 2010. *Attack on FM Belgrano in Junín.* Available at: http://www.hoyendiachacabuco.com.ar/?p=7913

[26] World Association of Community Broadcasters (AMARC in its Spanish acronym). November 23, 2010. *UTPBA rejects attack on FM Nueva Generación.* Available at: http://legislaciones.item.org.uy/index?q=node/1966. Argentine Journalism Forum (FOPEA in its Spanish acronym). December 3, 2010. *Attacks take Radio Nacional San Martín de los Andes and urban zone community station off the air.* Available at: http://www.fopea.org/Inicio/Atentados_dejan_fuera_del_aire_a_Radio_Nacional_San_Martin_de_los_Andes_y_a_una_emisora_comunitaria_del_conurbano

[27] Argentine Journalism Forum (FOPEA in its Spanish acronym). December 3, 2010. *Attacks take Radio Nacional San Martín de los Andes and urban zone community station off the air.* Available at: http://www.fopea.org/Inicio/Atentados_dejan_fuera_del_aire_a_Radio_Nacional_San_Martin_de_los_Andes_y_a_una_emisora_comunitaria_del_conurbano; Telam. December 2, 2010. *Neuquén: Radio Nacional equipment destroyed; director says it "was an attack."* Available at: http://www.telam.com.ar/vernota.php?tipo=N&idPub=205226&id=389595&dis=1&sec=1

[28] Argentine Journalism Forum (FOPEA in its Spanish acronym) / International Freedom of Expression Exchange (IFEX). April 29, 2010. *Photographers threatened, harassed in Chaco and Santa Cruz.* Available at: http://www.ifex.org/argentina/2010/04/29/photographers_harassed/; Diario Chaco. April 21, 2010. *Vallejos concerned over episode with photographer.* Available at: http://www.diariochaco.com/noticia.php?numero=55283; Organization of Independent Journalists Santa Cruz. April 16, 2010. *Photographer forced by unemployed UOCRA members to erase photographs of protest.* Available at: http://www.opisantacruz.com.ar/home/2010/04/16/un-fotografo-fue-obligado-por-los-desocupados-de-la-uocra-a-borrar-las-fotos-del-piquete/8783

[29] Nuevo Diario de Salta. May 13, 2010. *José Piedra: "They're trying to intimidate me".* Available at: http://www.nuevodiariodesalta.com.ar/diario/archivo/noticias_v.asp?32193; Argentine Journalism Forum (FOPEA in its Spanish acronym) / International Freedom of Expression Exchange (IFEX). May 14, 2010. *Journalist harassed, threatened in Tartagal.* Available at: http://www.ifex.org/argentina/2010/05/14/piedra_threatened/

[30] International Freedom of Expression Exchange (IFEX). April 12, 2010. *FOPEA condemns threats made towards journalists in Córdoba.* Available at: http://www.ifex.org/argentina/2010/04/12/journalists_threatened/; La Nación.com. April 9, 2010.
Continued…

29. According to Principle 9 of the Declaration of Principles, "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."

30. The Office of the Special Rapporteur received information on statements and incidents indicating the intense polarization between government officials and their supporters on one hand and a media group and its journalists on the other. According to the information received, in the city of Buenos Aires and other Argentine cities, anonymous posters appeared with messages insulting and stigmatizing journalists who work for the Clarín Group for the fact that they work there.[31] Also, in the context of the public conflict between the government and this media group, on October 8, Amado Boudou, the Economy Minister, said during an interview in Washington, D.C., that two journalists with the newspapers La Nación and Clarín were "like the ones who helped the Nazis clean out the gas chambers." According to the information received, Boudou apologized to the Argentinean Delegation of Israeli Associations (DAIA in its Spanish acronym) four days later for having used an "inappropriate metaphor," however he said he would not apologize to the journalists because they maintain "anti-Argentine attitudes" by "constantly publishing lies" in the newspapers where they work.[32] These statements took place within an environment of marked tension between certain government authorities and the aforementioned media group.

31. Likewise, according to the information received, the President of the El Soberbio City Council, Juan Carlos Pereira, used particularly harsh terms to refer to the magazine *Apta Para Todo Público* and admitted he would try to charge the publication with tax violations due to its editorial stance.[33]

32. The existence of a context of extreme confrontation in which defamatory and stigmatizing remarks are constant generates a climate that prevents reasonable and plural deliberation, especially with regard to political matters. Although it is true that the existence of tension between the press and governments is a normal phenomenon that derives from the natural function of the press and is seen in many States, it is also true that acute polarization closes down space for debate and helps neither the authorities nor the press to better carry out the role that corresponds to each in a vigorous, deliberative and open democracy. In these cases, given its national and international responsibilities, it is the State's job to contribute to generating a climate of greater tolerance and respect for outside ideas, including when those ideas are offensive or upsetting. As the IACHR has reiterated, the State must in all cases abstain from using any of its competences to reward friendly media and punish those who dissent or criticize its actions. In this sense, the authorities must respond to criticism that it finds without justification and

---

…continuation
*Three journalists from Córdoba threatened for researching drug dealing.* Available at: http://www.lanacion.com.ar/nota.asp?nota_id=1252414

[31] Argentine Journalism Forum (FOPEA in its Spanish acronym). April 16, 2010. *FOPEA repudiates the appearance of posters against journalists.* Available at: http://www.fopea.org/Comunicados/2010/Fopea_repudia_la_aparicion_de_afiches_contra_periodistas. Clarin.com. April 23, 2010. *Government tries to distance itself from anonymous posters attacking the press.* Available at: http://edant.clarin.com/diario/2010/04/23/um/m-02186373.htm

[32] Argentine Journalism Forum (FOPEA in its Spanish acronym). October 11, 2010. *Fopea repudiates statements of minister Boudou.* Available at: http://www.fopea.org/Comunicados/2010/Fopea_repudia_las_declaraciones_del_Ministro_Boudou; Association of Argentine Journalism Entities (ADEPA in its Spanish acronym). October 18, 2010. "*Insults dynamite dialogue bridges" ADEPA warned.* Available at: http://www.adepa.org.ar/secciones/ldp/nota.php?id=534. Clarín.com. October 13, 2010. *Boudou apologizes before the DAIA, but attacks press again.* Available at: http://www.clarin.com/politica/gobierno/Boudou-DAIA-volvio-atacar-prensa_0_352764731.html

[33] When Fopea sought comment with regard to Valentina Lovell's complaints, the president of the El Soberbio City Council, Juan Carlos Pereira, said, "I don't give a damn what the newspapers say. We're the ones in charge around here because that's what the people who voted for us with 70% said." Argentine Journalism Forum (FOPEA in its Spanish acronym) / International Freedom of Expression Exchange (IFEX). October 8, 2010. *Officials threaten, harass, and take advertising away from journalists.* Available at: http://www.ifex.org/argentina/2010/10/14/funcionarios_quitan_pauta/es/

information that it considers incorrect generating the conditions for more and better debate and information rather than with measures that could inhibit and affect the vigor of the deliberation. As established in Principle 6 of the Declaration of Principles passed by the IACHR, journalistic activities must be guided by ethical conduct, which should in no case be imposed by the States.

33. During 2010, the Office of the Special Rapporteur received information on two measures taken by the Argentine government with regard to companies whose shareholders include Clarín Media group. Specifically, the Office of the Special Rapporteur has closely followed the lawsuits filed by the national government against the boards of directors of newspapers *Clarín* and *La Nación* in connection with the purchase of the newspaper production company *Papel Prensa.*[34] The Office of the Special Rapporteur has also closely followed the administrative proceeding started against the Internet service provider company *Fibertel*[35] property of Grupo Clarín. The first measure mentioned - that is, with regard to Papel Prensa - is related to the distribution of newsprint. The second - with regard to Fibertel - refers to the offering of Internet services to a significant number of users in Argentina. For these reasons and because of the context explained above, the aforementioned governmental measures merit special attention from the Office of the Rapporteur. The two matters referred to are currently being examined by the courts[36] and the regulation of newsprint is being debated in the legislature.[37] The Office of the Special Rapporteur hopes that given their notable importance for the exercise of freedom of expression, the matters mentioned herein are resolved in keeping with international standards on the subject.

34. In particular, as far as the regulation of newsprint, the matter is of such significance for the inter-American system that Article 13 of the American Convention itself 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

---

[34] Cf. Decree 1210/2010 dated August 30, 2010. Available at: http://www.infoleg.gov.ar/infolegInternet/anexos/170000-174999/171211/norma.htm. On September 13, 2010, the Office of the Special Rapporteur requested information from the Argentine State on the content of a report prepared by the government on the process of acquiring Papel Prensa; the authorities to whom the report would be submitted; and the measures that the administration would adopt with regard to Papel Prensa S.A. On October 12, 2010, the State responded to the Office of the Special Rapporteur through sending the Special Report of the Human Rights Secretariat in response to the communication from the IACHR's Office of the Special Rapporteur for Freedom of Expression. Received on October 12, 2010, on file at the Office of the Special Rapporteur.

[35] Communications Secretariat. Resolution 100/2010 dated August 19, 2010. Available at: http://www.infoleg.gov.ar/infolegInternet/anexos/170000-174999/170737/norma.htm. On September 13, 2010, the Office of the Special Rapporteur requested information from the Argentine State on current legislation, the proceeding carried out to make the decision, the proportionality of the decision made, and, especially, the existence of studies that ensure that the significant number of users who connect to the Internet through the company Fibertel would have an opportunity to access the service under adequate conditions. On October 12, 2010, the State responded to the Office of the Special Rapporteur through sending the Special Report of the Human Rights Secretariat in response to the communication from the IACHR's Office of the Special Rapporteur for Freedom of Expression. Received on October 12, 2010, on file at the Office of the Special Rapporteur.

[36] As far as the decision to order the liquidation of Fibertel, the Office of the Special Rapporteur was informed that both the company and a number of users have turned to the courts to challenge it. As of the publication date of this report, several precautionary measures have been ordered by different judges in different jurisdictions in the country - for example, provincial tribunals in Buenos Aires and Salta - issued injunctions and suspended the implementation of Resolution 100/2010 of the Communications Secretariat. However, other courts - for example, in the City of Buenos Aires and in Córdoba - rejected similar requests. See: La Nación. November 20, 2010. *Fibertel: Two more conflicting court rulings.* Available at: http://www.lanacion.com.ar/nota.asp?nota_id=1326389; La Nación. November 13, 2010. *Court suspends closure of Fibertel in Salta.* Available at: http://www.lanacion.com.ar/nota.asp?nota_id=1324213; La Mañana de Córdoba. December 2, 2010. *Court reversal for Fibertel.* Available at: http://www.lmcordoba.com.ar/nota.php?ni=39432; Télam. November 13, 2010. *Córdoba courts reject amparo presented by Fibertel user.* Available at: http://www.telam.com.ar/vernota.php?tipo=N&idPub=203399&id=386352&dis=1&sec=2

[37] This bill was submitted to the legislature on September 14, 2010 and was passed by the Chamber of Deputies' Commerce Commission (Bill 0024-PE-2010. Declares the production, sale and distribution of cellulose paste and paper for newspapers in the public interest. Available at: http://www1.hcdn.gov.ar/cb/proyectosd.asp?condictytram=true&whichpage=1&fromForm=1&id_proy=119376). According to the bill passed by commission, the production of paper for newspapers would be considered "in the public interest," an "equitative final price" is established for all domestic newspapers, and a regulatory body is created under the Executive Branch. Also, the bill mandates that no company that holds more than a 10% share in a print or audio-visual media company can own a company that produces newsprint. As of the publication deadline of this report, the recommendation by the Commission has not been addressed by the Chamber of Deputies.

of information, or by any other means tending to impede the communication and circulation of ideas and opinions." In this sense, it is important that existing anti-monopoly rules be applied to newsprint production in such a way as to foment its uninhibited production. This regime must be defined by the legislative branch, with special attention given to the obligation to prevent the existence of abusive government or private sector controls. In particular, it is important to take into account that the pretext of regulating monopolies cannot end up creating a form of intervention that allows the State to affect this sector in any way other than to prevent the concentration of property and control of production and distribution of this input and to facilitate free and competitive paper production. As of the publication deadline of this report, the Assembly had still not made a decision on the matter. For the aforementioned reasons, the Office of the Special Rapporteur is following the issue closely.

35. Finally, the Office of the Special Rapporteur notes that after the Communications Secretariat issued Resolution 100/2010 ordering the liquidation of Fibertel and moving its users to other Internet service providers, the National Communications Commission began broadcasting an official advertising spot of a little more than two and a half minutes informing people of the State's position on the case and informing users that they had "every right to demand what they [paid] while the company was operating illegally." This announcement was shown mainly during broadcasts of first division football matches, whose broadcast rights have been in the hands of the State since August 2009. On November 30, 2010, a judge ruled to grant a precautionary measure ordering various television channels broadcasting the first division football matches to refrain from showing the above mentioned government advertisement.[38]

### 2. Bahamas

36. The Office of the Special Rapporteur observes that in January of 2010, the Utilities Regulation & Competition Authority[39] (URCA) of the Bahamas issued the Interim Code of Practice for Political Broadcast[40] which regulates the content of political advertising, the time the advertising can be aired, and the people who can air it, referring in particular to general elections. According to the regulation, each political party will have the right to acquire only six slots of 15 minutes each on the radio and another six slots of 15 minutes each on television channels for announcements and political advertising. The laws regulating expression during elections can establish rules designed to ensure greater equality in the public debate. However, this law appears to go further than strictly necessary to comply with the legitimate ends it seeks. In this sense, it is important that the law be interpreted in a way that is compatible with inter-American standards and guarantees the public debate.

37. The information received indicates that in April 2010, URCA issued an Interim Code of Practice for Broadcasting Content[41] that regulates the duration and content of radio and television programs under the editorial responsibility of the broadcaster. Some of the provisions of this law prohibit the broadcasting of: "[…] any malicious, scandalous or defamatory matter; any obscene, indecent o profane matter; […] any description of violence which offends against good taste, decency, or public feeling […]."[42]

---

[38] Enciclomedios. December 1, 2010. *Courts prohibit State from using the Fibretel brand in television announcements intended to discredit the company*. Available at: http://www.enciclomedios.com/node/12573; El Cronista Comercial. December 1, 2010. *TV channels ordered to abstain from broadcasting Fibertel*. In file at the Special Rapporteur office; Clarín.com. August 29, 2010. *Announcement on government channel during football match.* Available at: http://www.clarin.com/politica/aviso-canal-oficial-hora-futbol_0_325767547.html.; Cfr. http://www.youtube.com/watch?v=qQNIYkRU0YE

[39] Utilities Regulation & Competition Authority

[40] Interim Code of Practice for Political Broadcast. Utilities Regulation & Competition Authority. January 19, 2010. Available at: http://www.urcabahamas.bs/download/016347400.pdf

[41] Interim Code of Practice for Political Broadcast. Utilities Regulation & Competition Authority. April 9, 2010. Available at: http://www.urcabahamas.bs/download/028415700.pdf

[42] Interim Code of Practice for Political Broadcast. Utilities Regulation & Competition Authority. April 9, 2010. Available at: http://www.urcabahamas.bs/download/028415700.pdf

38. The Office of the Rapporteur understands that it is the State's duty to regulate the electromagnetic spectrum and protect society's valid interests. However, vague or imprecise restrictions can be problematic and lead to interpretations that unduly affect freedom of expression. In this respect, the Office has indicated that, "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 limitations to which radio broadcasting is subject."[43] Consequently, and in keeping with the Bahamas' common law legal system, the Office of the Rapporteur invites the State in the application of these provisions to determine the content of the clauses cited in such a way that it is clarified to be in conformity with inter-American standards on the subject of freedom of expression.

### 3. Belize

39. The Office of the Special Rapporteur received information that on December 7, 2010, the Government of Belize had temporarily "suspended normal relations" with the news station "Channel 5" after an accusation by the Government that invoked a violation of the terms and conditions of its television broadcasting license. The accusation argued that Channel 5 was the only local television station that refused to broadcast the state television program "Belmopan Weekly," in violation of Clause 19 of the Belize Broadcasting and Television Act. This clause ordered license holders to "provide to the government one hour per week of broadcasting time, free of charge, for broadcasting public service messages and programs produced by or channeled through the Ministry of Information."[44]

40. According to the information received, the Government of Belize banned all representatives of its ministries and departments from granting individual official interviews or making any appearance on the television station until it was prepared to abide by State rules.[45]

41. The Office of the Special Rapporteur recognizes that States have the authority to regulate telecommunications and impose sanctions for failure to comply with its regulations. Likewise, the media is obliged to comply with legal regulations established by the State over its licenses. However, both the regulations and the sanctions stipulated by the State must hew to standards of proportionality and reasonableness. Sanctions cannot be imposed that are disproportionate or not established by law. States must at all times seek to ensure that their regulations meet the inter-American standards that apply to the subject.

### 4. Bolivia

42. The Office of the Special Rapporteur was informed of a ruling by the Supreme Court of Justice, Supreme Ruling No. 125/2010, dated April 1. The ruling ordered the declassification of all existing archives in the Second Department of the Chiefs of Staff dating between June 1979 and December 1980, as well as entry and exit logs of the Army Chief of Staff from June 10-20, 1980.[46] The order of the Supreme Court was issued in the framework of an investigation to learn the whereabouts of

---

[43] IACHR. Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter IV: Freedom of Expression and Broadcasting, p. 417, para. 18 Available at: http://www.cidh.org/pdf%20files/RELEAnual%202009.pdf

[44] The Guardian. December 9, 2010. *Government suspends normal relations with Channel 5 and Great Belize Productions.* Available at: http://www.guardian.bz/all-politics/2655-government-suspends-normal-relations-with-channel-5-and-great-belize-productions-

[45] The Guardian. December 9, 2010. *Government suspends normal relations with Channel 5 and Great Belize Productions.* Available at: http://www.guardian.bz/all-politics/2655-government-suspends-normal-relations-with-channel-5-and-great-belize-productions-; Amandala Online. December 10, 2010. *GOB boycotts Channel 5!*. Available at: http://www.amandala.com.bz/index.php?id=10651; Jamaica Observer. December 10, 2010. *Belize gov't muzzels TV station*. Available at: http://www.jamaicaobserver.com/news/Belize-gov-t-muzzles-TV-station_8223513

[46] First Criminal Court. Supreme Court of Justice of Bolivia. Supreme Ruling No. 125, April 1, 2010. Available at: http://suprema.poderjudicial.gob.bo/

individuals who were forcibly disappeared during the military dictatorship. The Office of the Rapporteur also received information indicating Defense Minister Rubén Saavedra has announced that the Armed Forces are willing to comply with the court order.[47] The Office of the Special Rapporteur recognizes the crucial importance of these decisions for the protection of the right to access to information and, in turn, for the satisfaction of the rights of victims of human rights violations. For this reason, it urges the Armed Forces to comply with the court ruling, as Armed Forces Commander in Chief General Ramiro de La Fuente said it would on July 17.[48]

43. As far as challenges, the Office of the Special Rapporteur was informed of several incidents in which state officials had assaulted media workers. On March 29, presidential bodyguards allegedly rebuked Gabriela Flores, a photographer with the newspaper *Opinión,* and forced her to erase a photo she had taken of security officials.[49] On April 4, uniformed and plainclothes police officers allegedly beat Hilton Coca, a cameraman with *Red Uno*, and Mauricio Egüez, a cameraman with the *PAT* network, when they attempted to cover the arrest of an former candidate in the Santa Cruz de la Sierra municipal elections.[50] The Office of the Special Rapporteur was also informed that on June 18, the Police had attacked journalists trying to report on a session of the Sucre Municipal Council in which it was decided to suspend the local mayor.[51] Also, according to information received by the Office of the Rapporteur, on July 9 a group of individuals who were being evicted beat a group of journalists and damaged the equipment and journalistic materials of television stations *Univalle* and *ATB*. The media workers have filed a complaint on the incident with the Police.[52]

44. Principle 9 states: "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."

45. On October 8, 2010, the Bolivian Congress passed the Law against Racism and All Forms of Discrimination. The law contains several provisions related to communicators and media outlets. Article 16 of the law provides that media outlets that "authorize and publish racist and discriminatory ideas shall be subject to monetary sanctions and suspension of their operating licenses, in accordance with regulations."[53] For its part, Article 23 of the law proposes changes to the Penal Code according to which

---

[47] Reporters without Borders. May 31, 2010. *Access to information to get boost from declassification of dictatorship's files* Available at: http://en.rsf.org/bolivia-army-should-allow-access-to-18-02-2010,36489.htmll; Agencia Francesa de Prensa (AFP). May 31, 2010. *Bolivian armed forces agree to turn over files on those disappeared during dictatorship.* Available at: http://noticias.latam.msn.com/xl/latinoamerica/articulo_afp.aspx?cp-documentid=24429404

[48] La Patria. July 17, 2010. *Armed Forces will declassify files from the dictatorship.* Available at: http://www.lapatriaenlinea.com/?nota=34655

[49] Instituto Prensa y Sociedad (IPYS). March 31, 2010. *Presidential security guards block coverage of photojournalist* Available at: http://www.ipys.org/alertas/atentado.php?id=2245; Asociación Nacional de Prensa. No date. *Bolivia: Evo Morales' security guards assault a photojournalist from the newspaper Opinión.* Available at: http://red.anpbolivia.com/index.php?option=com_content&task=view&id=91&Itemid=1

[50] Instituto Prensa y Sociedad (IPYS). April 6, 2010. *Police attack journalists.* Available at: http://www.ipys.org/alertas/atentado.php?id=2248; Asociación Nacional de Prensa. No date. Police attack journalists again. Available at: http://red.anpbolivia.com/index.php?option=com_content&task=view&id=92&Itemid=2

[51] Correo del Sur. June 19, 2010. *Clashes result in arrests and some 50 victims in Sucre.* Available at: http://www.correodelsur.com/2010/0619/z.php?nota=29; Asociación Nacional de Prensa. No date. *Police attack journalists and keep them from doing their jobs in Sucre.* Available at: http://red.anpbolivia.com/index.php?option=com_content&task=view&id=111&Itemid=28

[52] Asociación Nacional de la Prensa. July 9, 2010. *Bolivia: A mob beats, wounds a journalist and steals two cameras in Cochabamba*. Available at: http://red.anpbolivia.com/index.php?option=com_content&task=view&id=113&Itemid=2; International Freedom of Expression Exchange (IFEX). July 20, 2010. *Journalists assaulted by mob during police operation* Available at: http://www.ifex.org/bolivia/2010/07/20/journalists_assaulted/

[53] Law 45, October 8, 2010. *Against Racism and All Forms of Discrimination.* Available at: http://www.gacetaoficialdebolivia.gob.bo/normas/verGratis/138670

those who "distribute" racist or discriminatory ideas will be subject to a punishment of one to five years in prison.[54]

46. As the Office of the Rapporteur has indicated in a letter to the State of Bolivia, "racism and discrimination are a cultural phenomenon and the product of long historical processes of exclusion and domination. A report compiled by the United Nations on racial discrimination concluded that 'the principle causes of racism and racial discrimination and apartheid are profoundly rooted in the historical past and determined by a variety of economic, political, social and cultural factors.'[55] In effect, and as this office has expressed in a letter to the State, "The role of the media as channelers of information, ideas, and opinions is fundamental for developing narratives that value diversity and reject racism and arbitrary discrimination."[56]

47. The Office of the Special Rapporteur has expressed its concern over the spread of racist speech through media outlets. In this sense, in its 2009 Annual Report, the Office of the Special Rapporteur recalled that the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people concluded that expression with racist content is "frequent in some mass media outlets" in Bolivia.[57] In this sense, the Office of the Special Rapporteur condemned messages with "racist content that could incite discrimination or violence, particularly when they come from social communicators or journalists, since they help form public opinion."[58] The Office of the Special Rapporteur examined different communication and training measures taken by Bolivian authorities toward refuting prejudicial speech that stigmatized indigenous communities and their systems for administering justice, as recognized in the Constitution of the Plurinational State of Bolivia.[59]

48. The Office of the Special Rapporteur notes that the Law against Racism and All Forms of Discrimination includes mechanisms for prevention and education as valuable instruments for refuting racist speech and for encouraging the development of a society based on the principles of diversity, pluralism, and tolerance. These measures, which the law promotes principally in Article 6, appear to be more effective than the purely coercive ones that seek to punish those who express certain speech. The educational measures strike at the cultural root of the problem: in the struggle against discrimination, it is more effective for fair words to be heard promoting equal respect for all persons without distinction of race, sex, or religion, as opposed to silencing the iniquitous words that promote racism and discrimination. Likewise, it has been demonstrated that the criminal prosecution of those who express themselves in that way can cause those individuals to be seen as victims rather than victimizers, which could end up radicalizing the groups to which they belong.[60]

---

[54] Law 45, October 8, 2010. *Against Racism and All Forms of Discrimination.* Available at: http://www.gacetaoficialdebolivia.gob.bo/normas/verGratis/138670. See "Article 23 (...), Article 281 *quarter*. (...) An individual who for any reason distributes ideas based in racial superiority or racial hatred, or who promotes and/or justifies racism or any kind of discrimination for the reasons described in Articles 281 bis and 281 ter, or who incites violence toward or persecution of individuals or groups based on racist or discriminatory motives will be punished with a prison term of between one and five years."

[55] United Nations, report on the seminar, *"Political, Historical, Economic, Social and Cultural Factors Contributing to Racism, Racial Discrimination and Apartheid,"* Geneva, December 1990.

[56] Letter sent by the Office of the Special Rapporteur to the Plurinational State of Bolivia on November 11, 2010 (on file at the Office of the Special Rapporteur).

[57] IACHR Monitoring Report - *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, para. 138. Available at: http://www.cidh.oas.org/annualrep/2009sp/Cap.V.Indice.htm; Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. Rodolfo Stavenhagen. Preliminary note on the mission to Bolivia, November 25 - December 7, 2007. A/HRC/6/15/Add.2. December 11, 2007, pp. 2-3.

[58] IACHR Annual Report 2009. *Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II, para. 60.

[59] IACHR. Annual Report 2009. *Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II, para. 60.

[60] In this respect, see Agnés Callamard, *Striking the Right Balance,* available at: www.article19.org/pdfs/publications/hate-speech-reflections.pdf

49. Article 13.5 of the American Convention establishes the limits for prohibiting racist and discriminatory speech. In effect, in order to avoid using the right to punish to silence uncomfortable or simply offensive ideas, it is necessary that they constitute "advocacy of hatred" intended not simply to express an idea, but to incite violence. In this way, the Convention prohibits the so-called "crime of opinion."

50. In light of this provision, the offensiveness of speech in and of itself is not sufficient reason to restrict it. Speech that offends because of the intrinsic falseness of its racist and discriminatory content must be refuted, not silenced: those who promote these points of view need to be persuaded of their error in public debate. Given the unfairness of these opinions, there is no better response than the justice of arguments, and that requires more and better debate, not less. This is the logic of the American Convention, as expressed by the Inter-American Court in the case of *The Last Temptation of Christ*, where it held that freedom of expression protects not just "the information or ideas that are favorably received or considered inoffensive or indifferent, but also for those that shock, concern or offend the State or any sector of the population. Such are the requirements of pluralism, tolerance and the spirit of openness, without which no 'democratic society' can exist.[61]" In order to enable a vigorous debate it is necessary to guarantee greater diversity and pluralism in access to the media.[62]

51. It is worth recalling that any limit to freedom of expression, especially those that could include serious sanctions such as prison sentences or the closure of a media outlet, must meet three basic guarantees: they must be applied by a body that is independent of the Executive Branch that has structural guarantees of independence and autonomy; they must respect the principles of due process; and they must include sanctions that are proportional. Also, several reports issued by this office, as well as judgments of the IACHR and the Inter-American Court of Human Rights, have held that every limitation on freedom of expression must be established beforehand in a law and established explicitly, strictly, precisely and clearly[63], both formally and in practice.[64] This means that the law's text should clearly establish the grounds for subsequent liability to which the exercise of freedom of expression could be subjected. Vague or ambiguous legal norms may affect protected speech insofar as they allow their interpreters discretion to determine the scope of the rights which may be affected by the norm.

52. From this point of view, the aforementioned provisions of the Law against Racism and All Forms of Discrimination are worrying to the Office of the Special Rapporteur, for which reason the Office requested precise information from the State. Specifically, articles 16 and 23 of the Law seem to punish the mere dissemination of messages with racist content without requiring these messages to be linked to the "inciting of violence," as Article 13.5 of the American Convention requires, and without complying with the requirements mentioned in the above paragraphs regarding the balance and proportionality of sanctions, among others.

---

[61] Inter-American Court, *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile.* Judgment dated February 5, 2001. Series C No. 73, para. 69, citing the European Court of Human Rights.

[62] See IACHR. Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression. Chapter VI (Freedom of Expression and Broadcasting), OEA/Ser.L/V/II. Doc.51. December 30, 2009, para 24-37. Available at: http://www.cidh.oas.org/pdf%20files/RELEAnual%202009.pdf

[63] Inter-American Court, *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*, November 13, 1985. Series A No. 5, paras. 39-40; Inter-American Court, *Case of Palamara Iribarne v. Chile*. Judgment dated November 22, 2005. Series C No. 135. para. 79; Inter-American Court, *Case of Herrera Ulloa v. Costa Rica*. Judgment dated July 2, 2004. Series C No. 107. para. 120; Inter-American Court, *Case of Tristán Donoso v. Panama.* Preliminary Objections, Merits, Reparations and Costs. Judgment dated January 27, 2009. Series C No. 193. para. 117; IACHR. *Annual Report 1994. Chapter V: Report on the Compatibility of "Desacato" laws with the American Convention on Human Rights.* Title IV. OAS/Ser. L/V/II.88. doc. 9 rev. February 17, 1995, IACHR. Report No. 11/96. Case No. 11.230. *Francisco Martorell*. Chile. May 3, 1996, para. 55; IACHR. Arguments before the Inter-American Court in the case of *Ricardo Canese v. Paraguay*. Transcripts available at: Inter-American Court, *Case of Ricardo Canese v. Paraguay*. Judgment dated August 31, 2004. Series C No. 111. para. 72. a).

[64] In this respect, the definition of the Inter-American Court in its Advisory Opinion OC-6/86 is applicable. It states that the term "laws" does not mean any legal provision, but rather general legal provisions established by the legislative body that is constitutionally provided for and democratically elected, according to the procedures established in the Constitution, hewing to the common good.

53. In its response to the Office of the Special Rapporteur's request for information, the Plurinational State of Bolivia said that the "criminal categorization takes into account aspects of concurrence regarding apologies for racial hatred and incitement to violence or persecution based on racist motives," and that in this sense, the "Law against Racism and All Forms of Discrimination joins the directives provided for in the International Convention on the Elimination of All Forms of Racial Discrimination [...] as well as the provisions expressly established in Section 5 of Article 13 of the American Convention on Human Rights."[65] The State also expressed that "as far as speech that contains expressions that 'shock,' 'upset' or 'offend' the State or a part of society [...] Bolivian law has given expression to institutions designed for effective participation and social control of public administration at all levels of the State, including public sector or mixed companies, as well as private sector companies that manage State resources."[66] The State recognized that "Bolivian law does not establish general safeguards for live broadcasting or reporting on news events that require reporting on issues of discrimination."[67] However, it indicated that the law was in the process of having its specific regulations established to clarify these matters and that "in the hypothetical case that basic freedoms and guarantees are infringed upon or harmed [due to the application of the Law], the individual affected - whether through the processing of an administrative or criminal order - has at his or her disposition the defense remedies provided for by the Political Constitution of the State, including the writ of constitutional protection (*amparo*)."[68] Finally, the State noted that "the Bolivian Government is establishing the regulations of the [...] Law against Racism and All Forms of Discrimination" and that "it has consulted broadly with various social sectors, professionals, academics, representatives of public universities and social organizations, civil society organizations, human rights organizations, the People's Ombudsman's Office, and others in meetings held throughout the country for the preparation of the regulations."[69] As of this report's publication deadline, the regulations have not yet been published.

54. On July 6, 2010, the Plurinational Constitutional Tribunal Law was promulgated. Among other things, the law establishes that the members of this judicial body will be chosen by popular election. In Article 19, the law establishes that the Plurinational Legislative Assembly will, by a vote of two thirds of members present, carry out the "pre-selection of twenty-eight candidates, of which half will be women, and submit their nominations to the Plurinational Electoral Body.[70]" Article 20 provides that the Plurinational Electoral Body will proceed to organize a "national" election and establishes that, "The candidates will not be allowed to campaign directly or through third parties in favor of their own candidacy, under penalty of disqualification. The Electoral Body will be the only entity responsible for advertising the merits of the candidates.[71]"

55. As the Office of the Special Rapporteur expressed during the public hearing held on October 25, 2010, this provision is concerning.[72] Effectively, although it is true that the State has good reasons to try to establish rules to ensure electoral equality, it is also true that the right to freedom of

---

[65] Plurinational State of Bolivia, Communication OEA-CIDH-228-10, *"State Statement on the Reach of the Law Against Racism and All Forms of Discrimination"*, December 28, 2010, ps. 3-4.

[66] Plurinational State of Bolivia, Communication OEA-CIDH-228-10, *"State Statement on the Reach of the Law Against Racism and All Forms of Discrimination"*, December 28, 2010, p. 6.

[67] Plurinational State of Bolivia, Communication OEA-CIDH-228-10, *"State Statement on the Reach of the Law Against Racism and All Forms of Discrimination"*, December 28, 2010, p. 10.

[68] Plurinational State of Bolivia, Communication OEA-CIDH-228-10, *"State Statement on the Reach of the Law Against Racism and All Forms of Discrimination"*, December 28, 2010, p. 12.

[69] Plurinational State of Bolivia, Communication OEA-CIDH-228-10, *"State Statement on the Reach of the Law Against Racism and All Forms of Discrimination"*, December 28, 2010, ps. 10-11.

[70] Plurinational Constitutional Tribunal Law. Article 19. Available at: http://bolivia.infoleyes.com/shownorm.php?id=1918

[71] Plurinational Constitutional Tribunal Law. Article 20. Available at: http://bolivia.infoleyes.com/shownorm.php?id=1918

[72] Cf. Hearing on the situation of freedom of expression in Bolivia, held at the IACHR on October 25, 2010, during the 140th Period of Sessions.

thought and expression plays a fundamental role in electoral processes, since it is through their exercise that citizens can access the information vital for learning the different proposals of the candidates seeking public office. As the Inter-American Court has explained, the right to freedom of expression has a special function in this context: (i) as an essential tool for forming the public opinion of the electorate that adds to the contest between the two participants and provides instruments for analyzing the proposals of each, thus providing greater transparency and supervision of the future officials and their administration; and (ii) fostering the formation of a clear collective will in the vote.[73]

56. Effectively, in the context of an election, freedom of expression is linked directly to political rights and their exercise, with both kinds of rights reciprocally strengthening each other.[74] Healthy democratic debate requires the existence of a greater degree of circulation of ideas, opinions, and information with regard to the candidates, their aptitudes, and abilities during the period preceding an election, mainly via the media. It is necessary for everyone to be able to question and investigate the abilities and suitability of the candidates, disputing and confronting their proposals, ideas and opinions so that the electorate can form an opinion on how to vote.[75] As the IACHR has noted, free speech and political debate are essential for the consolidation of democracy in societies, which is why they are of imperative social importance.[76]

57. For these reasons, the permissible justifications for the State to restrict expression during an election, such as the need to guarantee fairness and pluralism, must be weighed with the assets and values stated above in a way that none of the rights involved is disproportionally sacrificed.

58. The UN, OSCE, OAS, and ACHPR (African Commission on Human and Peoples' Rights) rapporteurs for freedom of expression stated as much in their 2009 Joint Declaration. On May 15, 2009, the four rapporteurs issued the "Joint Declaration on Media and Elections." In the Joint Declaration, the rapporteurs highlighted the importance of open and vigorous debate and of access to information and electoral processes. Among its other points, the Joint Declaration urges States to: (i) implement measures for creating an environment that guarantees the plurality of the media; (ii) strike down laws that unduly restrict freedom of expression and rules that place blame on the media for distributing illicit statements made directly by political parties or candidates and that the media outlets could not have prevented; and (iii) establish clear obligations for public media outlets, including obligations to: provide sufficient information to the electorate on all aspects indispensable for participating in the election; respect strict rules ensuring impartiality and informational balance; and ensure equal access to all candidates.[77]

59. It has not escaped the notice of the Office of the Special Rapporteur that the role of the magistrates of the Constitutional Tribunal is significantly different from that of elected officials in other branches of power, and that the law being commented on here is a profound institutional innovation, not only within the Plurinational State of Bolivia but in comparison to the vast majority of countries in the hemisphere. Effectively, and given the guarantees of independence which judges must enjoy, it is possible to establish restrictions on their capacity to "campaign," for example by banning them from receiving monetary contributions of any kind. However, by concentrating the distribution of information in the hands of the Electoral Body, the law seems to be going further than strictly necessary to comply with the legitimate ends it seeks. From this point of view, should the law not be modified, it is important that in the process of defining its regulations and implementing the law, it be interpreted in a way that is

---

[73] Inter-American Court, *Case of Canese v. Paraguay*. Judgment dated August 31, 2004. Series C No. 111. paras. 88-90.

[74] Inter-American Court, *Case of Canese v. Paraguay*. Judgment dated August 31, 2004. Series C No. 111. para. 90.

[75] Inter-American Court, *Case of Canese v. Paraguay*. Judgment dated August 31, 2004. Series C No. 111. para. 90.

[76] IACHR. Arguments before the Inter-American Court in the case of *Ricardo Canese v. Paraguay*. Transcripts available at: Inter-American Court, *Case of Canese v. Paraguay*. Judgment dated August 31, 2004. Series C No. 111. para. 72. B).

[77] Joint Statement on Media and Elections of 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. May 15, 2009. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=745&lID=2

compatible with the American Convention; that is, in a way that guarantees public debate on the merits and conditions of the candidates for the Constitutional Tribunal.

**5. Brazil**

60. The Office of the Special Rapporteur takes note of the progress made in the investigation of the attack on the newspaper *Correio Popular*, which took place on January 21, 2009, in Campinas, São Paulo. According to the information received, on February 1, 2010, Waderson Nilto de Paula Lima, also known as "Andinho," stated to law officials that he organized the attack on the Brazilian newspaper from prison. In the attack, a group of individuals threw two grenades at the newspaper headquarters. Fortunately, the grenades did not explode. According to the information received, Wanderson Nilton de Paula Lima stated that the attack was retaliation against the newspaper for having published a report on his crimes and a story about his marriage in prison.[78]

61. The Office of the Special Rapporteur was also informed that on March 27, 2010, three military police officers and a businessman were convicted of the murder of journalist Luiz Carlos Barbon Filho, a murder which took place in May 2007 in Porto Ferreira, São Paulo. The information adds that another of the accused, a police officer indicated as the one who fired the shots that killed the journalist, has not yet been brought to trial. Barbon was 37 when he was murdered and had reported on cases related to police corruption and child prostitution.[79]

62. The Office of the Special Rapporteur expresses its satisfaction over the April 13, 2010, passage of a bill on the right to access to information by the Lower Chamber of the Brazilian Congress. In order for the bill to become law, it must be passed by both chambers of the Brazilian Congress and signed by the President. According to the information received, on June 16, 2010, the Senate's Constitution, Justice and Citizenry Committee passed the bill, but its passage by two other Senate commissions is still pending.[80] The Office of the Special Rapporteur urges Brazilian State authorities to support this important legislative reform.

63. On May 12, 2010, President Luiz Inácio Lula da Silva issued Decree 7.177, which modifies several provisions of the National Human Rights Plan that included regulation of the media. Among other things, the changes would eliminate the part of the aforementioned plan that proposed penalties like warnings, fines, programming suspensions, and closure for radio and television broadcasters that violate basic human rights and conditioned the renewal of public concessions based on compliance with these guarantees.[81]

64. According to information received, on July 16, 2010, a regional federal court convicted a federal governor and condemned him to pay an independent journalist from Editora Abril R$50,000

---

[78] Instituto Prensa y Sociedad (IPYS)/IFEX. February 12, 2010. *Suspect confesses to involvement in attempted grenade attack on newspaper.* Available at: http://www.ifex.org/brazil/2010/02/12/andinho_confesses/; Folha de São Paulo. February 2, 2010. *Andinho confessa ser o mandante de ataque a jornal de Campinas (SP*). Available at: http://www1.folha.uol.com.br/folha/brasil/ult96u688456.shtml

[79] Committee to Protect Journalists (CPJ). March 30, 2010. *CPJ hails convictions in 2007 murder of Brazilian journalist.* Available at: http://cpj.org/2010/03/cpj-hails-convictions-in-2007-murder-of-brazilian.php; Reporters without Borders. March 29, 2010. *Three military policemen get long jail terms for killing journalist in 2007*. Available at: http://en.rsf.org/brazil-three-military-policemen-get-along-29-03-2010,36852.html; Knight Center for Journalism. March 29, 2010. *Four given prison terms for the murder of journalist in Brazil*. Available at: http://knightcenter.utexas.edu/archive/blog/?q=en/node/6796

[80] Article 19/ International Freedom of Expression Exchange (IFEX). June 23, 2010. *Access to information bill passed by Senate Commission*. Available at: http://www.ifex.org/brazil/2010/06/28/senate_commission_passes_bill/. Article 19/IFEX. April 14, 2010. *Congress passes right to information bill*. Available at: http://www.ifex.org/brazil/2010/04/14/congress_passes_bill/

[81] Decree No. 7.177, May 12, 2010. Available at: http://www.jusbrasil.com.br/noticias/2186875/decreto-7177-altera-anexo-do-decreto-que-aprovou-o-programa-nacional-de-direitos-humanos. Knight Center for Journalism in the Americas. May 14, 2010. *President of Brazil eliminates controversial articles on the media in human rights program.* Available at: http://knightcenter.utexas.edu/es/blog/presidente-de-brasil-suprime-articulos-polemicos-sobre-medios-en-programa-de-derechos-humanos

(about US$28,000) for moral damages. In 1999, the journalist was physically attacked by soldiers with the Military Police in Rio de Janeiro. The information received indicates that the attack on the journalist took place after she took photos of an attack by those same police officers on another journalist.[82]

65. According to the information received, on August 4, 2010, the Second Chamber of Private Law of the Court of São Paulo ordered the newspaper *Debate*, located in Santa Cruz do Rio Pardo, São Paulo state, to suspend the payment of damages worth R$593,000 (approximately US$335,000). A judge had sued the newspaper in 1995 in response to an article saying that his house and phone line were being paid for by the local mayor's office.[83]

66. On August 23, 2010, the Office of the Federal Public Prosecutor issued a communique recognizing media outlets' right to keep their sources confidential. According to the information received, the Office of the Federal Public Prosecutor opened an investigation to determine how the media in the state of Mato Grosso do Sul had access to documents demonstrating the use of a system for recording video during criminal interrogations in the Campo Grande federal maximum-security prison. In the communique, the Office of the Federal Public Prosecutor defended the legitimacy of the investigation but indicated that it would not force the media to reveal sources considered confidential.[84]

67. According to information received, on August 26, 2010, a justice with the Supreme Federal Tribunal of Brazil suspended the application of a provision of Law 9.504/97 prohibiting at election time "the use of altered photos, photomontages, or other audio or video resources to in any way degrade or ridicule a candidate, party or coalition."[85] Justice Ayres Britto found that the rule "seeks to inhibit a peculiar style of journalism", which utilizes these resources as "methods of critical journalism."[86] The rule had generated protests from journalists and humorists, and the Associação Brasileira de Emissoras de Rádio e Televisão (ABERT) filed a writ of unconstitutionality against the rule that ended in its suspension.[87]

68. The Office of the Special Rapporteur received information indicating that on December 14, 2009, José Givondaldo Viera, owner and director of radio station *Bezerros FM*, was murdered in the city of Bezerros in the State of Pernambuco on leaving the broadcaster's offices. According to the information received, an individual approached Viera's car and fired several times, wounding him in the

---

[82] Knight Center for Journalism in the Americas. July 16, 2010. *Brazilian courts convict governor and award damages to journalist attacked 10 years ago.* Available at: http://knightcenter.utexas.edu/blog/?q=pt-br/node/1433. Estadão. July 16, 2010. *União terá de indenizar repórter agredida há dez anos.* Available at: http://www.estadao.com.br/noticias/geral,uniao-tera-de-indenizar-reporter-agredida-ha-dez-anos,581875,0.htm

[83] Knight Center for Journalism in the Americas. August 5, 2010. *Court suspends payment of damages that threated to close the newspaper Debate in Brazil.* Available at: http://knightcenter.utexas.edu/es/blog/tribunal-suspende-indemnizacion-que-amenazaba-cierre-de-diario-debate-en-brasil. Estadão. August 4, 2010. *TJ suspende dívida que fecharia jornal no interior de SP.* Available at: http://www.estadao.com.br/noticias/geral,tj-suspende-divida-que-fecharia-jornal-no-interior-de-sp,590468,0.htm

[84] Federal Public Ministry of the State of Mato Grosso do Sul. August 23, 2010. *Nota sobre garantias do segredo de justica e da liberdade de imprensa.* Available at: http://www.prms.mpf.gov.br/servicos/sala-de-imprensa/noticias/2010/08/mpf-divulga-nota-sobre-garantias-do-segredo-de. Knight Center for Journalism in the Americas. August 24, 2010. *District attorney in Brazil won't force press to reveal source of leaks about eavesdropping at prison*. Available at: http://knightcenter.utexas.edu/blog/district-attorney-brazil-wont-force-press-reveal-source-leaks-about-eavesdropping-prison

[85] Supreme Federal Tribunal. Judgment dated August 26, 2010. Justice Ayres Britto. Available at: http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=159758. Reporters without Borders. August 27, 2010. *O Supremo Tribunal Federal suspende a proibição do direito à caricatura durante a campanha electoral.* Available at: http://es.rsf.org/brasil-o-direito-a-caricatura-durante-a-25-08-2010,38205.html

[86] Supreme Federal Tribunal. Judgment dated August 26, 2010. Justice Ayres Britto. Available at: http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=159758

[87] BBC World. August 23, 2010. *Brazilian humorists against electoral campaign with no jokes.* Available at: http://www.bbc.co.uk/mundo/america_latina/2010/08/100822_brasil_elecciones_protesta_lav.shtml. ABERT. August 27, 2010. *Britto deruba censura a humor político.* Available at: http://www.abert.org.br/site/index.php?/Clipping-2010/1o-edicao-britto-derruba-censura-a-humor-politico.html

head and chest. The information adds that Viera died shortly thereafter in a nearby hospital. Several local media reported that the journalist had been having problems with some local politicians.[88]

69. On October 18, 2010, radio journalist Francisco Gomes de Medeiros was murdered in the city of Caicó. The Office of the Rapporteur was informed that an individual fired on him several times in front of his house. The journalist survived and was taken to a local hospital, where he died. A day after the crime the Police arrested an individual who admitted to committing the murder in retaliation for news items published by Gomes that were used by a court to send him to prison in 2007. The Office of the Special Rapporteur was informed that Gomes had worked as news director for *Radio Caicó*, contributed to the newspaper *Tribuna do Norte*, and kept a personal blog where he published his own research and reports. Gomes had recently denounced a case of vote buying in exchange for drugs, allegedly carried out by Caicó politicians during Brazil's first round of general elections. As a result of this publication, Gomes received death threats.[89]

70. The Office of the Special Rapporteur 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."

71. The Office of the Special Rapporteur received information indicating that on February 8, 2010, the studio of radio station *Nova Coari*, in Coari in the state of Amazonas, was completely destroyed by a fire set intentionally, according to reports from local police and in the media. The information adds that no one was injured. Aguinaldo Medes, the radio station's owner and director, said he did not have any evidence pointing to the perpetrators, but said that every time they do a report critical of the local mayor's office, the radio station is attacked. The radio station was subject to similar attacks in August and September of 2009.[90]

72. On April 14, 2010, television host and radio producer Handson Laércio was shot while in Bacabal, Maranhão state. The report indicates that the attack took place outside his house. The journalist was wounded in the hand when he tried to protect himself from the shot. According to the information received, Laércio hosts a program broadcast by TV Mearim, as well as a police program on a local radio station. He had received daily threats.[91]

73. On May 20, 2010, journalist Gilvan Luiz Pereira, founder and editor of the newspaper *Sem Nome* in Juazeiro do Norte, Ceará, was kidnapped and tortured by four men. According to the information received, he was held for about 20 minutes until the car in which they were holding him was intercepted by police. The kidnappers escaped, leaving the journalist tied, injured and unconscious. The information indicates that Pereira had published articles accusing the local mayor of irregularities and

---

[88] Committee to Protect Journalists (CPJ). December 15, 2009. *Media owner shot to death in northeastern Brazil*. Available at: http://cpj.org/2009/12/media-owner-shot-to-death-in-northeastern-brazil.php#more. Reporters without Borders. December 17, 2009. *O dono de rádio e jornal e diretor de um programa morre baleado em Pernambuco*. Available at: http://www.rsf.org/O-dono-de-radio-e-jornal-e.html

[89] IACHR. Office of the Special Rapporteur for Freedom of Expression. November 3, 2010. Press Release R108/10. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=824&lID=1; Inter American Press Association (IAPA). October 20, 2010. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4463&idioma=sp; Tribuna do Norte. October 21, 2010. *Promotor oferece delação premiada.* Available at: http://tribunadonorte.com.br/noticia/promotor-oferece-delacao-premiada/163039

[90] Associação Brasileira de Jornalismo Investigativo (ABRAJI). February 12, 2010. *Radio station set on fire.* Available at: http://www.abraji.org.br/?id=90&id_noticia=1108. Article 19. February 12, 2010. *Brazil: Arson Attack Destroys Radio's Broadcasting Studio.* Available at: http://www.article19.org/pdfs/press/brazil-arson-attack-destroys-radio-s-broadcasting-studio.pdf

[91] Associação Brasileira de Jornalismo Investigativo (ABRAJI). April 22, 2010. *Journalist is assaulted in the Northeast of Brazil*. Available at: http://www.abraji.org.br/?id=90&id_noticia=1153. Reporters without Borders/ International Freedom of Expression Exchange (IFEX). April 22, 2010. *Television presenter is targeted in gunfire attack*. Available at: http://www.ifex.org/brazil/2010/04/22/tv_presenter_attacked/

fraud. According to the information received, in June 2010, three individuals were accused of committing the crime, two of them local police offers who worked as the mayor's bodyguards.[92]

74. In May 2010, Renato Santana, a journalist with the newspaper *Tribuna de Santos*, was threatened and intimidated by public prosecutors in the state of São Paulo. According to the information received, the journalist had published a series of articles on death squads in the municipality of Santos, São Paulo.[93]

75. On July 10, 2010, journalist Rodrigo Santos, with Radio Cidade in Brusque, Santa Catarina state, was attacked by Delfim Peixoto Neto - an advisor with the Catarina Football Federation - and the son of the president of the federation. According to the information received, Santos had published information on his blog stating that Peixoto Neto was improperly interfering with the selection of referees. The information received indicates Santos lost consciousness as a consequence of the attack and was taken to the hospital.[94]

76. On July 20, 2010, a homemade bomb was thrown at the headquarters of RPC TV, in Curitiba, Paraná state. According to the information received, a masked individual threw a PVC pipe filled with gunpowder onto the company's lawn. The bomb hit a wall and caused a fire, but according to the information received, no one was injured.[95]

77. On August 8, 2010, journalist Bruno de Lima was attacked and threatened with death in the city of Cajazeiras, Paraíba. According to the journalist's complaint, the perpetrator of the incident was a Military Police officer. The attack and threat took place in a mall in the aforementioned city and were allegedly carried out in retaliation for reports by the journalist on a pedophilia case.[96]

78. In August of 2010, journalist Stuart Junior, author of the blog *Jornal Regional MA*, was attacked during an event commemorating the reelection of the mayor of São Mateus, Maranhão. According to the information received, the mayor's security guards beat the journalist. He was aided by members of the public attending the ceremony.[97]

---

[92] Associação Brasileira de Jornalismo Investigativo (ABRAJI)/IFEX. May 28, 2010. *Kidnapped journalist accuses politicians of being behind attack*. Available at: http://www.ifex.org/brazil/2010/05/28/pereira_kidnap_torture/. Knight Center for Journalism in the Americas. June 10, 2010. *Police accuse three men of torturing editor in northeast Brazil.* Available at: http://knightcenter.utexas.edu/archive/blog/?q=en/node/7449

[93] Knight Center for Journalism in the Americas. May 25, 2010. *Reporter who exposed death squad in Brazil receives threats.* Available at: http://knightcenter.utexas.edu/blog/reporter-who-exposed-death-squad-brazil-receives-threats. Jornalistas de São Paulo. May 21, 2010. *Jornalista que denunciou grupos de extermínio na Baixada Santista sofre ameaças*. Available at: http://www.sjsp.org.br/index.php?option=com_content&task=view&id=2809&Itemid=1

[94] Knight Center for Journalism in the Americas. July 13, 2010. *Radialista é agredido por assessor da Federação Catarinense de Futebol.* Available at: http://knightcenter.utexas.edu/pt-br/blog/radialista-e-agredido-por-assessor-da-federacao-catarinense-de-futebol. Inter-American Press Association (IAPA). November 5-9, 2010. *Information by country: Brazil.* Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=26&infoid=772&idioma=us

[95] Knight Center for Journalism in the Americas. July 21, 2010. *Homemade bomb thrown at regional television station in Brazil.* Available at: http://knightcenter.utexas.edu/es/blog/arrojan-bomba-casera-televisora-regional-en-brasil. Gazeta do Povo. July 21, 2010. *Sede da RPCTV em Curitiba é alvo de bomba casera*. Available at: http://www.gazetadopovo.com.br/vidaecidadania/conteudo.phtml?tl=1&id=1027246&tit=Sede-da-RPCTV-em-Curitiba-e-alvo-de-bomba-caseira

[96] Portal Imprensa. August 9, 2010. *Jornalista da PB diz ter sofrido ameaças de morte por matéria sobre pedofilia*. Available at: http://portalimprensa.uol.com.br/portal/ultimas_noticias/2010/08/09/imprensa37382.shtml; Knight Center for Journalism in the Americas. August 11, 2010. *Brazilian reporters denounce aggression during election period.* Available at: http://knightcenter.utexas.edu/blog/brazilian-reporters-denounce-aggression-during-election-period; Paraiba Urgente. August 9, 2010. *Em Cajazeiras, Secretário desmente ameaça de morte a Bruno e vai acionar Justiça.* Available at: http://www.paraibaurgente.com.br/detalhe_noticia.php?id=1170

[97] Portal Imprensa. August 9, 2010. *Jornalista teria sido agredido por prefeito da cidade de São Mateus (MA).* Available at: http://portalimprensa.uol.com.br/portal/ultimas_noticias/2010/08/09/imprensa37367.shtml. Knight Center for Journalism in the Americas. August 11, 2010. *Brazilian reporters denounce aggression during election period*. Available at: http://knightcenter.utexas.edu/blog/brazilian-reporters-denounce-aggression-during-election-period

79. On November 1, 2010, the printing press of the newspaper *Correio Mariliense*, located inland in the State of São Paulo, was attacked by unknown individuals. According to the information received, the attackers took the main computer, disabling the newspaper's printing press and causing a short circuit in the electrical system. This caused fires in several parts of the building, causing an estimated US$30,000 in damages. No one was injured in the attack. The information received indicates that the newspaper suspects that the attack was intended to disrupt its work, as it later had to be printed on an external press.[98]

80. Principle 9 states: "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."

81. According to information received, in May of 2010, a computer technician confessed to having sent fake e-mails under the name of the journalist Chico Otavio - with the newspaper *O Globo* - at the request of former judge Roberto Wider. According to the information received, Octavio had revealed in his articles that Wider was involved in a system for selling judgments. The revelations caused Wider to resign. The information received indicates that the technician said that the purpose of the e-mails was to hurt the journalist's credibility.[99]

82. In July 2010, Vania Costa, a journalist with the newspaper *O Mato Grosso*, denounced that she was being followed ever since she started investigating an alleged misappropriation of funds in the city of Sinop, Mato Grosso state. According to the journalist, she was approached three times by supposed police officers who demanded access to the documents that were part of her investigation. After being chased in her car by three subjects on motorcycles, one of them pulled a gun in order to force her to stop.[100]

83. In August of 2010, Márcia Pache, a reporter with *TV Centro Oeste* in the state of Mato Grosso, denounced intimidation by city council member Lourivaldo Rodrigues de Moraes, in the city Pontes e Lacerda, Mato Grasso. On June 28, 2010, the council member physically attacked the reporter as she tried to interview him about a legal proceeding against him. The attack was recorded and later disseminated.[101]

84. Principle 5 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

---

[98] Instituto Prensa y Sociedad (IPYS)/IFEX. November 15, 2010. Attack against newspaper printing press Available at: http://www.ifex.org/brazil/2010/11/15/correio_mariliensil/es/; Knight Center for Journalism in the Americas. November 4, 2010. *Jornal Correio Mariliense é vítima de ataque no interior de São Paulo*. Available at: http://knightcenter.utexas.edu/pt-br/blog/jornal-correio-mariliense-e-vitima-de-ataque-no-interior-de-sao-paulo

[99] Knight Center for Journalism in the Americas. May 21, 2010. *Journalists denounce campaign of defamation against Brazilian reporter.* Available at: http://knightcenter.utexas.edu/blog/?q=pt-br/node/549. Associação Brasileira de Jornalismo Investigativo (ABRAJI) May 10, 2010. *Abraji acompanha com apreensão investigações sobre envio de e-mails falsos em nome de jornalista de "O Globo".* Available at: http://www.abraji.org.br/?id=90&id_noticia=1186

[100] Knight Center for Journalism in the Americas. July 29, 2010. *Journalist investigating corruption in Brazil denounces harassment.* Available at: http://knightcenter.utexas.edu/es/blog/periodista-que-investiga-corrupcion-en-brasil-denuncia-persecucion. Folha de São Paulo. July 23, 2010. *Jornalista de MT diz que é perseguida e registra boletim de ocorrência*. Available at: http://www1.folha.uol.com.br/poder/771905-jornalista-de-mt-diz-que-e-perseguida-e-registra-boletim-de-ocorrencia.shtml

[101] Knight Center for Journalism in the Americas. August 7, 2008. *Brazilian reporter denounces council member for new incidents of intimidation.* Available at: http://knightcenter.utexas.edu/es/blog/reportera-brasilena-denuncia-concejal-por-nuevas-intimidaciones-0. UNESCO. June 29, 2010. *UNESCO condemns violence against journalist from Mato Grosso*. Available at: http://www.unesco.org/en/brasilia/single-view/news/unesco_condemns_violence_against_journalist_from_mato_grosso/back/9679/cHash/0ec636a3dc/

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. According to the information received in May of 2010, a civil court banned *Diário do Grande ABC* from publishing articles related to the controversial decision of the mayor of São Bernardo do Campo, São Paulo state, to throw away student desks that were supposedly in good condition. According to the information received, after an article was published in the newspaper on the issue in February of 2010, the mayor turned to the courts to demand his right of reply, reparations for moral damages, and the aforementioned measure of censorship.[102]

86. According to information received in September of 2010, a judge's order in Mato Grosso state banned Grupo Gazeta de Comunicación - the largest media group in the state - from circulating news items saying that Carlos Abicali, a candidate for senate, was in favor of making abortion legal. The candidate had complained to the electoral tribunals that he felt he had been harmed by news items that revealed that, when he was a federal deputy, he had requested an analysis of a bill to legalize abortion.[103] The Office of the Special Rapporteur requested information regarding these incidents from the Brazilian state. In its response, the State provided information that the lawsuit had been archived on September 27, 2010.[104]

87. According to information received by the Office of the Special Rapporteur, on September 12, 2010, the Mato Grosso do Sul State Police seized 850 copies of the weekly magazine *Impacto Campo Grande* in Mato Grasso do Sul. The magazine contained articles that were critical of Governor André Puccinelli, who was seeking reelection. Also, the Office of the Rapporteur was informed that the police detained Mario Pinto, the magazine's director, and held him for several hours in the Campo Grande Immediate Citizen Attention Station (DEPAC in its Portuguese acronym).[105] The Office of the Special Rapporteur requested information from the State regarding these incidents. In its response on December 9, 2010, the State replied that on April 8, 2010, judge Aldo Ferreira da Silva Junior issued a court order in favor of André Puccinelli banning the magazine *Impacto Campo Grande* from publishing articles with content or images on him that were offensive. The State reported that the magazine had submitted its reply to this action, which was challenged by Puccinelli on July 23, 2010. As of the publication deadline of this report, the process has yet to reach a conclusion.[106]

88. According to the information received, timely action by the Attorney General of the Republic blocked Tocantins state authorities from preventing the distribution of the magazine *Veja* on September 26, 2010. According to the information received, on September 24, 2010, a magistrate with the Regional Elections Tribunal of the State of Tocantins had banned the distribution of news about an investigation by the São Paulo Public Ministry that involved the Tocantins state governor, Carlos Gaguim. The Office of the Special Rapporteur was informed that dozens of media outlets had been informed of the court ruling and ordered to refrain from publishing, directly or indirectly, information on the investigation

---

[102] Knight Center for Journalism in the Americas. May 14, 2010. *Brazilian newspapers denounce prior censorship of São Paulo newspaper.* Available at: http://knightcenter.utexas.edu/es/node/476. Associação Brasileira de Jornalismo Investigativo (ABRAJI)/ International Freedom of Expression Exchange (IFEX). May 20, 2010. *Diário do Grande ABC forbidden from reporting on case implicating town mayor*. Available at: http://www.ifex.org/brazil/2010/05/20/daily_censored/

[103] Knight Center for Journalism in the Americas. September 18, 2010. *Court order bans newspaper from publishing negative news items on a Brazilian senate candidate.* Available at: http://knightcenter.utexas.edu/es/blog/orden-judicial-prohibe-periodico-publicar-notas-negativas-sobre-candidato-senador-en-brasil. Mato Grosso Circuit. September 17, 2010. *Deu no A Gazeta: ANJ condena censura prévia.* Available at: http://www.circuitomt.com.br/home/materia/45887

[104] Communication from the State of Brazil to the Office of the Rapporteur, December 9, 2010, paras. 14-15 and Annex 9.

[105] Associação Brasileira de Jornalismo Investigativo (ABRAJI)/ International Freedom of Expression Exchange (IFEX). September 21, 2010. *Police seize newspapers, detain journalist in Mato Grosso do Sul.* Available at: http://www.ifex.org/brazil/2010/09/21/newspapers_seized/. Knight Center for Journalism in the Americas. September 14, 2010. *Brazilian police seize hundreds of newspapers for criticizing governor.* Available at: http://knightcenter.utexas.edu/blog/brazilian-police-seize-hundreds-newspapers-criticizing-governor

[106] Communication from the State of Brazil to the Office of the Rapporteur, December 9, 2010, paras. 7-13 and Annex 5-8.

being carried out by the São Paulo Public Ministry. This court ruling had been used to try to block the circulation in Tocantins of the September 26, 2010, edition of the magazine *Veja*, which included a report on the Public Ministry's investigation. With this goal, on September 25 state authorities tried to confiscate the copies of *Veja* in Tocantins. According to the information received, it was necessary for the Attorney General of the Republic, Álvaro Lotufo Manzano, to request the help of the Federal Police in halting the state authorities and allowing the copies of the magazine at arrive to the distribution center.[107] The Office of the Special Rapporteur requested information from the State regarding these incidents. In its reply, the State said that on September 27, 2010, the Regional Electoral Tribunal of Tocantins struck down the precautionary measure of September 24 in a special session, on the grounds that it constituted prior censorship.[108]

89. According to information received, a court order prohibiting the newspaper *O Estado de São Paulo* from publishing information on a federal police investigation into businessman Fernando Sarney, son of the current president of the Brazilian senate, was in effect until at least November 2010. The order has been in effect since July 31, 2009.[109]

90. The Office of the Special Rapporteur recalls that Principle 5 of the IACHR's 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." The Office of the Rapporteur also reiterates its Annual Report 2009, which stated 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."

91. According to information received, on June 10, 2010, Anatel closed down Santa Cruz Community Radio, in the state of Rio Grande do Sul, and confiscated its equipment. The information received indicates that the radio station was operating legally; however the government argued that the radio station was operating outside the technical specifications established. The radio station's representative was also arrested.[110]

92. On July 21, 2010, President Luiz Inácio Lula da Silva published a decree creating an inter-ministerial commission in charge of proposing changes to the country's telecommunications and radio broadcasting regulatory framework. The commission is made up of government officials and includes the participation of federal, state, and municipal authorities, as well as representatives of the private sector.[111]

---

[107] Knight Center for Journalism in the Americas. September 27, 2010. *Court bars publication of allegations against Brazilian governor*. Available at: http://knightcenter.utexas.edu/blog/brazilian-court-bars-publication-allegations-against-governor. Portal Imprensa. September 27, 2010. *Justiça de TO proíbe 84 veículos de comunicação de citar investigação contra governador.* Available at: http://portalimprensa.uol.com.br/portal/ultimas_noticias/2010/09/27/imprensa38322.shtml. *Portal Imprensa. September 27, 2010. Veja é distribuída em TO após intervenção da Polícia Federal, diz blogueiro.* Available at: http://portalimprensa.uol.com.br/portal/ultimas_noticias/2010/09/27/imprensa38333.shtml

[108] Communication from the State of Brazil to the Office of the Rapporteur, December 9, 2010, para. 5 and Annex 3.

[109] Inter-American Press Association. November 5-9, 2010. *Resolutions: Brazil.* Available at: http://www.sipiapa.com/v4/index.php?page=det_resolucion&asamblea=26&resid=654&idioma=us. O Estado de São Paulo July 31, 2010. *Um ano sob censura*. Available at: http://www.estadao.com.br/estadaodehoje/20100731/not_imp588457,0.php

[110] World Association of Community Broadcasters (AMARC in its Spanish acronym) / El Mundo de La Radio. June 17, 2010. *Anatel closes community radio station with legal license and confiscates equipment.* Available at: http://legislaciones.item.org.uy/index?q=node/1404. Centro de Midia Independente. June 18, 2010. *Fechada de forma truculenta a rádio comunitária de Santa Cruz do Sul.* Available at: http://www.midiaindependente.org/pt/blue/2010/06/473528.shtml

[111] Decree that "Cria Comissão Interministerial para elaborar estudos e apresentar propostas de revisão do marco regulatório da organização e exploração dos serviços de telecomunicações e de radiodifusão." July 21, 2010. Available at: http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2010/Dnn/Dnn12700.htm. World Association of Community Broadcasters (AMARC in its Spanish acronym) / Knight Center for Journalism in the Americas. July 26, 2010. *Brazilian government will revise telecommunications and radio broadcasting laws.* Available at: http://legislaciones.item.org.uy/index?q=node/1522

93. Principle 12 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."

94. On August 19, 2010, the National Association of Brazilian Newspapers (ANJ in its Portuguese acronym) announced its decision to create a self regulation council. According to the information received, the council should begin to function before the end of 2010. It will have seven members and will examine matters related to the professionals and media outlets affiliated with the ANJ.[112]

### 6. Canada

95. The Office of the Special Rapporteur takes note of the rulings of the Supreme Court of Canada in the cases of *Peter Grant et al v. Torstar Corp et al*[113], and *Douglas Quan et al v. Danno Cusson*.[114] On December 22, 2009. According to the information received, both rulings ordered new trials and accepted the possibility of invoking the "responsible communication on matters of public interest" defense. According to this defense, communicators cannot be found guilty if they demonstrate they acted responsibly to confirm the information contained in their reports, even if they cannot demonstrate during a trial that the published information is true. The rulings held that Canada's in-force libel laws did not protect statements on matters in the public interest if they could not be proven to be true. However, the Supreme Court found that insisting that the truth of information concerning matters in the public interest be proven before a court could prevent the communication of facts that an individual might consider reasonable and relevant to the public debate, inhibit the public discourse and debate on matters of public import, and impede the process of debate necessary for reaching the truth. The Supreme Court took into account the case law of other democracies with common law legal systems to argue for the necessity of replacing current Canadian law with the doctrine of responsible communication in matters in the public interest, which in its view provides better coverage for freedom of expression while at the same time offering sufficient protection of reputations. As of this report's publication deadline, the rulings in the new trials for both cases were still pending.

---

[112] Knight Center for Journalism in the Americas. August 20, 2010. *Brazilian Newspaper Association creates self regulation council.* Available at: http://knightcenter.utexas.edu/es/blog/asociacion-de-periodicos-de-brasil-crea-consejo-de-autorregulacion. O Estado de São Paulo. August 20, 2010. *Jornais terão órgão de autorregulação.* Available at: http://www.estadao.com.br/estadaodehoje/20100820/not_imp597668,0.php

[113] Supreme Court of Canada. December 22, 2009. *Peter Grant et al v. Torstar Corp et al*. Available at: http://scc.lexum.umontreal.ca/en/2009/2009scc61/2009scc61.html Grant v. Torstar refers to an article in the Toronto Star newspaper, dated June 23, 2001, which revealed the process for Grant to acquire a piece of public property (crown land) to widen an adjacent golf course. The article said that the residents in the area feared that the project would effect the area's environmental balance and that the close relationship between Grant and federal government officials would mean that the competent federal authorities would not hear their complaints. The author of the article, who is an experienced journalist, tried to confirm the information with Grant, but Grant declined to respond. Grant sued the Toronto Star and the author for libel. The lower court found the journalist and the newspaper guilty, but in 2008, the Court of Appeals for Ontario ordered a new trial. Both the newspaper and Grant filed appeals before the Supreme Court.

[114] Supreme Court of Canada. December 22, 2009. Douglas Quan et al. v. Danno Cusson. Available at: http://scc.lexum.umontreal.ca/en/2009/2009scc62/2009scc62.html. This case arose when Cusson, an officer with the Ontario Provincial Police, brought a civil suit for libel against the Ottawa Citizen and three of its journalists for publishing articles in September and October 2001 on his participation in the rescue operations following the attacks in the World Trade Center in the United States. According to the information received, the articles indicated that Cusson had lied to New York Police Department officials with regard to his credentials, which put several rescue operations at risk. As a result of his conduct, disciplinary action would be initiated against him. The trial judge ruled that while three of the articles address issues in the public interest, two of them did so "not to the extent that they needed to be heard". The jury found that several of the facts in the articles were true, but condemned the newspaper to pay damages. In 2007, the Court of Appeals for Ontario found that in these cases, it was possible to invoke the "responsible journalism" defense, but held that the defendants did not resort sufficiently to that defense. Both the newspaper and the journalists filed appeals before the Supreme Court.

96. Also, the Office of the Special Rapporteur was informed of the ruling of the Supreme Court of Canada in the case of *R v. National Post*, dated May 7, 2010. The ruling recognized journalists' right to keep their sources confidential but established some exceptional limitations. According to the court: "In appropriate circumstances, accordingly, the courts will respect a promise of confidentiality given to a secret source by a journalist or an editor. The public's interest in being informed about matters that might only be revealed by secret sources, however, is not absolute. It must be balanced against other important public interests, including the investigation of crime. In some situations, the public's interest in protecting a secret source from disclosure may be outweighed by other competing public interests and a promise of confidentiality will not in such cases justify the suppression of the evidence."[115] Applying this standard of proportionality to the specific case, the Supreme Court ruled to order the *National Post* newspaper to turn over the information that it had argued was protected due to the confidentiality of its sources.[116] The Supreme Court found that, "The alleged offences are of sufficient seriousness to justify the decision of the police to investigate the criminal allegations. The physical evidence is essential to the police investigation and likely essential as well to any future prosecution."[117]

97. In its ruling in the case *Globe and Mail v. Canada (Attorney General)*, handed down on October 22, 2010, the Supreme Court of Canada applied a similar standard in the context of a civil trial.[118] The Supreme Court repeated its statement in the case of *R v. National Post*, in the sense that the Constitution of Canada protects journalists' right to keep their sources confidential with some exceptions that should be considered in the specific case when certain standards are met.[119] Specifically, in a civil case, the court should weigh the importance of having information for the purpose of meting out justice, versus the public interest in keeping journalists' sources confidential.[120] The Supreme Court highlighted that to require a journalist answer questions in a judicial proceeding that may disclose the identity of a confidential source, the party requesting the information must demonstrate its relevance, and later the court must apply the standards set by the Supreme Court, among them the standard of proportionality.[121] In this case, the Supreme Court struck down an order from the Superior Court that forced the journalist in question to testify. The Supreme Court ordered the tribunal to take up the matter again, taking into account the standards established by the Supreme Court.[122] In addition, the Supreme Court struck down an order issued by the Superior Court banning the journalist from continuing to write about the

---

[115] Supreme Court of Canada. May 7, 2010. *R. v. National Post et al.* Available at: http://scc.lexum.com/en/2010/2010scc16/2010scc16.html. The case refers to a bank document received by a journalist under the condition that the source be kept secret. If it is authentic, the document demonstrates a conflict of interest involving a senior public official. The person in question alleged that the document was a counterfeit and Canadian police officials ordered the newspaper to turn over the original document and the envelope in which it was delivered in order to carry out a forensic examination. The newspaper asked for the decision to be reviewed, and a court revoked the order. The Appeals Court reversed the ruling and the issue was brought before the Supreme Court of Canada; The Reporters Committee for Freedom of the Press. May 10, 2010. *Canadian High Court Refuses to Recognize Privilege for Journalists*. Available at: http://www.rcfp.org/newsitems/index.php?i=11424; International Freedom of Expression Exchange (IFEX)/CJFE. May 10, 2010. *Mixed result in Supreme Court source protection case holds some good news, says CJFE.* Available at: http://www.ifex.org/canada/2010/05/10/source_protection/; The Canadian Association of Journalists. May 7, 2010. *Supreme Court ruling a blow for source protection: CAJ*. Available at: http://www.caj.ca/?p=564

[116] Supreme Court of Canada. May 7, 2010. *R. v. National Post et al*. Available at: http://scc.lexum.com/en/2010/2010scc16/2010scc16.html

[117] Supreme Court of Canada. May 7, 2010. *R. v. National Post et al*. Available at: http://scc.lexum.com/en/2010/2010scc16/2010scc16.html

[118] Supreme Court of Canada. October 22, 2010. *Globe and Mail v. Canada (Attorney General).* Available at: http://scc.lexum.umontreal.ca/en/2010/2010scc41/2010scc41.html

[119] Supreme Court of Canada. October 22, 2010. *Globe and Mail v. Canada (Attorney General).* Available at: http://scc.lexum.umontreal.ca/en/2010/2010scc41/2010scc41.html

[120] Supreme Court of Canada. October 22, 2010. *Globe and Mail v. Canada (Attorney General).* Available at: http://scc.lexum.umontreal.ca/en/2010/2010scc41/2010scc41.html

[121] Supreme Court of Canada. October 22, 2010. *Globe and Mail v. Canada (Attorney General).* Available at: http://scc.lexum.umontreal.ca/en/2010/2010scc41/2010scc41.html

[122] Supreme Court of Canada. October 22, 2010. *Globe and Mail v. Canada (Attorney General).* Available at: http://scc.lexum.umontreal.ca/en/2010/2010scc41/2010scc41.html

negotiations toward reaching a friendly settlement in the case. The Supreme Court held that: "The Superior Court's order must be assessed for what it is: a court-ordered publication ban which had the effect of limiting [the journalist's] freedom of expression."[123]

98. The Office of the Rapporteur recalls that Principle 8 of the Declaration of Principles establishes that: "Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential." Likewise, Principle 5 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."

99. The Office of the Special Rapporteur received information on the excessive use of force by police authorities against peaceful demonstrators and the imposition of significant limits to the exercise of freedom of expression during the G20 summit in Toronto, on June 26 and 27. According to the information received, hundreds of people were arrested during that weekend, and the police allegedly used excessive force in making arrests and controlling the public, including against peaceful demonstrators in areas that were protected and set aside for the exercise of freedom of expression.[124] At least nine journalists and media workers were beaten and/or detained, while others were blocked from covering the protests.[125] According to the information received, hundreds of people were detained for as long as 24 hours in a temporary detention center consisting of cages of various sizes.[126] According to civil society organizations, the detention conditions were inadequate with regard to space, sanitation, food and medical attention, and the individuals detained did not have access to legal counsel, nor could they use a telephone.[127] The information received by the Office of the Special Rapporteur indicates that the majority of the individuals arrested were freed unconditionally, with charges being brought against at least 270 of them.[128] In a public hearing held on October 25, 2010, in the framework of the IACHR's 140th ordinary

---

[123] Supreme Court of Canada. October 22, 2010. *Globe and Mail v. Canada (Attorney General).* Available at: http://scc.lexum.umontreal.ca/en/2010/2010scc41/2010scc41.html

[124] International Freedom of Expression Exchange (IFEX). June 30, 2010. *Journalists and protesters assaulted and detained during massive police clampdown at G20.* Available at:http://www.ifex.org/canada/2010/06/30/g20_crackdown/. The Globe and Mail June 27, 2010. *Security or liberty? Toronto comes to grips with a historic crackdown*. Available at: http://www.theglobeandmail.com/news/world/g8-g20/toronto/security-or-liberty-toronto-comes-to-grips-with-a-historic-crackdown/article1621020/. Canadian Civil Liberties Union. July 7, 2010. *G-20 mass arrests by the numbers.* Available at: http://ccla.org/2010/07/07/g-20-mass-arrests-by-the-numbers/

[125] International Freedom of Expression Exchange (IFEX). June 30, 2010. *Journalists and protesters assaulted and detained during massive police clampdown at G20.* Available at: http://www.ifex.org/canada/2010/06/30/g20_crackdown/es/; Amnesty International. June 27, 2010. *Toronto and the G8/G20: Peaceful protest suffers amidst heavy security measures and acts of vandalism.* Available at: http://www.amnesty.ca/resource_centre/news/view.php?article=5453&c=Resource+Centre+News&load=arcview; Canadian Journalists for Free Expression/ International Freedom of Expression Exchange (IFEX). June 28, 2010. *CJFE Dismayed at Reports of Free Expression Violations at G20 Summit Protests*. Available at: http://www.ifex.org/canada/2010/06/29/g20_protests/

[126] Clinique internationale de défense des droits humains de l'UQÀM, Ligue des droits et libertés, Fédération internationale des Ligues des droits de l'homme. October 25, 2010. *Document in support of the general hearing on the status of freedom of expression, assembly and association in Canada and the right to liberty, security and the integrity of the person.* Available at: http://www.ciddhu.uqam.ca/documents/rapport_G20_anglais.pdf; Canadian Civil Liberties Union (CCLA). June 29, 2010. *A breach of the peace: A preliminary report of observations during the 2010 G20 Summit.* Available at: http://ccla.org/wordpress/wp-content/uploads/2010/06/CCLA-Report-A-Breach-of-the-Peace-Preliminary-report-updated-July-8.pdf

[127] Clinique internationale de défense des droits humains de l'UQÀM, Ligue des droits et libertés, Fédération internationale des Ligues des droits de l'homme. October 25, 2010. *Document in support of the general hearing on the status of freedom of expression, assembly and association in Canada and the right to liberty, security and the integrity of the person.* Available at: http://www.ciddhu.uqam.ca/documents/rapport_G20_anglais.pdf. Canadian Civil Liberties Union (CCLA). June 29, 2010. *A breach of the peace: A preliminary report of observations during the 2010 G20 Summit.* Available at: http://ccla.org/wordpress/wp-content/uploads/2010/06/CCLA-Report-A-Breach-of-the-Peace-Preliminary-report-updated-July-8.pdf

[128] Canadian Civil Liberties Association (CCLA) July 7, 2010. *G-20 mass arrests by the numbers.* Available at: http://ccla.org/2010/07/07/g-20-mass-arrests-by-the-numbers/. The Globe and Mail June 28, 2010. *G20-related mass arrests unique*

Continued…

period of sessions, the petitioners informed the Commission of these events, the deficiencies in the legal system that permit them, and the serious consequences with regard to freedom of expression. Specifically, they indicated that Article 63 of the Criminal Code of Canada, which prohibits unlawful assembly, is vague and imprecise and has been used to repress political activity in Canada.[129] During the same hearing, the State of Canada reported that there were various domestic processes in progress intended to examine the conduct of the police during the G20 summit.[130]

100. In a follow-up to the hearing, the IACHR requested information from the State of Canada in order to clarify the incidents that took place in Toronto on June 26 and 27. In its response, dated December 13, 2010, the State repeated that several domestic proceedings were in progress and that it was requesting the relevant information from the different levels of the government. For this reason, the State said it would send its final response to the IACHR on January 31, 2011 at the latest. Likewise, the IACHR was informed of the publication of a report by the Ombudsman of Ontario on these incidents in December 2010. In that report, the Ombudsman denounced the fact that Regulation 233/10 had been passed in preparation for the summit. The regulation activates the Public Works Protection Act, a little-known piece of legislation from the time of World War II. According to the Ombudsman, "the regulation triggered the extravagant police authority found in the Public Works Protection Act, including the power to arbitrarily arrest and detain people."[131] The Ombudsman concluded that, "The effect of Regulation 233/10, now expired, was to infringe on freedom of expression in ways that do not seem justifiable in a free and democratic society."[132]

101. The Office of the Special Rapporteur expresses its concern over these incidents and recalls Principle 2 of the IACHR's Declaration of Principles, which 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." As the Office of the Special Rapporteur has indicated, this principle applies not only to journalistic activity but also to other forms of exercising the right to freedom of expression, such as public demonstrations and social protest.

102. Likewise, Principle 5 of the Declaration of Principles 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. In addition, with respect to the legal framework, the Office of the Special Rapporteur has indicated that, "vague or ambiguous legal provisions that grant, through this channel, very broad

---

…continuation
*in Canadian history*. Available at: http://www.theglobeandmail.com/news/world/g8-g20/news/g20-related-mass-arrests-unique-in-canadian-history/article1621198/

[129] Observations of petitioners Clinique internationale de défense des droits humains de l'UQÀM, Ligue des droits et libertés, Fédération internationale des Ligues des droits de l'homme, Public Hearing, "Right to freedom of expression, assembly, association and movement in Canada," 140th Period of Sessions of the IACHR, October 25, 2010.

[130] Observations of the State of Canada, Public Hearing, "Right to freedom of expression, assembly, association and movement in Canada," 140th Period of Sessions of the IACHR, October 25, 2010.

[131] André Marin, Ombudsman of Ontario. December 2010. "*Caught in the Act": Investigation into the Ministry of Community Safety and Correctional Services' conduct in relation to Ontario Regulation 233/10 under the Public Works Protection Act.* Available at: http://www.ombudsman.on.ca/media/157555/g20final1-en.pdf

[132] André Marin, Ombudsman of Ontario. December 2010. "*Caught in the Act": Investigation into the Ministry of Community Safety and Correctional Services' conduct in relation to Ontario Regulation 233/10 under the Public Works Protection Act.* Available at: http://www.ombudsman.on.ca/media/157555/g20final1-en.pdf

discretionary powers to the authorities are incompatible with the American Convention because they can support potentially arbitrary acts that are tantamout to prior censorship or that establish disproportionate liabilities for the expression of protected speech. 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."[133]

104. The Office of the Special Rapporteur received information indicating that at the beginning of February 2010, Canadian authorities prevented two US journalists who were going to cover the Winter Olympic Games 2010 in the city of Vancouver from entering the country. According to the information received, John Weston Osburn, a freelance journalist associated with the organization *Indymedia*, was blocked from entering Canada after being interrogated by immigration officials. Also, the journalist Martin Macias Jr., working for *Vocalo*, an online news site affiliated with Chicago Public Radio, was also prevented by immigration officials from entering Canada. According to the available information, both journalists intended to cover the protests against the Olympic Games.[134]

105. The Office of the Special Rapporteur recalls the provisions of Principle 5 of the IACHR Declaration of Principles mentioned above.

**7. Chile**

106. The Office of the Special Rapporteur recognizes the important progress made by Chile's Transparency Council on the issue of the right to access to information. This year the Council reached its one year anniversary of beginning operations, and the results of its work include significant accomplishments that will be examined in detail in a separate chapter of this report.[135]

107. The Office of the Special Rapporteur also highlights the passage of Law 20.453, which "enshrines the principle of net neutrality for all of the Internet's users and consumers." This law, published on August 26, 2010, establishes that Internet service providers "[s]hall not be allowed to arbitrarily block, interfere with, discriminate against, slow or restrict the right of any Internet user to use, send, receive or offer any legal content, application, or service over the Internet, as well as any other type of legal activity or use carried out over the Internet. In this sense, they must offer to each user a service for accessing the Internet - or connectivity to the provider of Internet access, as the case may be - that does not arbitrarily distinguish between content, applications, or services based on their source or owner, taking into account the different Internet connection configurations according to the in-force contract with the users.[136]

108. With regard to challenges, according to the information received, documentary film maker Jaime Díaz Lavanchy was allegedly verbally assaulted by Pedro Sabat, mayor of the Ñuñoa municipality in the province of Santiago, on May 5, 2010, while several of the mayor's security guards and associates allegedly beat him and damaged his equipment. The information received indicates that Díaz Lavanchy had asked Sabat about the lack of attention provided to the victims of the earthquake.[137]

---

[133] IACHR, Office of the Special Rapporteur for Freedom of Expression. Inter-American Framework on the Right to Freedom of Expression. OEA/Ser.L/V/II IACHR/RELE/INF. 2/09. December 30, 2009, paras. 70-71.

[134] Committee to Protect Journalists (CPJ). February 12, 2010. *On way to Olympic protests, reporters stopped at border.* Available at: http://cpj.org/2010/02/on-way-to-olympic-protests-reporters-stopped-at-ca.php. Notimex. February 10, 2010. *Work of activist against Winter Olympics blocked in Canada.* Available at: http://espanol.sports.yahoo.com/noticias/deportes-impiden-canada-labor-activista-olimpicos-10022010-7.html

[135] For more information on the activities of the Transparency Council, see: http://www.consejotransparencia.cl/

[136] Law 20.453. Published on August 26, 2010. Available at: http://www.doe.cl/fsumarios/2010-08-26/z2601001.pdf

[137] Observatorio Latinoamericano para la Libertad de Expresion. (OLA)/ International Freedom of Expression Exchange (IFEX). May 17, 2010. *Documentary maker assaulted by mayor's security guards.* Available at: http://www.ifex.org/chile/2010/05/17/diaz_lavanchy_assaulted/. El Ciudadano. *Pedro Sabat, mayor of Ñuñoa, is accused of assault*

Continued…

109. According to the information received, on February 10, 2010, Richard Curinao, a media worker of the Mapuche People, was arrested by police officers at his place of employment. According to the journalist's complaint, the officers confiscated his hard drive and took him by force to his home, where they also confiscated the hard drive from his personal computer, along with several accessories used in his communications work. According to the information received, Richard Curinao works as editor of the news source Werken Kvrruf, is part of the Wixage Anai Radio Program, is a member of the Mapuche Communications Network, and collaborates with several news web sites.[138]

110. On May 13, 2010, the communicator, poet, singer and photographer Alejandro Stuart was arrested. According to the information received, the arrest took place after his house was searched by Chilean police officers. The information received indicates that the day before the search and arrest, Stuart was photographing a march by the Mapuche indigenous people in Temuco.[139]

111. Principle 2 states: "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."

112. On November 9, the community radio stations *Radio Felicidad*, *Tentación,* and *Radio 24*, located in the municipality of Paine, were shut down. According to the information received, members of the Intellectual Property Crimes Squad of the Investigative Police confiscated the equipment of *Tentación* and *Radio 24* in the framework of a criminal proceeding against the members of the radio stations. The information received also indicates that five individuals, including the directors of *Tentación* and *Radio 24,* were arrested. According to the information received, the complaint from which the criminal proceeding arose was filed by the Subsecretary of Telecommunications in response to the demands of a commercial radio station in the area.[140]

113. The Office of the Rapporteur recalls that a restriction imposed for the regulation of radio broadcasting must be proportionate in the sense that there is no other alternative that is less restrictive of freedom of expression for achieving the legitimate purpose being pursued. Thus, the establishment of criminal sanctions in cases of violations of radio broadcasting legislation does not seem to be a necessary restriction.[141]

---

…continuation
*and intimidation.* Available at: http://www.elciudadano.cl/2010/05/09/pedro-sabat-alcalde-de-nunoa-es-acusado-de-agresion-y-amedrentamiento/

[138] Futawillimapu. 11 de febrero de 2010. *Press release of the Mapuche media worker Richard Curinao on the confiscation of his equipments.* Available at: http://www.futawillimapu.org/Llitu/Comunicado-Publico-del-Comunicador-Mapuche-Richard-Curinao-sobre-la-incautacion-de-sus-equipos.html; El Ciudadano. 10 de febrero de 2010. *Persecution and equipment confiscation against a Mapuche communicator*. Disponible en: http://www.elciudadano.cl/2010/02/10/persecusion-y-requisamiento-de-equipos-a-comunicador-mapuche/

[139] La Otra Voz. May 14, 2010. *Alejandro Stuart Arrested in La Araucanía.* Available at: http://laotravoz.wordpress.com/2010/05/15/detienen-a-alejandro-stuart-en-la-araucania-equipo-mapuche-noticias/. Sur y Sur. *Chile: Photographer arrested after Mapuche march in Temuco.* Available at: http://www.surysur.net/?q=node/13651

[140] World Association of Community Broadcasters (AMARC in its Spanish acronym) / International Freedom of Expression Exchange (IFEX). November 11, 2010. *Authorities shut down three community radio stations.* Available at: http://www.ifex.org/chile/2010/11/15/radio_stations_closed/. Resumen. 10 de noviembre de 2010. *PDI shuts down another community radio.* Available at: http://www.rsumen.cl/index.php?option=com_content&view=article&id=2932:la-pdi-clausura-otra-radio-comunitaria&catid=8:nacional&Itemid=52; FUCATEL Media Observatory. November 15, 2010. *Three community radio stations closed.* Available at: http://www.observatoriofucatel.cl/cierre-de-tres-radios-comunitarias/

[141] IACHR. 2009 Annual Report. *Volume II: Annual Report of the Special Rapporteur for Freedom of Expression*, Chapter VI (*Freedom of Expression and Broadcasting*), paras. 40 y 41. Available at: http://www.cidh.oas.org/pdf%20files/RELEAnual%202009.pdf

114. On May 4, 2010, Law 20.433 was published in the Official Newspaper, a law that establishes Citizen Community Radio Broadcasting Services.[142] This legislation recognizes community radio broadcasting and establishes that community broadcasters shall have minimum signal strength of 1 watt and a maximum of 25 watts, with a maximum antenna height of 18 meters. In exceptional circumstances, they may have maximum signal strength of 40 watts, for frontier or far-flung, rural areas with a population that is widely dispersed. According to the legislation, to set up a community radio station, an organization must be non-profit and have among its essential purposes the promotion of the general welfare through the pursuit of specific civic, social, cultural, or spiritual objectives. They must be formed and domiciled in Chile, as are, for example, neighborhood councils, unions and other labor organizations, as well as indigenous and community associations. The concessions shall be granted in a special segment of the FM frequency spectrum for both analogue and digital signals. A concession lasts 10 years and the concessioner shall be given preference for renewal.[143]

115. The Office of the Rapporteur recognizes the importance of the progress made in the passage of a law that explicitly recognizes community radio broadcasting, as it responds to the call made to States repeatedly by the Office of the Rapporteur to pass legislation on community radio broadcasting. Likewise, the Office of the Rapporteur notes with satisfaction the purpose of protecting community radio broadcasting and private commercial radio broadcasting from other forms of radio broadcasting that do not respond to community interests and development and that present private radio broadcasting with unfair competition. However, the Office of the Rapporteur observes that Law 20.433 establishes a series of limitations for community radio stations, with regard, for example, to signal strength,[144] financing,[145] and the possibility of broadcasting as a chain,[146] that don't apply to commercial radio stations. The Office of the Rapporteur recalls that legal recognition of community radio broadcasters is not sufficient if there are laws establishing discriminatory operating conditions. Discriminatory limitations include, for example, those that could be provided for in legislation or that are implemented in practice establishing certain kinds of restrictive measures as far as content, territorial coverage, or access to sources of funding without an adequate, objective, and reasonable argument that they pursue a legitimate purpose in keeping with the American Convention.[147] So for example, although it is true that many communities subject to protection are located in certain well-defined municipalities or areas, others could be spread throughout the country. In these cases, there does not seem to be any reason to prevent the community radio station in question from having nationwide coverage.

116. 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." For this reason, from its very beginning the Office of the Special Rapporteur has requested that States recognize on equal terms all forms of radio broadcasting and establish reasonable and non-discriminatory legislation.

117. On September 27, 2010, Transportation and Telecommunications Ministry Decree No. 264 was published.[148] The Decree "sets rules complementary to Decree No. 136, dated September 14,

---

[142] Law 20.433. May 4, 2010. Available at: http://www.leychile.cl/Navegar?idNorma=1013004&idParte=&idVersion=2010-05-04

[143] Law 20.433. May 4, 2010. Available at: http://www.leychile.cl/Navegar?idNorma=1013004&idParte=&idVersion=2010-05-04

[144] Law 20.433. May 4, 2010. Art. 4. Available at: http://www.leychile.cl/Navegar?idNorma=1013004&idParte=&idVersion=2010-05-04

[145] Law 20.433. May 4, 2010. Art. 13. Available at: http://www.leychile.cl/Navegar?idNorma=1013004&idParte=&idVersion=2010-05-04

[146] Law 20.433. May 4, 2010, Art. 15. Available at: http://www.leychile.cl/Navegar?idNorma=1013004&idParte=&idVersion=2010-05-04

[147] IACHR. 2009 Annual Report. *Volume II: Annual Report of the Special Rapporteur for Freedom of Expression*, Chapter VI (*Freedom of Expression and Broadcasting*), paras. 72. Available at: http://www.cidh.oas.org/pdf%20files/RELEAnual%202009.pdf

[148] Transportation and Telecommunications Ministry, Decree 264, dated September 27, 2010. Available at: http://www.subtel.cl/prontus_subtel/site/artic/20101005/asocfile/20101005122650/decreto_tvd_subtel_nuevo.jpeg

2009." Specifically, it extends "permission to carry out broadcasts to demonstrate over-the-air digital television technology" for a period of up to five years.[149] According to the information received, on November 6, a group of congretional deputies presented a motion of unconstitutionality to nullify Decree No. 264, a motion that was admitted to be heard by the Chilean Constitutional Court.[150]

118. The Office of the Special Rapporteur recalls that the goal of technological transformation in radio broadcasting should be to ensure that the new digital medium makes optimal use of the spectrum in order to ensure the greatest amount of plurality and diversity possible. For this, States must establish specific legal mechanisms for carrying out the transition to digital radio broadcasting services. This regulation must include a migration program that takes into account the needs and capacities of the different actors involved in this process, as well as the level to which the new technologies should be applied. In particular, States must evaluate the broadcast possibilities in the use of digital technology, considering this change in technology as an opportunity to increase the diversity of voices on the airwaves and provide new segments of the population with access to mass media. At the same time, States must take measures to prevent the cost of the transition from analogue to digital from limiting the capacity of the mass media for economic reasons.[151]

## 8. Colombia[152]

### A. Killings, Violence, Harassment and Illegal Imprisonment of Journalists

119. The IACHR is gravely concerned by the murders of three journalists that have taken place since December 2009. According to the information received, on December 15, 2009, Harold Humberto Rivas Quevedo was shot in Buga, in Valle del Cauca. At the time of the murder, the journalist was leaving work at the local television channel *Bugavisión*, where he was the presenter of the political program *Comuna Libre*. According to the information, the journalist interviewed community leaders and politicians, and had a reputation for insightful commentary and for highlighting the responsibility of local authorities towards their citizens.[153]

120. According to the information received, on March 19, 2010, journalist Clodomiro Castilla Ospino, of the newspaper *El Pulso del Tiempo* and *La Voz de Montería* radio station, was murdered in the city of Montería, Department of Córdoba, by a hit man who shot him several times at the door of his home. According to the information received, Castilla Ospino had built a reputation for the investigation and denunciation of the paramilitary phenomenon and political corruption in the Department of Córdoba. The information adds that the State had authorized a protection regime, which was suspended at the journalist's own request in February 2009, given the mistrust for the entity in charge of providing the protection, the DAS (*Departamento Administrativo de Seguridad*). Due to an increase in risk, the journalist and non-governmental organizations in November 2009 again requested protection. However,

---

[149] Transportation and Telecommunications Ministry, Decree 264, dated September 27, 2010. Available at: http://www.subtel.cl/prontus_subtel/site/artic/20101005/asocfile/20101005122650/decreto_tvd_subtel_nuevo.jpeg.

[150] Emol. November 24, 2010. *Constitutional Court admits motion of unconstitutionality on digital TV decree.* Available at: http://www.emol.com/noticias/todas/detalle/detallenoticias.asp?idnoticia=449087. FUCATEL Media Observatory. November 24, 2010. *Media silent before Constitutional Court decision.* Available at: http://www.observatoriofucatel.cl/acogen-recurso-de-inconstitucionalidad-por-decreto-de-tv-digital/. Radio Universidad de Chile. November 11, 2010. *Concessions and publicity: The great fight over digital television.* Available at: http://radio.uchile.cl/noticias/90303/

[151] IACHR. 2009 Annual Report. *Volume II: Annual Report of the Special Rapporteur for Freedom of Expression*, Chapter VI (*Freedom of Expression and Broadcasting*), paras. 80. Available at: http://www.cidh.oas.org/pdf%20files/RELEAnual%202009.pdf

[152] This section corresponds to the section on freedom of expression in Colombia in Chapter IV, Volume I, of the IACHR 2010 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.

[153] Committee for the Protection of Journalists. December 17, 2009. *Tv Presenter shot dead in the east of Colombia.* Available at: http://cpj.org/es/2009/12/presentador-de-television-muerto-a-tiros-en-el-occ.php. El Tiempo. December 17, 2009. *Journalist murdered in Buga minutes after finishing his show.* Available at: http://www.eltiempo.com/archivo/documento/CMS-6801632 (in Spanish). El Espectador. December 17, 2009. *Journalist Bugueño murdered after his show.* Available at: http://www.elespectador.com/noticias/judicial/articulo177907-asesinado-periodista-bugueno-al-finalizar-su-programa (in Spanish).

at the time of the events, the journalist did not have State protection.[154] The Office of the Special Rapporteur for the Freedom of Expression acknowledges the swift repudiation of the crime by the highest authorities in Colombia but expresses grave concern regarding the absence of protection given to the journalist, despite his having requested the activation of the State of Colombia's Journalist Protection Program in good time. In its observations the State reported that Castilla Ospino was admitted to the Protection Program of the Ministry of the Interior and Justice on January 23 2007, but in 2009 the CRER recommended the suspension of some of the measures granted, including the DAS and National Police escort units "because the Ministry received constant complaints about the mistreatment of escorts by Mr. Castilla Ospino - a situation brought to his attention on various occasions."[155] The State also reported that the last two risk level reports of the journalist in August and September 2008 revealed "ordinary risk" level. These are the reasons provided by the State to explain why "Mr. Clodomiro Castilla did not have a mobile protective scheme at the moment of the attack that resulted in his death."[156]

121. The IACHR was informed that on October 14, the indigenous leader and journalist, Rodolfo Maya Aricape, was murdered in the López Adentro reservation, in the Department of Cauca, in Colombia. According to the information received, Aricape was at home when two armed men shot him. The leader was secretary of López Adentro's Indigenous Town Council and correspondent for Pa´yumat community radio, of the Tejido de Comunicación project. In discharging these functions, Rodolfo Maya had made a reputation for taking a firm stance against all armed groups operating in indigenous areas. Weeks before his death, a sign appeared in the community threatening the journalist.[157]

122. The IACHR expresses concern over the situations described and encourages the State of Colombia to maintain the protection programs and move forward in the fight against the situation of impunity that still surrounds these crimes. As such, the work of judges and prosecutors should be supported, and effective and strengthened preventative and protective measures for the freedom of thought and expression should be promoted.

123. The IACHR was also informed about physical violence, death threats and incidents obstructing journalists' work during the first half of 2010, which seriously hampers the exercise of freedom of expression. As concerns alleged acts of violence committed by State agents, the IACHR received information to the effect that on April 23, the journalist Wilfer Moreno Villamizar had been beaten by a police officer in Arauca.[158] The IACHR was also informed that the journalists Leonardo Sierra, of *Radio Caracol*, and Juan Pablo Murcia, of *FM Radio*, had been attacked on April 26 by officers of the Bogotá Police while they were covering a demonstration by college students.[159] On July 21, the journalist Juan David Betancur, a correspondent for *Teleantioquia Noticias*, was struck with a blunt object by an

---

[154] Special Rapporteur for the Freedom of Expression. *Press Release R34-10.* Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=788&lID=2.

[155] Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 46.

[156] Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 46.

[157] Special Rapporteur for the Freedom of Expression. *Press Release R106/10.* Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=823&lID=2. El Tiempo. October 15, 2010. *Native leader expert in communications, murdered in Cauca.* Available at: http://www.eltiempo.com/colombia/cali/ARTICULO-WEB-NEW_NOTA_INTERIOR-8133331.html.

[158] According to the information received, the incident occurred when Milfer Moreno was taking pictures in a Highway Police operation. The information shows that the Arauca Police press office recounted the event as an "unfortunate situation" and revealed that they would be investigating the events and would be fostering a joint journalist/police training program. Foundation for Press Freedom. April 27, 2010. *Journalists attacked by officers of the National Police in two cities.* Available at: http://www.flip.org.co/alert_display/0/777.html.

[159] The journalists had requested an explanation from the police while witnessing the violence against the students, as a result of which the Police beat the reporters. Murcia, in addition, was detained for some minutes in an armored vehicle. According to the information, the Metropolitan Police of Bogotá explained that the incident had occurred because the journalists were not carrying visible identification in the midst of a confused situation. Foundation for Press Freedom, April 27, 2010. *Journalists attacked by officers of the National Police in two cities*. Available at: http://www.flip.org.co/alert_display/0/777.html.

employee of the municipal city hall in Dabeiba Park, Antioquia.[160] On the other hand, the IACHR is aware of the acts of violence suffered by Luis Enrique Cárdenas, correspondent of *Noticias Uno* and independent reporter Dagoberto Ferés Molina, on August 22 in Aguachica, in the El Cesar Department, at the hands of officers of the National Police while covering a protest by taxi-drivers.[161]

124. In addition, during the International Labor Day demonstrations on May 1, the security forces of Bogotá and Cali attacked at least seven journalists who were covering demonstrations and unrest. The Spanish journalist Oriol Segón Torra was beaten by police while he was photographing confrontations between the security forces and demonstrators in the Plaza Bolívar in Bogotá. In Cali, another six journalists from the national media and international agencies were attacked by the police. According to the information, the Cali Police have announced an investigation into the events and have explained that there had been a misunderstanding due to the fact that the journalists remained trapped in the confrontations. In addition, the IACHR was informed that the Headquarters of the National Police offered its apologies to the journalists and have issued a directive to request greater efforts in the investigation of abuses against journalists.[162]

125. As regards the threats, assaults and violence committed by other actors, the IACHR has received information surrounding the assault suffered by the director of the *El Norte* newspaper and of the local MTV television channel Marco Tulio Valencia Hoyos, on August 30 in Mariquita, Tolima. According to the information received, an individual riding a motorcycle shot him five times as he was entering his house. The perpetrator of the attack had turned off the motorcycle as he approached his victim and this gave the journalist time to enter the house. The IACHR has been aware that since June, Marco Tulio Valencia has received death threats and harassment, after publishing information surrounding the sale of drugs in the community. The IACHR was informed that the authorities had assigned a protection regime for the journalist.[163]

126. In addition, the IACHR was informed that on May 18 and 20 unknown persons assaulted the journalist Leiderman Ortiz Berrío, director of the web site *La verdad del pueblo* and correspondent for various regional media in Caucasia, Department of Antioquia.[164] On August 20, the IACHR granted precautionary measures in favor of Leiderman Ortiz.[165] According to information supplied, there have been difficulties in implementing the protection regime.[166] In addition, in the early hours of August 12, a vehicle packed with explosives exploded in Bogotá opposite the building housing the offices of *Radio*

---

[160] According to the information received, the attacker had warned the journalist that he would run the risk of being murdered if he referred again to the Mayor. As a result of the attack, the journalist decided to flee the city. Colombian Federation of Journalists. August 9, 2010. *Journalist beaten and threatened in Dabeiba, Antioquia*. Available at: http://www.fipcolombia.com/noticiaAmpliar.php?noticia=5133.

[161] According to the information received, a police officer had tried to snatch the camera from Luis Enrique Cárdenas, who was injured in the scuffle; whilst Dagoberto Ferés had to be admitted to hospital because a police officer fired a tear gas grenade very close to him. As the Special Rapporteur has reported, an Aguachica Police spokesman explained that the incident had occurred during "confusing events". Foundation for Press Freedom. August 24, 2010. *Journalists attacked by officers of the National Police in two cities*. Available at: http://www.ifex.org/colombia/2010/08/27/periodistas_agredidos/es/.

[162] Foundation for Press Freedom. May 3, 2010. *Journalists attacked during International Labor Day Demonstrations.* Available at: http://www.flip.org.co/alert_display/2/871.html.

[163] Communication of the Colombian Federation of Journalists sent to the Special Rapporteur for the Freedom of Expression on October 21, 2010.

[164] According to the information received, the perpetrators launched a grenade, first onto the patio of the house and then against the front facade of the building. As far as the IACHR knows, the journalist had complained through the media of paramilitary group's activities operating in the community. Colombian Federation of Journalists. May 21, 2010. *Attack on a journalist in Caucasia and police beat a colleague in Bogotá*. Available at: http://www.fipcolombia.com/noticiaAmpliar.php?noticia=4896.

[165] IACHR. *Precautionary Measures granted by the IACHR during 2010.* Available at: http://www.cidh.org/medidas/2010.sp.htm.

[166] Communication of the Colombian Federation of Journalists sent to the Special Rapporteur for the Freedom of Expression on October 21, 2010.

*Caracol* and Spanish news agency *EFE*.[167] In addition, the IACHR was informed that on August 28, the police authorities located and defused a bomb near the *Linda Stereo* community radio station in El Doncello, Department of Caquetá.[168]

127. On May 9, a group of unknown men attacked journalist Jorge Tolosa, of *Telepetróleo,* in front of his house in Barrancabermeja.[169] On September 7, two individuals set fire to the motorcycle belonging to journalist Alberto Caballero Parejo, owner and reporter of the *Innovación Estéreo* community radio, in Ciénaga, Magdalena.[170] The IACHR also received information surrounding the violence suffered by special envoys of *Caracol Noticias* in the Ipiales Municipality, Nariño, at the hands of a group of persons who were guarding a cargo of contraband[171]. In addition, on August 29, several unknown individuals broke into the building of the *Puerto Wilches Estéreo* community radio station, in the Puerto Wilches municipality in Santander and destroyed and stole equipment essential for operating the radio station. This had been the forth occasion in less than three years in which *Puerto Wilches Estéreo* had suffered an attack aimed at preventing its transmissions.[172]

128. In addition, the IACHR has become aware of new cases of threats against journalists. The Special Rapporteur has received information according to which a leaflet was circulated on February 21, 2010, in the city of Cartago, in Valle del Cauca, signed by an alleged organization called "los doce del patíbulo" (*the gallow's dozen*) containing death threats against five local journalists who had criticized the administration of the local mayor.[173] On March 23, according to information received, journalist Alex Pájaro Mosquera of the *El Propio* newspaper of Montería, Córdoba, was informed by the police that an intercepted telephone call from a prison inmate revealed a plan to murder him, in retaliation for information concerning this individual that the reporter had published.[174] In addition, during March and April, journalist Edgar Astudillo Vásquez, director of the radio station *Panzenú* in Montería, received various death threats, which coincided with his publications concerning the upsurge of armed groups in

---

[167] According to the information received, the blast left at least eight people injured, and caused damage to the station's entrance. The President of the Republic, Juan Manuel Santos, made assurances that the authorities would investigate the source of the attack and would pursue those responsible. UN Special Rapporteur for the Freedom of Expression and the Special Rapporteur for the Freedom of Expression of the IACHR. August 13, 2010. *Press Release R81/10. UN and OAS Special Rapporteurs for the Freedom of Expression condemn the attack on Radio Caracol in Colombia.* Available at: https://www.cidh.oas.org/relatoria/showarticle.asp?artID=810&lID=2.

[168] French Press Agency. August 28, 2010. *Bomb attributed to the FARC opposite a radio station in Colombia defused*. Available at: http://www.terra.com.mx/noticias/articulo/948598/Desactivan+bomba+atribuida+a+las+FARC+frente+a+una+radioemisora+en+Colombia.htm.

[169] Jorge Tolosa is the host of the program "Other people's money" where he had denounced the behavior of common criminal gangs. International News Safety Institute. May 11, 2010. *Disabled Barrancabermeja journalist beaten by a gang.* Available at: http://www.newssafety.org/index.php?option=com_content&view=article&id=18858:incapacitado-periodista-de-barrancabermeja-que-fue-golpeado-por-banda&catid=53:colombia-media-safety&Itemid=100273.

[170] According to the information received, days prior to the attack, the journalist had made a series of complaints about the alleged acts of corruption in the community. *El Heraldo*. September 9, 2010. *Attacks on Journalist after complaints about corruption by privileged.* Available at: http://www.elheraldo.com.co/ELHERALDO/BancoConocimiento/1/1atentan_contra_periodista_que_denuncio/1atentan_contra_periodista_que_denuncio.asp?CodSeccion=48. El Informador. September 9, 2010. Motorcycle riders attempted to burn journalist's bike. Available: http://www.el-informador.com/index.php?option=com_content&view=article&id=3814:sujetos-en-motocicleta-intentaron-quemar-moto-de-periodista&catid=82:cienaga&Itemid=459.

[171] Semana. September 14, 2010. *Contrabandistas agredieron a un equipo periodístico en Nariño*. Available at: http://www.semana.com/noticias-nacion/contrabandistas-agredieron-equipo-periodistico-narino/144583.aspx

[172] Foundation for Press Freedom. September 2, 2010. *Community radio station remains off air due to sabotage of equipment*. Available at: http://www.flip.org.co/alert_display/0/1240.html.

[173] Foundation for Press Freedom (FLIP)/IFEX. February 25, 2010. *Leaflet threating journalists in Cartago, Valle del Cauca*. Available at: http://ifex.org/colombia/2010/02/25/five_death_threats/es/.

[174] Foundation for Press Freedom. March 27, 2010. *Plan to attack journalist in Montería, Córdoba defused.* Available at: http://www.flip.org.co/alert_display/2/466.html.

the area. Astudillo had to flee the area.[175] On April 7, cameraman Alexis Tordecilla, of *Canal Montería,* was threatened by unknown persons riding a motorcycle. They made him stop at gunpoint and show them the images he had recorded on his camera.[176] In addition, the IACHR has received information of a threat made against journalist Deyanira Castro, editor-in-chief of the *Q'Hubo* newspaper in Cali, after she published information about gangs of hit men operating in the community where she lives.[177]

129. The IACHR was also informed that on May 30, a group of journalists from *Canal Caracol*, *Noticiero 90 Minutos*, and several foreign journalists were illegally detained for approximately one hour by men identified as guerillas of the Revolutionary Armed Forces of Colombia (FARC), in a rural area in the Caloto municipality, Cauca Department.[178] In addition, on October 23, the president of Colombia, Juan Manuel Santos, announced that information obtained from computers seized at the camp of the guerilla leader known as "Mono Jojoy" had revealed a FARC plan to murder journalist Olga Cecilia Vega. The journalist has publically requested that the FARC revoke the order, explaining that her coverage of this guerilla group has been performed exclusively in fulfillment of her functions as a journalist.[179]

130. Finally, the IACHR is particularly concerned by the new threats made by the FARC against journalist Jineth Bedoya on November 9, 2010, after the publication of her book "The Life and Death of Mono Jojoy".[180] Jineth Bedoya has been a beneficiary of the IACHR's precautionary measures since June 2000. The IACHR is concerned by the meager judicial advances in the case of the violence against journalist Jineth Bedoya, which occurred on May 25, 2000, when she was kidnapped, beaten and raped by her abductors as she was undertaking an investigation into paramilitary groups. Ten years after the events occurred, the proceedings are still at the investigation stage with the 6th Public Prosecutor of the Human Rights Unit, without any suspects having been identified.

131. In its observations the State indicated that since 2002 violence and attacks against journalists diminished “noticeably”. It also reported that the Human Rights and IHL Unit of the General Prosecutor's Office has 49 pending cases related to persons linked to journalistic activities with 16 convictions affecting 24 persons.[181]

### B. Judicial Proceedings against Journalists

132. Throughout 2010, the IACHR has become aware of several cases of media journalists being criminally indicted for broadcasting information or opinions on matters of public interest. As an example, the IACHR was informed of a libel action lodged by the Governor of Casanare against eight journalists of the programs "Contacto Noticias" at the *Violeta Estéreo* community radio and "The Voice of

---

[175] Colombian Federation of Journalists. April 8, 2010. *Wave of threats against journalists in Córdoba.* Available at: http://www.fipcolombia.com/noticiaAmpliar.php?noticia=4788. Colombia Federation of Journalists. July 29, 2010. *Threats against show “Zona Franca” in Montería, Córdoba.* Available at: http://www.fipcolombia.com/noticiaAmpliar.php?noticia=5105.

[176] Foundation for Press Freedom. April 10, 2010. *New threats against journalists in Montería*. Available at: http://www.flip.org.co/alert_display/0/549.html. El Tiempo. April 8, 2010. *Journalist from Monteria receives death threats.* Available at: http://www.eltiempo.com/archivo/documento/CMS-7558767.

[177] Foundation for Press Freedom. August 10, 2010. *Threats against the chief editor of the newspaper Q´Hubo in Cali, valle del Cauca.* Available at: http://www.flip.org.co/alert_display/2/1233.html.

[178] Latin-American Observatory for the Freedom of Expression. June 1, 2010. *The FARC keep a group of journalists hostage*. Available at: http://www.felatracs.net/portal/index.php?option=com_content&view=article&id=285:reporte-1056&catid=15:ola&Itemid=46.

[179] Foundation for Press Freedom. November 3, 2010. *President Santos announces that the FARC were planning attack on journalist.* Available at: http://www.flip.org.co/alert_display/0/1729.html.

[180] Foundation for Press Freedom, November 10, 2010*. The FACR threaten journalist and seemingly ordered assassination of the director of points-of-view program.* Available at: http://flip.org.co/alert_display/0/1741.html.

[181] Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 46.

Casanare" of *Voz de Yopal* community radio.[182] On the other hand, the IACHR was informed of the indictment for defamation offenses initiated on August 23 by the Office of the Attorney General against the columnist Claudia López, originating from a complaint lodged by former President Ernesto Samper.[183] In addition, information has been received about the complaints filed against Salud Hernández Mora by the President of the Supreme Court of Justice.[184] On the other hand, journalists of the *Verdad Abierta* web page, which is dedicated to news about paramilitaries, have been accused by Lieutenant Jalyl Rosember Torres Vega, director of the Gaula Army Unit of the Department of Santander, for having published paramilitaries' statements, which mention the agent of the security forces.[185] Regarding these facts, the State indicated in its observations that "Colombian domestic legislation contemplates defamation offenses as an effort by the legislator to protect the right to honor and dignity as an essential part of the law. These criminal offenses have not been established as a tool to harass journalists. On the contrary, it constitutes a mechanism to protect the inhabitants from false and dishonorable accusations."[186]

133. The IACHR reiterates principle 10 of its Declaration of Principles, according to which "[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 commentator 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 turn, 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."

134. Finally, on September 6, 2010, the Colombian judiciary issued an arrest warrant against a Colombian journalist residing in Venezuela and former correspondent of the Telesur enterprise, William Parra, for his alleged affiliation with guerilla organizations. According to the information received, the journalist denied the charges. The IACHR hopes that the present case is processed in accordance with the most rigorous due process guarantees.[187]

### C. Restrictions on the Freedom of Expression in the Electoral Process

135. The IACHR has received information concerning the enactment of Decree 1800 of May 24, 2010, which set out laws for the preservation of public order during the first and second rounds of the presidential elections, on May 30 and June 20. Journalist organizations questioned the fact that the decree restricted the right to freedom of expression, freedom of the press and freedom of information in a

---

[182] In accordance with information received, the complaint is based on three broadcasts made between February and April of 2010, in which the journalists pointed out to the governor the failure to implement the Development Plan, questioned his competence for the task and complained of various inconsistencies in the job's performance. Reporters *sans frontieres*. August 3, 2010. *Eight journalists face charges for "libel".* Available at: http://www.ifex.org/colombia/2010/08/03/journalists_sued/es/.

[183] The case originated in an editorial column that Claudia López published in the *El Tiempo* magazine, on July 11, 2006, in which she criticized the possible nomination of Samper as ambassador to France. The complaint alleged that the journalist had made disreputable statements against the former president and had linked him to the possible commission of offences. Foundation for Press Freedom. August 24, 2010. *Public Prosecutor formally indicts journalist Claudia López for the crime of libel and slander.* Available at: http://www.flip.org.co/alert_display/0/1266.html.

[184] *El Espectador*. August 30, 2010. *Salud Hernández is sued by the President of the Supreme Court*. Available at: http://www.elespectador.com/noticias/judicial/articulo-221694-salud-hernandez-denunciada-el-presidente-e-de-corte-suprema.

[185] Verdad abierta. May 18, 2010. *Paramilitaries smear at least ten members of the DAS, Army and Police*. Available at: www.verdadabierta.com/.../2464-paras-salpican-a-decenas-de-miembros-del-das-ejercito-y-policia-en-meta-y-guaviare.

[186] Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 46.

[187] *Reporters sans frontieres*. September 10, 2010. *Delayed due process against the former journalist of Telesur, William Parra*. Available at: http://es.rsf.org/colombia-tardio-y-dudoso-procedimiento-09-09-2010,38331.html.

disproportionate way. Article 3 of the decree prohibited "all types of propaganda, demonstration, communications and interviews with political electoral aims" by any communications media whatsoever during the day of the elections. Article 7 established that on election day, "whilst the voting process is taking place", the communications media could only supply information concerning the number of persons who had cast their vote. Article 9 stipulated that "in matters of public order, on election day, the media communications shall only transmit information confirmed by official sources."[188]

136. The Office of the Special Rapporteur the Freedom of Expression sent a communication to the State of Colombia expressing concern about this issue.[189] In response, the Interior and Justice Minister rejected that there had been attempted censorship of media communications and denied that the decree represented a restriction on the freedom of expression, since "it did not mean that only statements from official sources could be published, but that information on public order be confirmed with the official source. The decree did not establish a prohibition but a procedure."[190]

137. During election periods special restrictions on freedom of expression may exist. However, they must strictly respect constitutional and international protections, particularly those enshrined in article 13.2 of the Convention. According to this provision, 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.” In applying this provision, the IACHR and the Court have indicated that all restrictions must be established by law in both the formal and material sense, and that the scope of restrictions should be clear and precise. In this regard, the IACHR notes that in this case restrictions were established through administrative provisions that do not appear compatible with the aforementioned conditions.

---

[188] Interior and Justice Ministry. May 24, 2010. *Decree No.1800 of 2010*. Available at: http://web.presidencia.gov.co/decretoslinea/2010/mayo/24/dec180024052010.pdf.

[189] Special Rapporteur for the Freedom of Expression. IACHR. *Request for information from the State of Colombia. REF: Decrees 1740 of 2010 and 1800 of 2010.* Republic of Colombia. May 27, 2010.

[190] Interior and Justice Ministry. May 27, 2010. *Communication No. 492.* Available at: http://web.presidencia.gov.co/comunicados/2010/mayo/492.html; Communication handed over on July 30, 2010 by the State to the Special Rapporteur for the Freedom of Expression *Note DIDH.GAPID No. 32010/1273*.

### D. Changes to the mechanism for the protection of journalists[191]

138. The Interior and Justice Ministry issued Decree 1740 of May 19, 2010, which introduces important changes to the Interior and Justice Ministry's Human Rights Protection Program, which lends protection to, *inter alia*, journalists and social communicators who find themselves at risk.[192] The IACHR observes that Article 17 of Decree 1740 establishes changes to some of the protection measures offered to the beneficiaries; it removes, for instance, transportation aid, and substantially reduces the amount of relocation subsidies. Second, the IACHR observes that Article 29.1 of Decree 1740 of 2010 introduces grounds for suspending protective measures which could include conduct related to the work of a journalist, such as the necessity to meet in private with sources of information, in the absence of guards.

139. The Office of the Special Rapporteur for the Freedom of Expression expressed its concern to the State of Colombia with regard to the changes introduced by Decree 1740 of 2010.[193] In a communication received on July 30, 2010, regarding the adjustments to the measures of protection relating to land transportation aid and support for temporary relocation, the State replied that these alterations applied to all persons subject to the Protection Program and not only to journalists and social communicators. The State stresses that these changes are due to the interest in strengthening the "hard measures" approved and implemented for persons at an extraordinary and extreme level of risk. The State, with regard to the reduction in the amount of relocations subsidies, stated that this is due to the attempt to "reduce the negative effect generated by temporary relocation aid" which was highlighted by a National Procurator General's Office Evaluation and according to which relocations did not answer the needs of the beneficiaries as a measure of protection and even encouraged forced displacement. With respect to the changes in the security regime at the beneficiary's request, the State maintains that the beneficiary must notify the decision to make changes, without that implying a suspension of the measure.[194] At a public hearing held on October 28, 2010, at the IACHR, the State also expressed its willingness to receive suggestions and revise the alterations to the Interior and Justice Ministry's Human Rights Protection Program jointly with human rights organizations.[195] In its observations on the present report, the State reported that “[t]he Ministry of the Interior and Justice is currently advancing a process to modify Decree 1740 with the participation of the populations that are the object of the Protection Program. To date there are several proposals from different population groups, among them, the journalists and before the end of the first quarter of 2011, the National Government will establish the new content of the Decree.”[196].

---

[191] See *supra* IV. The Situation of Human Rights Defenders, Social and Trade Union Leaders.

[192] Interior and Justice Ministry of the Republic of Colombia. May 19, 2010. *Decree 1740 of 2010.* Available at: http://www.dmsjuridica.com/CODIGOS/LEGISLACION/decretos/2010/1740.htm.

[193] Special Rapporteur for the Freedom of Expression. IACHR. Request for information from the State of Colombia. REF: Decrees 1740 of 2010 and 1800 of 2010. Republic of Colombia. May 27, 2010.

[194] Communication handed over on July 30, 2010, by the State to the Special Rapporteur for the Freedom of Expression *Note DIDH.GAPID No. 32010/1273*.

[195] Hearing on the situation of human rights defenders in Colombia and the implementation of precautionary measures, held on October 28, 2010, in the context of the 140th period of sessions of the Commission. http://www.cidh.oas.org/prensa/publichearings/advanced.aspx?Lang=ES.

[196] Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 47.

### E. Wiretapping and Unlawful Surveillance of Journalists

#### 1. Background

140. As indicated in the 2009 Annual Report, throughout the year allegations of illegal wiretappings and unlawful surveillance were released which the State Intelligence Agency, known as the Administrative Department for Security (DAS), carried out on journalists, justices of the higher courts, opposition politicians, activists and human rights organizations.

141. During 2010, the Commission received additional information concerning unlawful activities of espionage, harassment, smear campaigns and even death threats against journalists, undertaken by the DAS between 2002 and 2008. The investigations initiated by the National Procurator General and the National Attorney General's Office, as well as the important revelations of the media indicate a sustained and systematic policy of persecution on the part of the principal intelligence agency of the State of Colombia, directed at spying on, smearing and intimidating some of the journalists criticizing the Government of President Álvaro Uribe Vélez. In some cases, the unlawful spying by the DAS was undertaken by the same agents charged with protecting those journalists within the framework of the Interior and Justice Ministry's Human Rights Protection Program.[197]

142. These events represent an especially serious attack on the freedom of expression in Colombia, and have had profound consequences for the personal and professional lives of the persecuted journalists and their families. As described below, despite the advances in the investigation there is no clarity on who issued the orders and performed most of the illegal activities against journalists criticizing the Government.

#### 2. Spying and Harassment by the DAS against Journalists

143. Although the IACHR has received information about unlawful activities directed against at least a group of ten journalists,[198] the current report highlights those cases in which the investigations made to date allow more and better information to be shown to explain the phenomenon. The cases selected refer to independent journalists with respect to whom the spying and harassment activities were especially serious.

144. One of the most serious cases is that of the journalist Daniel Coronell. Journalist Coronell has a prestigious career, writes one of the most widely read editorial columns in the country and at the moment of the facts he directed *Noticias Uno*, a news program presenting an informative and editorial line pointedly independent from that of the government's. Thanks to his investigations, the journalist was able to denounce serious cases of alleged corruption.[199] In response to some of these investigations, former President Álvaro Uribe and high-ranking officials of his Government publically discredited him on various occasions.[200]

---

[197] See Constitutional Court of Colombia. Judgment T-1037 of 2008. Judge Rapporteur, Jaime Córdoba Triviño. Foundation for Press Freedom. December 3, 2010. *Spying on Journalists: the courts now speak*. Available at: http://www.ifex.org/colombia/2010/12/03/das-Report.pdf. US Office on Colombia, Center for International Policy, Washington Office on Latin America. June of 2010. *Far Worse than Watergate: Widening scandal regarding Colombia's Intelligence Agency*, p. 4. Available at: http://www.noticiasuno.com/noticias/instructivo-del-das-para-amenazar-a-claudia-julieta-duque.html. Hollman Morris. March of 2010. *The DAS, a criminal hunt*. Available at: http://www.facebook.com/note.php?note_id=388797002244.

[198] See IACHR. Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression. Chapter 2, para. 139. Available at: http://www.cidh.oas.org/pdf%20files/RELEAnual%202009.pdf.

[199] See, for example, *Revista Semana*. April 18, 2009. "That's more than enough" (*Sobrados del lote).* Available at: http://www.semana.com/noticias-opinion/sobrados-lote/122986.aspx. *Revista Semana*. October 16, 2010. *One day flower.* Available at: http://www.semana.com/noticias-opinion/flor-dia/146010.aspx.

[200] See IACHR. Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression. Chapter 2, para. 139. Available at: http://www.cidh.oas.org/pdf%20files/RELEAnual%202009.pdf. See *Revista Semana*. October 9, 2007. *President Álvaro Uribe and journalist Daniel Coronell wage the bitterest verbal battle on the radio*. Available at: http://www.semana.com/wf_InfoArticulo.aspx?idArt=106790.

145. According to the information received, on May 25, 2010, at a public hearing before the National Public Prosecutor, former deputy director of DAS Intelligence Operations, Martha Inés Leal, stated that DAS directors ordered that Daniel Coronell be followed. According to her, there were attempts to establish who was passing him information since, according to the information received by her, President Uribe "was very annoyed" by the investigations made against him and his family. Leal added that DAS agents went beyond this and "checked up on the movements of Coronell and his wife [María Cristina Uribe, a presenter with *Noticias Uno*]. In addition, information was requested from the UIAF [Financial Analysis and Information Unit] as to his bank transactions. His address was located, and since he lived in a military zone, a car was hired to follow him."[201]

146. The Commission also received information about the statement of Fernando Alonso Tabares, former Director General of Intelligence at the DAS, as to the surveillance of journalist Coronell. According to press reports, at a hearing which took place on July 9, 2010, Tabares stated that in September 2007, then DAS Director María del Pilar Hurtado asked him to accompany her to a working meeting she had with Bernardo Moreno, Secretary General of the Office of the President of the Republic. According to Tabares' evidence, "Dr. Bernardo Moreno pointed out to Dr. María del Pilar Hurtado that the President of the Republic was interested in being kept informed by the DAS about four principal points or aspects: the Supreme Court of Justice, Senators Piedad Córdoba and Gustavo Petro and the journalist Daniel Coronell." Tabares added, finally, that Hurtado "left instructions for us to start to focus our best efforts on this requirement communicated by Dr. Bernado Moreno."[202]

147. According to the information received, Bernado Moreno, in a deposition before the Public Prosecutor in July 2010, remembered having met with Tabares and Hurtado in September 2007 and acknowledged having made requests for information - in his view, lawfully - from the DAS regarding members of Congress and judges, but denied requesting unlawful DAS actions against Daniel Coronell.[203] Hurtado also denied receiving orders from the President's Office to wiretap and track the persons mentioned by Tabares.[204]

148. Daniel Coronell has been the victim of numerous threats since April 2002. In August 2005, he left the country for exile due to this continuing harassment. He returned to Colombia in 2007, and despite the threats and acts of intimidation suffered, he has continued during all these years with a distinguished career in journalism.

149. Claudia Julieta Duque is an independent correspondent in Colombia with the Internet human rights broadcaster *Radio Nizkor*. The information received indicates that the harassment against

---

[201] *El Espectador* newspaper. September 4, 2010. Martha Leal's confession to a delegated prosecutor. Available at: http://www.elespectador.com/impreso/judicial/articuloimpreso-222598-confesion-de-martha-leal-un-fiscal-delegado. *Revista Semana*. September 6, 2010. DAS Wire-tapping: Martha Leal's chapter. Available at: http://www.semana.com/noticias-nacion/chuzadas-del-das-capitulo-martha-leal/144144.aspx

[202] *Revista Semana*, July 24, 2010, Article entitled: "Everything ordered by the Nariño house." Available at: http://www.semana.com/noticias-nacion/todo-orden-casa-narino/142149.aspx. W Radio, *July 23, 2010*. Fragments of Fernando Tabares' Testimony, key witness in the DAS wire-tapping. Available at: http://www.wradio.com.co/oir.aspx?id=1331096. Caracol Radio, July 24, 2010. 'Fernando Tabares' revelations implicate Bernardo Moreno." Available at: http://www.caracol.com.co/nota.aspx?id=1331537. *La Silla vacía*, *July 23, 2010*. *Tabares' statement will be the crowning evidence against Uribe in the DAS scandal*. Available at: http://www.lasillavacia.com/historia/16849.

[203] Vanguardia. July 27, 2010. Bernardo Moreno's Lawyer says yes he asked for information from the DAS. Available at: http://www.vanguardia.com/historico/70161-abogado-de-bernardo-moreno-dice-este-si-le-pidio-informacion-al-das. *El Tiempo*. July 28, 2010. Bernardo Moreno's defense says that the former head of DAS intelligence is lying. Available at: http://www.eltiempo.com/archivo/documento/CMS-7830392.

[204] Foundation for Press Freedom. December 3, 2010. *Spying on journalists: the courts speak out.* Available at: http://www.ifex.org/colombia/2010/12/03/das-Report.pdf.

the journalist was related to investigations she conducted into the murder of the journalist and broadcaster Jaime Garzón, which had shown that the DAS misled the investigation of the crime.[205]

150. According to the information received, a document was discovered in the investigation undertaken by the Public Prosecutor marked "For DAS use only" and headed with the journalist's telephone numbers and email addresses. This document contained detailed instructions on how to threaten the journalist, establishing the conditions as to how, when and where the threats could be made so as not to be identified as DAS agents. According to the instructions, whoever was to make the threat should say "Madam, are you María Alejandra's mother? [wait for an answer] then I tell you that you've left us no other option, you have been told and paid no attention; now neither armored cars nor little letters will be of use - we have to deal with what you love best, and this happens for meddling in things that don't concern you, you scabby old bitch."[206] In addition to the text included in the instructions, the person who telephoned on November 17, 2004, threatened to burn journalist Duque's ten-year old daughter alive. The threat caused her temporary exile from Colombia.[207]

151. According to the information available to the IACHR, the Public Prosecutor's investigation also revealed the existence of dozens of DAS intelligence reports regarding journalist Duque. These reports, which were mainly compiled during the years 2003 to 2005, include resumes, photos, telephone call transcripts and intercepted emails (including between Duque and her lawyer), and an analysis of her activities (including the journalistic investigations she was then undertaking) and family information.

152. In the last few years, Claudia Julieta Duque has received constant death threats through various channels. However, she has never abandoned her work as a reporter and investigative journalist. At present she is considered to face an extraordinary level of risk, and she is the beneficiary of protective measures in Colombia and she and her daughter have been beneficiaries of precautionary measures granted by the IACHR since November 2009.

153. Carlos Lozano is the director of the *Voz* weekly magazine and has been called upon by the Government at different times to undertake humanitarian work or to liaise with guerilla groups. According to information published in the press, in statements made before the Public Prosecutor on October 25, 2010, Gustavo Sierra Prieto, former deputy director of the DAS Analysis Office, stated that former director María del Pilar Hurtado constantly requested information on Carlos Lozano, director of the *Voz* weekly periodical, which in turn had been requested by the Secretary General of the President's Office. Sierra added that Hurtado also ordered smear campaigns against the social commentator, by leaking compromising information to the media. According to press reports, Sierra stated in his testimony

---

[205] *Revista Semana*. December 12, 2009. Manual for Threats. *Manual para amenazar*. Available at: http://www.semana.com/noticias-nacion/manual-para-amenazar/132562.aspx. International Women's Media Foundation. *Claudia Julieta Duque has the courage to speak*. Available at: http://www.iwmf.org/archive/articletype/articleview/articleid/1272/claudia-julieta-duque-has-the-courage-to-speak.aspx. This fact was revealed in December 2009, after the date of closing the 2009 Annual Report.

[206] *Revista Semana*. December 12, 2009. Manual for Threats. Available at: http://www.semana.com/noticias-nacion/manual-para-amenazar/132562.aspx. *Noticias Uno*. DAS instructions to threaten Claudia Julieta Duque. Available at: http://www.noticiasuno.com/noticias/instructivo-del-das-para-amenazar-a-claudia-julieta-duque.html. US Office on Colombia, Center for International Policy, Washington Office on Latin America. June of 2010. *Far Worse than Watergate: Widening scandal regarding Colombia's Intelligence Agency*. Available at: http://www.noticiasuno.com/noticias/instructivo-del-das-para-amenazar-a-claudia-julieta-duque.html. See also a copy of the above DAS manual for threatening Claudia Julieta Duque, in the IACHR's possession, available at: http://www.youtube.com/watch?v=vfnkGqy4-tE.

[207] *Revista Semana*. December 12, 2009. Manual for Threats. Available at: http://www.semana.com/noticias-nacion/manual-para-amenazar/132562.aspx. *Noticias Uno*. DAS instructions to threaten Claudia Julieta Duque. Available at: http://www.noticiasuno.com/noticias/instructivo-del-das-para-amenazar-a-claudia-julieta-duque.html. US Office on Colombia, Center for International Policy, Washington Office on Latin America. June of 2010. *Far Worse than Watergate: Widening scandal regarding Colombia's Intelligence Agency*. Available at: http://www.noticiasuno.com/noticias/instructivo-del-das-para-amenazar-a-claudia-julieta-duque.html. See also a copy of the above DAS manual for threatening Claudia Julieta Duque, in the IACHR's possession, available at: http://www.youtube.com/watch?v=vfnkGqy4-tE.

that the former DAS director ordered that reports should be circulated through media outlets suggesting some relationship of the journalist to the FARC, to publically smear him.[208]

154. Lozano was in effect investigated by the National Attorney General's Office for alleged links with the FARC, but the proceedings were archived when it was determined that his contacts with the guerilla were limited to his role as a peace facilitator.[209]

155. Hollman Morris, director of the news program *Contravía*, is a distinguished independent journalist well-known for his reporting directed at denouncing human rights violations and as a voice for the victims of these violations.

156. According to the information received, in February 2010, Hollman Morris disclosed a document allegedly discovered by the Public Prosecutor in the course of investigations with respect to unlawful DAS activities.[210] In this official document - a PowerPoint presentation - they explain the actions that had to be taken against Morris. The instructions included "beginning a smear campaign at the international level through the following activities: communications; Including a video (on the) FARC / Arranging suspension of his visa / Sabotage actions (stealing his passport and national identity card, etc.), as well as "locating his home in [...] of Bogotá / Constant surveillance of his movements".[211]

157. One of the smear measures mentioned in the PowerPoint was the "Arranging for suspension of his Visa". In July 2010, journalist Morris was notified that his US visa had been denied, despite having been admitted and granted a scholarship for a journalism study program at Harvard University. After a strong international backlash, the decision was revoked.[212] In its observations, the State denied that the refusal to grant a visa for Mr. Morris was part of a State persecution policy given that "it has no influence in the proceedings before the US embassy in the country."[213]

158. Journalist Morris, after having had access to some of the DAS documents about him that were seized by the Public Prosecutor, also denounced that the DAS archives contained information about several aspects of his personal life (identification information, studies completed, professional activities, and his movements) as well as information on his immediate family, such as photographs of his parents' house, notes on his sisters, and the class times of his small children.[214]

---

[208] Newspaper *El Espectador*, November 9, 2010. Article entitled: 'The DAS suitcase for Palacio". Available at: http://www.elespectador.com/impreso/judicial/articuloimpreso-234123-valija-del-das-palacio. Newspaper *El Espectador*. November 11, 2010. The reports of Gustavo Sierra Prieto. Available at: http://www.elespectador.com/impreso/articuloimpreso-234488-los-Reports-de-gustavo-sierra-prieto.

[209] Caracol Radio, July 24, 2009. 'They archive the investigation against Álvaro Leyva and Carlos Lozano". Available at: http://www.caracol.com.co/nota.aspx?id=850402. Newspaper *El Espectador*. July 24, 2009. Investigation for FARC politics against *Álvaro Leyva and Carlos Lozano, terminated*. Available at: http://www.elespectador.com/noticias/judicial/articulo152397-precluyen-favor-de-alvaro-leyva-y-carlos-lozano-investigacion-farcp..

[210] Documents of the trial confiscated by the Public Prosecutor from the DAS, presented by the journalist in press circles. Available at: http://www.cipcol.org/?p=1467. See also Foundation for Press Freedom. December 3, 2010. *Spying on journalists: the courts speak out.* Available at: http://www.ifex.org/colombia/2010/12/03/das-Report.pdf.

[211] Documents of the trial confiscated by the Public Prosecutor from the DAS, presented by the journalist in press circles. Available at: http://www.cipcol.org/?p=1467. See also Foundation for Press Freedom. December 3, 2010. *Spying on journalists: the courts speak out.* Available at: http://www.ifex.org/colombia/2010/12/03/das-Report.pdf.

[212] Inter-American Press Society (SIP) July 13, 2010. SIP asks US consulate to reconsider Visa denial to Colombian journalist Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&idioma=us&id=4404. Newspaper El Nuevo Heraldo. July 13, 2010. Disagreement over US's Visa denial for Colombian journalist. Available at: http://www.elnuevoherald.com/2010/07/12/764703/polemica-por-negacion-de-visado.html. Foundation for Press Freedom (FLIP). July 14, 2010. About the travel situation of Hollman Morris. Available at: http://www.flip.org.co/alert_display/0/1057.html. IFEX. July 27, 2010. *Journalist Hollman Morris granted visa to join Harvard Program.* Available at: http://www.ifex.org/united_states/2010/07/27/morris_granted_visa/.

[213] Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 47.

[214] Hollman Morris. March of 2010. *The DAS, a criminal hunt*. Available at: http://www.facebook.com/note.php?note_id=388797002244.

159. In addition, according to information received, the former deputy director of DAS Intelligence Operations, Martha Inés Leal, related in her deposition of October 28, 2010, that the DAS compiled a video with the aim of linking various journalists to illegal armed groups such as the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN). According to press reports, this video may correspond to a release of information in 2006, which attempted to link journalist Hollman Morris with the FARC and thereby smear him.[215] According to press reports, Leal stated in the same deposition that from the direction of DAS he ordered to have Morris followed.[216]

160. Hollman Morris and his family have been the target of multiple death threats and acts of harassment and smearing. He has been categorized as being in a situation of extreme risk that merit domestic protective measures for himself and his family who have also been beneficiaries of precautionary measures granted by the IACHR since June 2000. During all these years and despite undergoing periods of forced exile, the journalist has not ceased reporting on human rights and, especially, on the victims of the armed conflict in Colombia.

161. There are other very serious cases in which, however, there has been no progress in the investigations. This is the case, for example, of journalist Gonzalo Guillen, Colombia correspondent for Miami's *El Nuevo Herald*, who has had to leave the country several times due to threats on his life. In November 2009 he received notification from the Public Prosecutor that he was identified as having been the victim of surveillance tracking by the DAS. In June 2010, the journalist was the target of serious death threats. He brought this to the Public Prosecutor's attention but states that no measures have been adopted in this regard.[217]

162. With regard to the investigations, the Commission does not have precise information with respect to which of the acts committed against the journalists Daniel Coronell, Claudia Julieta Duque, Carlos Lozano and Hollman Morris —among other journalists that have been subject to illegal actions by the DAS[218]— are being investigated in criminal proceedings underway in relation to the unlawful intelligence activities. Nevertheless, a December 2010 report of the Foundation for Freedom of the Press indicates that Claudia Julieta Duque's case remains to date at the investigation stage.[219] In its observations the State reiterated that "the wire tappings carried out by the DAS are not a state policy", and indicated that the "State has not tolerated this conduct nor it has allowed for them to remain with impunity. The facts were investigated and arrest warrants were issued against the officials."[220] However the State fails to provide specific information on the criminal proceedings relating to illegal intelligence activities against journalists.

---

[215] *La Silla vacía*. November 2, 2010. *The questions that Peñate must answer before the Public Prosecutor.* Available at: http://www.lasillavacia.com/historia/19296. RCN. October 28, 2010. *Martha Leal revealed tactics to implicate journalist with the FARC.* Available at: http://www.canalrcnmsn.com/noticias/martha_leal_revel%C3%B3_maniobra_para_inculpar_periodista_con_las_farc. CNN. October 28, 2010. *International pressure on Uribe mounts due to the 'wire-tapping'*". Available at: http://mexico.cnn.com/mundo/2010/10/28/presion-internacional-contra-uribe-por-las-chuzadas.

[216] CNN. October 28, 2010. *International pressure on Uribe mounts due to the 'wire-tapping'*". Available at: http://mexico.cnn.com/mundo/2010/10/28/presion-internacional-contra-uribe-por-las-chuzadas. Foundation for Press Freedom. December 3, 2010. *Spying on journalists: the courts speak out*. Available at: http://www.ifex.org/colombia/2010/12/03/das-Report.pdf.

[217] Foundation for Press Freedom. December 3, 2010. *Spying on journalists: the courts speak out.* Available at: http://www.ifex.org/colombia/2010/12/03/das-Report.pdf.

[218] See IACHR Annual Report 2009. Report of the Special Rapporteurship on Freedom of Expression. Chapter 2, para. 139. Available at: http://www.cidh.oas.org/pdf%20files/RELEAnual%202009.pdf.

[219] Foundation for Press Freedom. December of 2010. *Spying on journalists: the courts speak out.* Available at: http://www.ifex.org/colombia/2010/12/03/das-Report.pdf.

[220] Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 48.

### 3. Access to Information

163. Several problems have been reported in relation to access to public information and the right to information about oneself or *habeas data*, in relation to the unlawful DAS activities and subsequent investigations.

164. At first, when evidence came to light that the DAS were spying on journalists and other public figures, some people requested that they be provided with the reports existing about them with this entity. With respect to the journalist Claudia Julieta Duque, even the Constitutional Court itself in a Judgment dated October 23, 2008, ordered that the DAS "allow the plaintiff access to information being kept about her in the entity, with the sole exception of information under reserve within the framework of the judicial investigation, access to which the plaintiff does not have a legal right."[221] However, the DAS failed to hand over all the information which, due to the investigations previously mentioned, was subsequently known to exist in its archives; the entity argued that the said information did not exist.[222] In its observations the State reported that the legal representative of journalist Duque had filed two motions regarding these facts. The first incident was resolved by the Fourth Contentious Administrative Chamber of the Council of State on August 13, and the second was resolved by the Third Section of the Contentious Administrative Court of Cundinamarca – Subsection A on November 25, 2010. Both decisions found that the DAS Director had complied with the orders issued by the Constitutional Court.[223]

165. In addition, some journalists who have indications that they were being targeted for surveillance by the DAS have asked the Public Prosecutor for precise information on whether this entity was in fact listening in on their telephone conversations. For this purpose, they have provided their home, office and cell phone numbers. However, the information received shows that the Public Prosecutor has declined the request, indicating that the events are currently under investigation and are, therefore, confidential.

166. In addition, the available information shows that the DAS destroyed part of the evidence related to the events under investigation. In October 2010, William Romero, former head of the sub-department of DAS Human Resources, provided the Public Prosecutor with ample electronic and hard copy information, which he stated he had been ordered to destroy. According to information published in the press, the general prosecutor in charge acknowledged that certain evidence had been destroyed by the DAS.[224]

167. Finally, the judicial information gathered during the public hearings which took place before the Supreme Court of Justice is also classed as confidential without there appearing to be any law which establishes this exception to the right to access in a clear, precise and proportionate way.[225]

168. The IACHR acknowledges the utmost importance that these investigations may be effective; while also of protecting the life and integrity of those witnesses who have contributed to the

---

[221] Constitutional Court of Colombia. Judgment T-1037 de 2008. Judge Rapporteur, Jaime Córdoba Triviño.

[222] In accordance with information received dated May 20, 2009, for example, the DAS informed the journalist that "there were no documents linked to institutional actions such as work orders, requests, requirements, recordings, nor court proceedings having a link to the journalist CLAUDIA JULIETA DUQUE."

[223] Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, pp. 48-50.

[224] *Revista Semana*. October 28, 2010. *Former DAS detective hands over three boxes of evidence about 'wire-tapping' that he did not destroy.* Available at: http://www.semana.com/noticias-nacion/ex-detective-das-entrega-tres-cajas-pruebas-sobre-chuzadas-no-destruyo/146504.aspx. Terra.com. October 28, 2010. *Prosecutor recognizes there was destruction of evidence in 'wire-tapping'*. Available at: http://www.terra.com.co/noticias/articulo/html/acu35808-fiscal-reconoce-que-hubo-destruccion-de-pruebas-en-chuzadas.htm. *El Espectador*. October 28, 2010. *Prosecutor confirmed destruction of evidence of the 'wire-tapping'*. Available at: http://www.elespectador.com/articulo-232016-fiscal-confirmo-destruccion-de-pruebas-de-chuzadas.

[225] Foundation for Press Freedom. December 3, 2010. *Spying on journalists: the courts speak out.* Available at: http://www.ifex.org/colombia/2010/12/03/das-Report.pdf.

advancement of the investigation. However, there are other means less restrictive on the right of access to information and surely much more effective in guaranteeing the outcome of the investigations and the security of witnesses. In this sense, any restriction on access to public hearings by the press must be established by law, pursue a legitimate aim and be necessary and proportionate in relation to the aims in a democratic society. The rules of access must be concrete, objective and reasonable, and their application transparent.[226]

### 9. Costa Rica

169. The Office of the Special Rapporteur observes with satisfaction that the Inter-American Court of Human Rights has declared the case of journalist Mauricio Herrera Ulloa versus Costa Rica concluded upon ruling that the Costa Rican State has complied with all the operative paragraphs of the judgment issued on July 2, 2004. According to the ruling of the Inter-American Court, the State was required to annul the ruling handed down on November 12, 1999, by the Criminal Court of the First Judicial Circuit of San José that convicted Herrera Ulloa on four counts of publication offenses related to defamation. Costa Rica also had to adjust its domestic law to the provisions of Article 8(2)(h) of the American Convention on Human Rights. In a resolution dated November 22, 2010, the Inter-American Court viewed positively the fact that the Legislative Assembly had passed Law No. 8.837, the Law for the Creation of a Remedy to Appeal Judgments, which creates a remedy for appealing criminal judgments and, *inter alia*: allows the ruling to be reviewed by a higher court; consists of a simple remedy, without excessive formalities, that does not include requirements or restrictions that infringe upon the essence of the right to appeal and makes possible an integral examination of all the issues debated and analyzed by the trial court.[227] The case began in 1995, when Herrera Ulloa published a series of articles in newspaper *La Nación* that partially reproduced information from European newspapers on a controversy involving a Costa Rican diplomat.

170. The Office of the Special Rapporteur took note of the important ruling of the Third Chamber (Criminal) of the Supreme Court of Justice, dated December 18, 2009, which struck down Article 7 of the Print Act that established a prison term as punishment for offenses against honor.[228] According to the information received, in ruling on a writ of cassation submitted by José Luis Jiménez Robleto - a journalist with the newspaper *Diario Extra* who was convicted by a lower court of defamation and sentenced to 50 days in prison - the court ruled that the punishment of a prison term established in the 1902 Print Act had been tacitly annulled in 1971 with the promulgation of the current Penal Code. That Code does not include a prison sentence, but does include a sanction of a “day wage fine” and registration in the criminal registry.[229]

171. According to the information received, on February 19 the Constitutional Chamber of the Supreme Court of Justice ruled in favor of two journalists with the newspaper *La Teja* who the Costa Rican Football Federation (Fedefutbol) had denied accreditation to cover an international game of the national football team. According to the information received, Fedefutbol had tried to block *La Teja*’s access because in October 2009, the newspaper had published a photo illustration of the team’s members with faces of dogs after they failed to qualify for the Football World Cup in South Africa. The

---

[226] IACHR, Special Rapporteur for the Freedom of Expression. The Right of Access to Information in the Inter-American judicial context. OEA/Ser.L/v/II IACHR/RELE/INF. 1/09. December 30, 2009, para. 65.

[227] Inter-American Court of Human Rights. November 22, 2010. Case of Herrera Ulloa v. Costa Rica. Monitoring compliance with judgment. Available at: http://www.corteidh.or.cr/docs/supervisiones/herrera_22_11_10.doc

[228] Supreme Court of Justice of Costa Rica. Third Chamber. Judgment 01798. December 18, 2009. Available at: http://200.91.68.20/SCIJ/busqueda/jurisprudencia/jur_ficha_sentencia.asp?nValor2=462328&nValor1=1&strTipM=T&lResultado

[229] Committee to Protect Journalists (CPJ). February 12, 2010. *Court eliminates prison terms for defamation, but criminal convictions still possible.* Available at: http://www.ifex.org/costa_rica/2010/02/16/penal_code_reform/; La Nación. February 11, 2010. *Third Chamber eliminates prison time for journalists.* Available at: http://wvw.nacion.com/ln_ee/2010/febrero/11/pais2260696.html

Constitutional Chamber ordered Fedefutbol officials not to repeat the actions that gave grounds for the acceptance of the writ.[230]

172. The Office of the Special Rapporteur received information indicating that on March 5, the Constitutional Chamber of the Supreme Court of Justice dismissed a writ of constitutional protection (*amparo*) filed by *Diario Extra* over an alleged act of prior censorship. According to the information received, on May 4, 2009, police and court officials confiscated photographs taken by Elías Alvarado, a photographer with *Diario Extra*, at the site where a helicopter loaded with cocaine had crashed. The photographer said he had been subject to harassment and intimidation by State officials trying to get him to turn over a memory card in order to copy its contents. In the end, the photographer submitted to the request. Four days later, the officials returned the memory card. The Constitutional Chamber ruled that, according to the evidence received, the photographer's constitutional rights were not harmed because he agreed voluntarily to turn over the requested material, "did not demonstrate that he was a journalist," and the photographic equipment was returned several days later. In the ruling, the Constitutional Chamber established that "prior censorship is prohibited, except for reasons of health, national security, morality or proper conduct."[231]

173. The Office of the Special Rapporteur recalls that Principle 5 of the IACHR's 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."

174. According to information received by the Office of the Special Rapporteur, on June 9, officials with a private company contracted by the municipality of Osa blocked Efraín Sánchez, director of the newspaper *La Estrella del Sur*, from photographing construction taking place in the public park of Ciudad Cortés. According to the information received, the company called the police, who arrested the journalist minutes later after he had already left the construction site. More than a month later, the company publicly apologized to the journalist and to the Journalist Professional Association of Costa Rica, explaining that the incident happened due to confusion over acts of vandalism suffered previously at its facilities.[232]

### 10. Cuba[233]

175. In 2010, Cuba released 17 journalists who had been detained in 2003; the Inter-American Commission on Human Rights considered this a positive development. Even so, conditions persisted in Cuba that allow one to state that the conditions necessary for the exercise of the freedom of expression do not exist in Cuba.

---

[230] Supreme Court of Justice of Costa Rica. Constitutional Chamber. Judgment 2010-03375, February 19, 2010. Available at: http://scij.org.poder-judicial.go.cr/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&nValor1=1&nValor2=475705&strTipM=T&strDirSel=directo; La Nación. February 23, 2010. *Fourth Chamber orders Fedefutbol to respect freedom of the press.* Available at: http://www.poder-judicial.go.cr/observatoriojudicial/vol100/prensa/nota17.htm

[231] Supreme Court of Justice of Costa Rica. Constitutional Chamber. Judgment 2010-4657, March 5, 2010. Available at: http://scij.org.poder-judicial.go.cr/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&nValor1=1&nValor2=467596&strTipM=T&strDirSel=directo

[232] Municipality of Osa. Ordinary act No. 28-2010, July 14, 2010. Paragraph 10. Available at: http://www.gobiernolocalosa.go.cr/pdf/actas/2010/ordinarias/Acta%20Ordinaria%20No.%2028-2010%20(ratificada%2021-07-2010)%20Vieja.pdf; National Union of Journalists. August 20, 2010. *No to abuse of authority toward journalists.* Available at: http://www.elpais.cr/articulos.php?id=30668

[233] This section corresponds to the section on freedom of expression in Cuba in Chapter IV, Volume I, of the IACHR 2010 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.

176. The following paragraphs indicate some relevant facts related to the exercise of the freedom of expression in Cuba.

### 1. Gains

177. Up until November, Cuba had released, on condition that they travel to Spain, 17 journalists who were part of a group of prisoners arrested in 2003, during a massive detention of political dissidents and independent journalists. The IACHR encouraged the Cuban State to continue the process so as to release all the political prisoners. It also reiterated that Cuba should set aside the convictions of those persons, bring its procedural rules into line with international standards of due process, make the necessary reforms in keeping with its international human rights obligations, and implement a process of democratic normalization. The journalists released are: Léster Luis González Pentón, Omar Ruíz Hernández, Julio César Gálvez Rodríguez, José Luis García Paneque, Pablo Pacheco Ávila, Ricardo González Alfonso, Omar Rodríguez Saludes, Normando Hernández González, Mijail Bárzaga Lugo, Alfredo Pulido López, José Ubaldo Izquierdo Hernández, Fabio Prieto Llorente, Juan Carlos Herrera Acosta, Juan Adolfo Fernández Saínz, Víctor Rolando Arroyo Carmona, Miguel Galván Gutiérrez, and Alfredo Felipe Fuentes. According to the information received, of the group of journalists detained in the 2003 roundup, Pedro Argüelles Morán, Héctor Maseda Gutiérrez, and Iván Hernández Carrillo are still awaiting release.[234]

### 2. Acts of aggression, political harassment, or detentions for exercising the right of freedom of expression

178. In 2010 the State maintained an attitude of intolerance towards the exercise of independent journalism and peaceful opposition demonstrations. The IACHR received information on two detentions of *Hablemos Press* correspondent Calixto Román Martínez Arias, from April 23 to May 13 and from May 5 to June 5. According to the information received, on the first occasion he had been arrested while covering a ceremony commemorating the death of dissident Orlando Zapata Tamayo. In the second incident, Martínez was detained when covering a demonstration of political opposition figures in Havana.[235]

179. In addition, the IACHR was informed that journalists from the Information Center of the Consejo de Relatores de Derechos Humanos de Cuba[236], Juan Carlos González Leiva, Tania Maceda Guerra, and Sara Marta Fonseca Quevedo, had been held in Havana for five hours, on April 8, 2010, in order to keep them from attending a meeting. Police agents returned to harass and detain González and Maceda for several hours on August 1.[237]

---

[234] Committee for the Protection of Journalists, October 12, 2010. Cuba libera decimoséptimo periodista arrestado en redada de 2003. Available at: http://cpj.org/es/2010/10/cuba-libera-decimoseptimo-periodista-arrestado-en.php; IACHR. July 13, 2010. Press Release No. 69/10. IACHR Welcomes Release of Prisoners in Cuba.

[235] On that occasion, also arrested were six protesters, who were released shortly thereafter. Martínez remained in prison, and was said to have been deported to the province of Camaguey on June 5. Reporters without Borders, June 2, 2010. *Periodista detenido de nuevo, 10 días después de haber sido puesto en libertad*. Available at: http://www.ifex.org/cuba/2010/06/02/martinez_rearrested/es/; Periodistas en Español. June 11, 2010. *El periodista Moisés Leonardo Rodríguez recibe un "acta de advertencia" de las autoridades de Cuba.* Available at: http://www.periodistas-es.org/periodistas/el-periodista-moises-leonardo-rodriguez-recibe-un-acta-de-advertencia-de-las-autoridades-cubanas

[236] The Consejo de Relatores de Derechos Humanos is a free, democratic, and plural forum that was constituted in May 2007 for the promotion and defense of human rights.

[237] Cubanet. April 13. *Arrestan a periodistas independientes del Consejo de Relatores*. Available at: http://www.cubanet.org/CNews/y2010/abril2010/13_N_2.html. World Organisation Against Torture. April 16. *La OMCT reitera su llamado a liberar a todos los presos de conciencia*. Available at: http://www.omct.org/es/urgent-campaigns/urgent-interventions/cuba/2010/04/d20649/. International Federation for Human Rights. August 6, 2010. *Hostigamiento judicial, agresión y amenazas contra varios miembros del Consejo de Relatores de Derechos Humanos*. Available at: http://www.fidh.org/Hostigamiento-judicial-agresion-y-amenazas-contra.

180. On June 2, the director of the *Agencia de Prensa Libre Avileña*, José Manuel Caraballo Bravo, who was taking photographs in a peaceful protest, and reporter Raúl Arias Márquez, were said to have been arrested for several hours in Havana. According to the information received, police agents beat Arias on detaining him and then questioned the journalists and confiscated their camera, recorder, and telephone.[238]

181. The IACHR also received information regarding several detentions, in 2010, of independent journalist and human rights activist Julio Beltrán Iglesias, on May 4, May 18 and September 30 by state security agents.[239]

182. In addition, the IACHR received information according to which on January 29 police agents arrested journalist Juan Carlos Reyes Ocaña, of the agency *Holguín Press*, accused him of "contempt," "disobedience," and "unlawful economic activity," and held him for 24 hours. He was also said to have been arrested and threatened by the Police on December 4, 2009.[240]

183. The IACHR was also informed that journalist Oscar Sánchez Madán was released on April 11 after serving a three-year prison sentence. According to the information received, Sánchez was convicted in April 2007 of "pre-delictive social dangerousness."[241]

184. Article IV of the American Declaration indicates that every person has the right to freedom of investigation, opinion, expression, and dissemination of thought, by any medium. The IACHR reiterates that principle 1 of the Declaration of Principles on Freedom of Expression says 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."

185. The IACHR also recalls principle 9 of the Declaration of Principles on Freedom of Expression, according to which: "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." The IACHR understands that the detention and subsequent restrictions directed at the reporters are clear forms of restricting journalistic endeavor, and, therefore, the exercise of freedom of expression.

### 3. Restrictions on the use of the Internet

186. In 2009, the IACHR noted the restrictions and difficulties Cubans face when it comes to accessing the Internet. In 2010, the use of the Internet continued to be far from reach for most of the

---

[238] Misceláneas de Cuba. June 22, 2010. *Detenido y despojado de sus instrumentos de trabajo Josè Manuel Caraballo Bravo, director de la agencia de prensa avileña.* Available at: http://www.miscelaneasdecuba.net/web/article.asp?artID=28441; The Miami Herald. June 10, 2010. *Two Independent Journalists Arrested Covering Anti-Government Protest.* Available at: http://www.miamiherald.com/2010/06/24/1698289/two-independent-journalists-arrested.html.

[239] Cubanet, May 7, 2010. *Independent Journalist Duped and Arrested*. http://www.cubanet.org/news_english_Jan_Dec_2010.html; Misceláneas de Cuba. May 20, 2009. *Detenido arbitrariamente el periodista independiente Julio Beltrán Iglesias.* Available at: http://www.cubanet.org/news_english_Jan_Dec_2010.html; Misceláneas de Cuba. October 8, 2010. *Víctima de un secuestro el periodista independiente Julio Beltrán Iglesias.* Available at: http://www.miscelaneasdecuba.net/web/article.asp?artID=30182.

[240] Reporters without Borders. February 1, 2010. *Un periodista disidente arrestado en Holguín*. Available at: http://es.rsf.org/cuba-un-periodista-disidente-arrestado-01-02-2010,36263.html; Cubanet. February 2. *Arrestado en Cuba el periodista Juancarlos Reyes Ocaña*. Available at: http://www.periodistas-es.org/reporteros/arrestado-en-cuba-el-periodista-juan-carlos-reyes-ocana; Inter-American Press Association. December 6, 2009. *Amenazan con dispararle a periodista.* Available at: http://www.sipiapa.com/cuba/espanol/noticia120809b.htm.

[241] Reporters without Borders. April 16, 2010. *Tras la liberación de Oscar Sánchez Madán, veinticuatro periodistas siguen esperados a recobrar su libertad*. vailable at: http://www.ifex.org/cuba/2010/04/16/sanchez_madan_released/es/

population, due to its high cost, the low connection speeds,[242] and the restrictive rules that limit or obstruct efforts to get on line.

187. In 2010, resolution 179/2008 continued to be part of the Cuban legal order; it establishes a "Regulation for providers of Internet services to the public, which are offered in the Internet areas, which are situated in hotels, post offices, or other institutions of the country and where national and international Internet and email services are provided to natural persons."[243] Among the provisions that call the IACHR's attention is the following obligation for providers: "to adopt the measures necessary to impede access to sites whose contents are contrary to the social interest, morality, and good customs; as well as the use of applications that affect the integrity or security of the State." The same provision establishes, among other points, the following: "Providers shall abide by the provisions emanating from the Organs of Defense of the country in exceptional situations, as well as the performance of tasks that cannot be put off for ensuring the defense and security of the State." When a provider fails to abide by the regulation, he or she may be sanctioned by temporary or definitive invalidation of the services and contracts he or she has signed with the provider of public services for data transmission and Internet access, according to Article 21 of the resolution.

188. In 2010, resolution 55/2009 continued in force, having come into force in June 2009; it is the basis of the same regulation mentioned in the previous paragraph for the so-called Internet Service Providers for Storage, Hosting, and Applications.[244] According to this resolution, the regulation includes those Cuban juridical persons who have received an operating license as a Public Services Provider for Access to Internet, which includes those who rent a physical space to a client who brings his or her own computer; those who provide the service of hosting sites, applications, and information; and those who grant applications services to third persons.

189. In this respect, the IACHR reiterates that the Internet "is an instrument with the capacity to fortify the democratic system, assist the economic development of the region's countries, and strengthen full enjoyment of freedom of expression. The technology of the Internet is without precedent in the history of communications and it allows rapid access of and transmission to a universal network of multiple and varied information. Maximizing the population's active participation through the use of the Internet furthers the political, social, cultural, and economic development of nations by strengthening democratic societies. In turn, the Internet has the potential to be an ally in the promotion and dissemination of human rights and democratic ideas and a major tool in the actions of human rights organizations, because of its speed and breadth which allow it to immediately transmit and receive information on situations affecting fundamental rights in different regions."[245]

190. The IACHR was also informed of different acts of police or judicial harassment of persons who have issued critical opinions or information on the Internet. The IACHR learned of the detention of writer and independent journalist Luis Felipe Rojas, who was arrested on August 16, 2010, after having published on his blog *Cruzar las Alambradas* a report in which he denounced arbitrary detentions and

---

[242] In Cuba there are two webs, one domestic, with limited access to information resources, and the other international. The average cost of one hour of connection to the domestic web network is approximately US$ 1.63 and to the international web US$ 5.48, in an economy in which the average monthly salary is about US$ 20. In January, the government was said to have announced an improvement in the satellite connections, which would allow for a 10% increase in the connection capacity. Reporters without Borders. 2010. Internet Enemies. Available at: http://en.rsf.org/internet-enemie-cuba,36678.html

[243] Ministry of Information and Communications. Resolution No. No 179/2008. Available at: http://www.mic.gov.cu/sitiomic/legislacion/R%20179-%2008%20Reglam%20Proveedores%20Serv%20Acceso%20Internet%20al%20Publico.pdf

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

[245] IACHR. Annual Report 1999: Annual Report of the Special Rapporteur for Freedom of Expression 1999, Chapter II. Assessment of the Situation of Freedom of Expression in the Hemisphere; D. The Internet and Freedom of Expression.

other human rights violations in Cuba.[246] The IACHR also received information according to which journalism student Darío Alejandro Paulino Escobar had been suspended for two years from the School of Social Communication of the Universidad de La Habana for having criticized, in a Facebook group, acts of repudiation against opponents.[247] On April 17, police agents kept bloggers Yoanis Sánchez and Eugenio Leal from giving a lecture on the use of the Internet in a home in the locality of Punta Brava.[248]

191. Along the same lines, on April 24, state security agents were said to have detained, at his house in Holguín, the director of the digital daily publication *Candonga* and activist for Internet access Yosvani Anzardo Hernández for directing an independent publication. According to the information received, the authorities held Anzardo for six hours to question him. He had already been detained without charges in September 2009 for almost two weeks.[249]

192. The IACHR recalls that Principle 2 of the Declaration of Principles on Freedom of Expression of the IACHR indicates 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."

193. In addition, the IACHR recalls that according to Principle 13 of the same declaration: "Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression."

### 4. Criminalization of protest

194. The IACHR was also informed of various acts aimed at criminalizing actions of persons who, by different means, sought to exercise their right to freedom of expression. According to the information received, on May 24 seven activists from a lesbian and gay group were arrested in Havana for distributing copies of the Universal Declaration of Human Rights and four others had been deported to other provinces.[250] On August 16, police and state security agents are said to have arrested five opposition members from the steps of the Universidad de La Habana who were demonstrating there to read a communiqué in which they called for respect for human rights, shouted anti-government slogans, and displayed placards. Two women arrested were said to have been held for 24 hours, and three others

---

[246] According to the information received, Rojas was released after being held 12 hours at a police station. Rojas was also said to have been arbitrarily detained on December 25 and 27, 2009, and on February 7, 2010. Amnesty International. June 2010. *Restricciones a la libertad de expresión en Cuba*. p. 21. Available at: http://www.amnesty.org/en/library/asset/AMR25/005/2010/en/b795ecee-89b4-4583-aa2b-f9c58b722e3e/amr250052010es.pdf; ABC. August 16, 2010. *El bloguero Luis Felipe Rojas, detenido tras un "informe del horror" en Cuba*. Available at: http://www.abc.es/20100816/internacional/bloguero-luis-felipe-rojas-201008161749.html

[247] Reporters without Borders. 2010. *Internet Enemies*. Available at: http://en.rsf.org/internet-enemie-cuba,36678.html; Penúltimos Días. February 6, 2010. *El estudiante de periodismo Darío Alejandro Paulino Escobar recurre su expulsión de la Universidad de La Habana por opinar en Facebook.* Available at: http://www.penultimosdias.com/2010/02/06/el-estudiante-de-periodismo-dario-alejandro-paulino-escobar-recurre-su-expulsion-de-la-universidad-de-la-habana-por-opinar-en-facebook/

[248] Misceláneas de Cuba. April 20, 2010. *Agentes del régimen cubano abortan conferencia sobre Internet*. Available at: http://www.miscelaneasdecuba.net/web/article.asp?artID=27294; Generación Y. April 19, 2010. *Encuentro Blogger en Punta Brava.* Available at: http://www.youtube.com/watch?v=jZrJ0jjjnNw.

[249] Amnesty International. June 2010. *Restricciones a la libertad de expresión en Cuba*. P 21. Available at:http://www.amnesty.org/en/library/asset/AMR25/005/2010/en/b795ecee-89b4-4583-aa2b-f9c58b722e3e/amr250052010es.pdf; Misceláneas de Cuba. April 25, 2010. *Detienen al periodista independiente Yosvani Anzardo Hernández.* Available at: http://www.miscelaneasdecuba.net/web/article.asp?artID=27370.

[250] Misceláneas de Cuba. May 26, 2010. Arrestan a activistas por repartir ejemplares de la Declaración Universal de los Derechos Humanos. Available at: http://www.miscelaneasdecuba.net/web/article.asp?artID=28010; Cuba Verdad. May 27, 2010. Detienen a lesbianas por repartir la Declaración Universal de los Derechos Humanos. Available at: http://cubadata.blogspot.com/2010/05/detienen-lesbianas-por-repartir-la.html.

for 10 days.[251] In addition, the IACHR was informed of the detention said to have been suffered by at least six members of the opposition who displayed placards and shouted anti-government slogans on the steps of the National Capitol building in Havana on May 12.[252] In addition, on May 8 police agents are said to have prevented a group of opponents from demonstrating silently, in a sit-down protest, in the municipality of Regla, in Havana. Several members of the group were detained.[253]

195. The IACHR recalls that Principle 1 establishes: "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."

196. In addition, Principle 2 of the above-cited Declaration of Principles notes: "Every person has the right to seek, receive and impart information and opinions freely under terms set forth in [Article IV of the American Declaration of the Rights and Duties of Man]. 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. Ecuador

197. The Office of the Special Rapporteur takes note of the decision by the Legislative Branch of Ecuador in December of 2009 to postpone discussion of the Organic Communication Law. In this respect, the Office recognizes the fact that the members of the Legislative Branch are studying the bill in the light of international human rights treaties that have been incorporated into domestic law through the Ecuadorian constitution in an exemplary fashion.[254]

198. The Office of the Special Rapporteur also observes with satisfaction that on November 29, the Ecuadorian State made an apology to Rafael Cuesta Caputi, the former news director of the television channel *TC Televisión*, and accepted responsibility for not having appropriately investigated the death threats he received in January 2000, nor the attempt on his life with explosives that he suffered in February of this year, an attack which caused several physical wounds.[255]

199. Once again, the Office of the Special Rapporteur wishes to express its recognition for the preparation of the Penal Guarantees Code bill, which would, among other things, eliminate the

---

[251] El Mundo. October 8, 2010. *Los jóvenes que gritaron "abajo Fidel" en la Universidad de La Habana no callan*. Available at: http://www.elmundo.es/america/2010/10/08/cuba/1286545811.html; Misceláneas de Cuba. September 10, 2010. *Liberados miembros del CID manifestantes en la escalinata universitaria.* Available at: http://www.miscelaneasdecuba.net/web/article.asp?artID=29748. Noticias 41. August 18, 2010. *Protesta en la Universidad de La Habana*. Available at: http://www.youtube.com/watch?v=-0I77NdmgUk.

[252] Misceláneas de Cuba. May 18, 2010. *Detienen a activistas que se disponían a hacer manifestación frente al capitolio habanero.* Available at: http://www.miscelaneasdecuba.net/web/article.asp?artID=27829; Cubanet. May 21. *Protesta de opositores pacíficos en el Capitolio.* Available at: http://www.cubanet.org/CNews/y2010/mayo2010/21_N_6.html

[253] Misceláneas de Cuba. May 11, 2010. *Protesta por acoso de la policía política es recibida con más represión.* Available at: http://www.miscelaneasdecuba.net/web/article.asp?artID=27661; Cuba, Democracia y Vida. May 13, 2010. *Amenazados y detenidos opositores en Regla.* Available at: http://www.cubademocraciayvida.org/web/article.asp?artID=6779

[254] Letter from the Special Rapporteur addressed to the President of the Legislative Assembly of Ecuador, published by the newspaper El Universo. December 8, 2009. Available at: http://www.eluniverso.com/data/recursos/documentos/RelatoriaLeydemedios.pdf. Radio Nederland Wereldomroep. December 17, 2009. *Ecuador: Media Law Postponed.* Available at: http://www.rnw.nl/espanol/article/ecuador-postergada-ley-de-medios. Diario Hoy. December 9, 2009. *OAS Rapporteur concerned over Communication Bill.* Available at: http://www.hoy.com.ec/noticias-ecuador/relatora-de-la%E2%80%A6e-comunicacionrelatora-de-la-oea-preocupada-por-proyecto-de-ley-de-comunicacion-381584.html

[255] El Comercio. November 29, 2010. *State offers apology to former news director.* Available at: http://www4.elcomercio.com/2010-11-29/Noticias/Politica/Noticias-Secundarias/Estado_Rafael-Cuesta.aspx; El Diario. November 30, 2010. *State apologizes to Cuesta.* http://www.eldiario.com.ec/noticias-manabi-ecuador/174066-estado-pide-disculpas-a-cuesta/; Fundamedios. December 3, 2010. *Fundamedios sees it as positive that the State has accepted responsibility in the violation of the rights of journalist Rafael Cuesta.* Available at: http://www.ifex.org/ecuador/2010/12/03/cuesta_derechos/es/

codification of offenses against public officials, *desacato*, and certain kinds of defamation as crimes. The Office encourages the State to push for its passage. This law would prevent some of the incidents that are subjects of concern to this office and that are mentioned in this report.

200. The Office of the Special Rapporteur received information on various acts of aggression against the employees of media outlets committed during the serious acts of violence that took place on September 30.[256] Common during the attacks were beatings, use of tear gas, arbitrary detentions, confiscation of photographic equipment, and a variety of actions intended to block media coverage. According to the information received, the acts of violence included riot police beating and firing tear gas at Eduardo Córdova, a journalist with public television channel *TV Ecuador*, and camera man Roberto Molina until they were thrown out of the National Assembly. In that same building, Ana María Cañizares, a reporter with *Teleamazonas*, was also attacked by police officers. Likewise, in the Quito Station, officers in revolt attacked Jimmy Coronado, a photographer with the Permanent Association of Human Rights, and Miguel Jiménez, the official press photographer for the presidential cabinet. Also in Quito, police officers attacked two photographers with the news agency *AFP* who were trying to cover incidents taking place nearby the Police Hospital. The journalists were beaten, relieved of their cameras, and affected by pepper gas. Their photographs were erased. Likewise, riot police officers arrested a news team from the network *Telesur*. Vinicio León, a camera assistant with *Teleamazonas*, suffered a bullet wound in his left thigh as he was providing coverage from outside the Police Hospital. In the same area, Antonio Narváez, a cameraman with *Ecuavisa*, was wounded by a rubber bullet. In Ambato, police officers beat a photojournalist with the newspaper *El Comercio*, launched tear gas at him, and confiscated his photography equipment. In Portoviejo, Gustavo Macay Cedeño, a journalist with *Radio Capital,* was beaten by police officers upon trying to help a photographer whose camera the police were trying to take to erase the images captured. Also, the Office of the Special Rapporteur was informed that police officers and civilians in political opposition to the sitting government broke the doors and windows of the public media buildings in order to enter the facilities, while riot police tried to cut off the broadcasts of public radio and television stations. Separately, members of the presidential guard beat Hernán Higuera, a reporter with the network *Ecuavisa*, when he tried to report on the police protests in Quito.[257]

201. The Office of the Special Rapporteur was also informed that starting in the early afternoon hours of September 30, the government declared a nation-wide state of emergency under the provisions of Article 164 and following of the Constitution of the Republic of Ecuador. After issuing the decree, radio and television broadcasters were ordered to suspend their ordinary programming and broadcast the official government programming. The measure was in effect until the crisis was resolved in the evening hours. At that time, the radio and television broadcasters were authorized to return to their regular programming. According to the information received, several private television channels were able to broadcast their news before the government suspended the order to link up to the official broadcast signal.[258]

202. In other incidents of violence against media outlets and workers, the Office of the Special Rapporteur received information of an attack with a low-powered explosive device against the channel *Teleamazonas* on December 3, 2009, in Quito.[259] On December 29, 2009, journalist Ana María

---

[256] IACHR. September 30, 2010. *Press Release No. 99/10. IACHR condemns any attempt to alter democratic order in Ecuador.* Available at: http://www.cidh.oas.org/Comunicados/English/2010/99-10eng.htm

[257] Fundamedios. October 5, 2010. *Attacks on journalists and media outlets rise to 31 in the attempted coup in Ecuador.* Available at: http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=950; Reporters without Borders. October 1, 2010. *Police uprising against President Correa leads to censorship and violence against media.* Available at: http://en.rsf.org/ecuador-police-uprising-against-president-01-10-2010,38482.html

[258] Fundamedios. September 30, 2010. *Private media outlets ordered by the government to only broadcast the indefinite and uninterrupted government signal.* Available at: http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=946; Committee to Protect Journalists (CPJ). October 1, 2010. *Ecuador, facing police revolt, censors news coverage.* Available at: http://cpj.org/2010/10/ecuador-facing-police-revolt-censors-news-coverage.php

[259] Teleamazonas. December 3, 2009. *Bomb explodes at Teleamazonas, in Quito; Jorge Ortiz says it will not silence the channel.* Available at: http://vodpod.com/watch/2631425-estalla-bomba-en-teleamazonas-en-quito-jorge-ortiz-dice-que-no-callarn-al-

Continued…

Cañizares, cameraman Manuel Tumbaco, and assistant cameraman Francisco Quizno, all of *Teleamazonas*, were attacked in Quito while driving to the channel's headquarters after covering the news at the National Assembly. According to the information received, the journalists were intercepted by a sport utility vehicle that blocked their way. The SUV's occupants then beat the cameraman and his assistant. The Office of the Special Rapporteur values the fact that the government has condemned the acts of violence reported.[260]

203. The Office of the Special Rapporteur also received information according to which on February 10, 2010, Pavel Calahorrano, a photojournalist with the newspaper *El Comercio*, was attacked by a police officer in Quito.[261] In other incidents, according to information received, on February 25, 2010, unidentified individuals detonated an explosive device in the city of Macas in front of the home of William Ribadeneira, the director of *Radio Bonita*.[262] On March 26, Alba Aldean, a reporter with *Radio Carrusel*, was insulted and beaten by an official with the Civic Board and director of a hospice for the terminally ill. The official was annoyed by the journalist's coverage of a demonstration against Venezuelan President Hugo Chávez.[263] On May 16, a group of police officers beat Carlos Delgado, a photographer and journalist with *El Mercurio,* in the city of Manta, launching tear gas at him and detaining him. Their goal was to erase images of a different incident of police violence from his camera. Because of the attack, Delgado had to be hospitalized.[264] On July 19, Rodolfo León, a cameraman with *Ecuavisa*, was attacked by demonstrators opposed to a referendum proposed by the President.[265] On Agust 24, cameraman Ramón Vergara, with the *Ecuavisa* television network, was pushed and struck by guards at the state Civil Registry of Guayaquil when he tried to film a protest staged by users of the Civil Registry.[266] On October 18, a group sympathetic to the government intimidated and insulted a team of *Ecuavisa* journalists who were trying to capture images of a protest taking place outside the Quito Presidential Palace. The protest

…continuation
canal; Fundamedios. December 2009. *Explosive device set off at television channel.* Available at: http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=799

[260] IACHR. Office of the Special Rapporteur for Freedom of Expression. December 31, 2009. Press Release R88/09. *The Special Rapporteur for Freedom of Expression expresses its concern regarding the assault suffered by Teleamazonas' journalists in Ecuador.* Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=777&lID=2

[261] Instituto Prensa y Sociedad (IPYS)/IFEX. February 25, 2010. *Police officer assaults photojournalist.* Available at: http://ifex.org/ecuador/2010/02/25/calahorrano_assaulted/. Fundamedios/Alert N°139. February 11, 2010. *Police officer assaults photojournalist.* Available at: http://es-la.facebook.com/notes/fundamedios/agente-policial-agrede-a-fotoperiodista/301483837026

[262] Fundamedios/Alert N° 144. February 26, 2010. *Journalist denounces murder attempt and threat.* Available at: http://es-la.facebook.com/note.php?note_id=330127217026&comments&ref=mf. Instituto Prensa y Sociedad IPYS/IFEX. March 4, 2010. Attack on journalist. Available at: http://www.ifex.org/ecuador/2010/03/04/ribadeneira_explosives/es/

[263] Instituto Prensa y Sociedad (IPYS). April 8, 2010. *Journalist denounces attack by member of the Civic Council.* Available at: http://www.ifex.org/ecuador/2010/04/08/aldean_assaulted/es/; Fundamedios. March 26, 2010. *Journalist denounces attack by member of the Civic Council of Guayaquil*. Available at: http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=856

[264] El Mercurio. May 17, 2010. *Brutal police attack on journalist Carlos Delgado puts him in the hospital.* Available at: http://www.mercuriomanta.com/index.php?option=com_content&view=article&id=7854:brutal-agresion-de-policias-a-periodista-carlos-delgado-lo-tiene-hospitalizado&catid=4:rockstories; Fundamedios. May 19, 2010. *Police officer assaults journalist.* Available at: http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=885

[265] Fundamedios. July 21, 2010. *Demonstrators attack cameraman.* Available at: http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=909; Ecuador inmediato. July 20, 2010. *In the Wake of Incidents, President Correa confirms support for referendum in La Concordia*. Available at: http://www.ecuadorinmediato.com/Noticias/news_user_view/tras_incidentes_presidente_correa_ratifico_apoyo_a_consulta_en_la_concordia--130570

[266] Fundamedios. August 25, 2010. *Guards attack cameraman.* Available at: http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=920; Ecuavisa. August 24, 2010. *Ecuavisa cameraman beaten by guards at the Government Civil Registry*. Available at: http://www.ecuavisa.com/noticias-nacionales/27473.html

was staged by family members of police officers who rebelled on September 30. They were demanding amnesty for their family members.[267]

204. The IACHR also received information on various threats received by communicators and media outlets. On February 12, 2010, a bomb threat was received at a building occupied by public media outlets *Ecuador TV, Radio Pública* and the newspaper *El Telégrafo*, in Quito. Upon evacuating the building and searching it, the authorities did not find any explosive devices.[268] On September 29, the network *Teleamazonas* also received a call warning of the placement of an explosive in its Quito headquarters. The authorities found no explosive device there either.[269]

205. The IACHR was also informed that journalist Eduardo Vite Benítez, the news director for *Telecosta*, received death threats during January and February that are allegedly related to an investigation he is in charge of into alleged irregularities in municipal contracts in the coastal city of Esmeraldas. According to the information received, in February the authorities captured two individuals suspected of making the threats.[270] In the city of Nueva Loja, Leidi Vallejo, a journalist with *Radio Seducción* denounced that a police officer had threatened her with death over a report on the sale of overpriced gas cylinders.[271] Likewise, on October 29, an unknown individual intercepted a vehicle being driven by Hólger Guerrero, a journalist with *Canal Uno,* and threatened him with death. The incident took place after Guerrero criticized the former Police Hospital director on his program.[272] On November 23, the journalist Rómulo Barcos was threatened with death by an unidentified individual while he was at a march against crime.[273] In Guayaquil, Hugo Gavilánez, a journalist with *Canal Uno*, received death threats for several months starting in July. The threats could be related to commentaries he has made against common criminality.[274]

206. The Office of the Special Rapporteur reiterates the importance of building a climate of respect and tolerance toward ideas and opinions, and recalls that Principle 9 of the IACHR's Declaration

---

[267] Fundamedios. October 22, 2010. *TV channel team attacked by mob.* Available at: http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=959; Hoy. October 22, 2010. *TV channel team attacked.* Available at: http://www.hoy.com.ec/noticias-ecuador/equipo-de-canal-de-television-agredido-437570.html

[268] El Diario. February 24, 2010. *Public media outlets suffer bomb threat.* Available at: http://www.eldiario.com.ec/noticias-manabi-ecuador/144472-medios-publicos-sufrieron-amenaza-de-bomba/; El Comercio. February 24, 2010. *Bomb threat at public media outlets.* Available at: http://www4.elcomercio.com/Generales/Solo-Texto.aspx?gn3articleID=103929

[269] Teleamazonas. September 29, 2010. *Teleamazonas suffers bomb threat.* Available at: http://www.teleamazonas.com/index.php?option=com_content&view=article&id=5588:todos-tranquilos-no-hay-bomba&catid=1:nacionalestitulares&Itemid=88. La Hora. September 29, 2010. *Teleamazonas in Quito evacuated on bomb threat.* Available at: http://www.lahora.com.ec/index.php/noticias/show/1101025616/-1/Evac%C3%BAan_Teleamazonas_en_Quito_por_amenaza_de_bomba.html

[270] Instituto Prensa y Sociedad (IPYS). January 15, 2001. *Reporter threatened with death.* Available at: http://www.ipys.org/alertas/atentado.php?id=2124. Expreso. July 31, 2010. *90% of all extortion victims are poor.* (See side story under the title: *Más casos*) Available at: http://www.diario-expreso.com/ediciones/2010/08/01/guayaquil/guayaquil/90-de-victimas-de-extorsion-es-pobre/

[271] Instituto Prensa y Sociedad (IPYS). January 15, 2010. *Journalist denounces that police officer threatened her with death.* Available at: http://www.ipys.org/alertas/atentado.php?id=2121; Fundamedios. January 2010. *Journalist denounces police officer's death threat.* Available at: http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=815

[272] Fundamedios. November 8, 2010. *Reporter threatened with death.* Available at: http://www.ifex.org/ecuador/2010/11/08/guerrero_death_threat/es/; Report 21. October 31, 2010. Correa accuses a colonel of having tried to poison him during the rebellion. Available at: http://informe21.com/cesar-carrion/correa-acusa-coronel-haber-instigado-envenenarlo-rebelion

[273] Fundamedios. November 29, 2010. *Reporters receive death threats.* Available at: http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=973; Diario Hoy. November 29, 2010. *Rómulo Barcos receives death threats.* Available at: http://www.hoy.com.ec/noticias-ecuador/romulo-barcos-habria-recibido-amenazas-de-muerte-444521.html

[274] Fundamedios. November 29, 2010. *Reporters receive death threats.* Available at: http://www.ifex.org/ecuador/2010/11/30/gavilanez_threatened/es/; La Hora. November 30, 2010. *Reporter threatened with death.* Available at: http://www.lahora.com.ec/index.php/noticias/show/1101056094

of Principles states: "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."

207. As the Office of the Rapporteur has indicated previously, diversity, pluralism, and respect for the distribution of all ideas and opinions are essential conditions for the functioning of any democratic society. Consequently, the authorities must contribute decisively to building a climate of tolerance and respect in which all individuals can express their thoughts and opinions without fear of being attacked, punished or stigmatized for doing so. Likewise, it is the State's duty to create the conditions that allow for all ideas and opinions to be freely disseminated. This includes the obligation to carry out investigations and adequately punish those who use violence to silence communicators or media outlets.

208. With regard to court proceedings, the Office of the Special Rapporteur was informed that on August 10, 2010, the Penal Guarantees Court issued an order for the preventative detention of Juan Alcívar, a reporter with radio station *El Nuevo Sol* and a correspondent for the newspaper *La Hora* in the La Concordia area, for being suspected of having committed a "terrorist act." The order originated from the fact that the journalist was present during a visit by President Rafael Correa to the community of La Concordia, on July 19, 2010. During the visit, a tear gas bomb was thrown in the direction of the president, making for a confusing incident. Almost a month later, the court issued its order for the arrest of Alcívar.[275] However, the order of preventative detention was substituted weeks later with a requirement to appear and sign every 15 days before the court.[276] Several sources have argued that the journalist was part of the demonstration in order to carry out his professional duties and that the order for arrest is retaliation for reports he has done that are critical of the local public authorities.[277]

209. According to the information received, on September 17, the mayor of Concordia, Walter Ocampo Heras, and the Solicitor General for the municipality, Miguel Moreta, brought a new private lawsuit against Alcívar for "terrorist aggression toward public officials," based on the same facts.[278] A Penal Guarantees court declared the accusation abandoned given the accuser's absence in a hearing held on November 23.[279]

210. The Office of the Special Rapporteur received information according to which in July, unidentified individuals intimidated the journalist, causing damage to his vehicle with a message in paint that said: "Shut up, don't fuck with the mayor."[280] On September 30, Alcívar was attacked by the

---

[275] Reporters without Borders. August 30, 2010. *Controversial charge of terrorism against journalist.* Available at: http://www.rsf-es.org/news/ecuador-polemico-cargo-de-terrorismo-contra-un-periodista/; Fundamedios. September 1, 2010. Journalist ordered arrested, mayor threatens to bring charges against him. Available at: http://www.ifex.org/ecuador/2010/09/01/alcivar_arrest_warrant/es/

[276] Fundamedios. October 15, 2010. *Public servant attacks journalist who faces criminal charges.* Disponible en: http://www.ifex.org/ecuador/2010/10/15/alcivar_assaulted/es/

[277] Committee to Protect Journalists. August 27, 2010. *Critical Ecuadoran journalist charged with terrorism.* Available at: http://cpj.org/2010/08/critical-ecuadoran-journalist-charged-with-terrori.php; El Universo. September 15, 2010. *Juan Alcívar. They changed my role: I didn't throw the bomb, I saw the gases*. Available at: http://www.eluniverso.com/2010/09/15/1/1447/juan-alcivar-rivas-cambiaron-parte-lance-bomba-vi-gases.html?p=1354&m=1775. El Comercio. August 29, 2010. *Journalist Juan Alcívar the focus of accusation by police.* Available at: http://www4.elcomercio.com/2010-08-29/Noticias/Politica/Noticias-Secundarias/EC100829P3CONCORDIA.aspx

[278] Fundamedios. October 4, 2010. *Mayor files new lawsuit against journalist.* Available at: http://www.ifex.org/ecuador/2010/10/04/alcivar_new_lawsuit/

[279] La Hora. November 25, 2010. *Judge declares case against correspondent abandoned.* Available at: http://www.lahora.com.ec/index.php/noticias/show/1101053528/-1/Juez_declar%C3%B3_abandonada_causa_contra_corresponsal.html

[280] Fundamedios. September 1, 2010. *Journalist ordered arrested, mayor threatens to bring charges against him.* Available at: http://www.ifex.org/ecuador/2010/10/04/alcivar_new_lawsuit/

Concordia Solicitor General and his wife while carrying out journalistic work,[281] and on November 26, he was insulted, struck, and threatened by a family member of the mayor while in a public place in Concordia.[282]

211. The Office of the Special Rapporteur received information concerning a request made on September 1 by María de los Ángeles Duarte, the minister of Transportation and Public Works, to Editorial Paradiso and the journalists Juan Carlos Calderón and Christian Zurita. She asked them to take the book *Big Brother* out of circulation, correct the caption on a photograph, and abstain from publishing her image or else she would bring legal actions against the authors and the publisher. The book contains information on State contracts received by Fabricio Correa, the president's brother.[283] On September 17, Minister Duarte sent a second letter to the journalists warning them that she would start legal action if the journalists did not take their book out of circulation. On September 29, in a third letter, the minister asked the reporters to appear before a District Administrative Court in order to testify on the contents of the book. The journalists have not appeared, arguing that they have not been called by a competent authority.[284] Also, the journalists have been the subject of various insults and damaging remarks by senior State officials.[285]

212. The Office of the Special Rapporteur received information indicating that on January 15, 2010, a journalist with the newspaper *El Universo*, Peter Tavra Franco, was sentenced by the 3rd Criminal Chamber of Guayaquil to six months in prison and ordered to pay damages of US$3,000 to an individual questioned by the journalist for the alleged commission of the crime of human trafficking. The lower court ruled against the plaintiff, but a higher court reversed that decision, sources indicated. They added that the process remains open.[286]

213. The Office of the Special Rapporteur was informed of a prison sentence of three years handed down on March 26 against Emilio Palacio, a journalist and columnist for the newspaper *El Universo* in the city of Guayaquil, Ecuador, for the crime of defamation (*injuria calumniosa*). The conviction came after charges were filed by Camilo Samán, president of the Corporación Financiera

---

[281] Fundamedios. October 15, 2010. *Journalist who is facing legal proceedings assaulted by public servant*. Available at: http://www.ifex.org/ecuador/2010/10/15/alcivar_assaulted/

[282] Fundamedios. December 1, 2010. *Journalist accused of terrorism is attacked a second time*. Available at: http://www.ifex.org/ecuador/2010/12/01/alcivar_rios_death_threat/

[283] Law Clinic of the Universidad San Francisco de Quito. Letter from the IACHR Office of the Special Rapporteur for Freedom of Expression. September 24, 2010. Available at: http://asambleanacional.gov.ec/blogs/cesar_montufar/files/2010/09/carta-oea-u-san-fsco7.pdf. cf. Hearing on the situation of freedom of expression in Ecuador, held at the IACHR on October 29, 2010, during the 140th Period of Sessions.

[284] Ecuador Inmediato. September 27, 2010. *Authors of* Big Brother *will not withdraw book and Minister Duarte insists on taking the relevant legal actions.* Available at: http://ns1.ecuadorinmediato.com/index.php?module=Noticias&func=news_user_view&id=134592&umt=Autores%20de%20"El%20Gran%20Hermano"%20no%20retirar%E1n%20libro,%20e%20instan%20a%20ministra%20Duarte%20a%20seguir%20las%20acciones%20legales%20pertinentes. Fundamedios. September 15, 2010. *Journalists subjected to insults and harassment after publishing investigative book.* Available at: http://www.ifex.org/ecuador/2010/09/21/smear_campaign/; Fundamedios. October 8, 2010. *In new letter, minister calls journalists to testify.* Available at: http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=952. Fundamedios. September 21, 2010. *Minister threatens criminal charges if they do not take book out of circulation.* Available at: http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=936

[285] El Comercio. August 27, 2010. *The book* Big Brother *causes confrontation.* Available at: http://www4.elcomercio.com/2010-08-27/Noticias/Politica/Noticias-Secundarias/polemica-por-El-Gran-Hermano.aspx. El Universo. September 14, 2010. *Alexis Mera calls two journalists wretches.* Available at: http://www.eluniverso.com/2010/09/14/1/1355/alexis-mera-califica-miserables-dos-periodistas.html; La Hora. August 26, 2010. *Alvarado challenges the authors of* Big Brother *to a debate.* Available at: http://www.lahora.com.ec/index.php/noticias/show/1101008704

[286] Instituto Prensa y Sociedad (IPYS). February 11, 2010. *Journalist sentenced to six months in prison for defamation.* Available at: http://ifex.org/ecuador/2010/02/11/tavra_franco_sentenced/. Fundamedios/Alert N° 135. *Journalist sentenced to prison for defamation.* Available at: http://www.facebook.com/note.php?note_id=285058972026

Nacional (CFN), a State financial institution.[287] In the end, the plaintiff withdrew the complaint on June 4, which concluded the legal action and prevented the ruling from being executed.[288] However, although the Office of the Special Rapporteur values Camilo Saman's decision, the cited legal precedent is cause for particular concern.

214. The Office of the Special Rapporteur also received information on the arrest of Ángel Gabriel Salvador, the executive director of the organization Contraloría Social, on April 20 while he participated in a protest against State Prosecutor General Washington Pesántez with a sign saying, "Down with the corrupt prosecutor." According to the information received, Salvador was arrested on the charge of "disturbing the public space," "offending public authority," and "rebellion." In the end, the charges were replaced by "rebellion against authority."[289]

215. The Office of the Special Rapporteur was informed that Fausto Lupera, a member of the Andean Parliament, filed a complaint for defamation (injuria no calumniosa grave) against Carlos Ochoa, the news director for channel *Gama TV*, after the latter stated the following on April 14 during a television program: "Let's remind people how it was that Mr. Lupera took the Andean Parliament by force, because it seems like these individuals are used to this kind of thing."[290]

216. The Office of the Special Rapporteur recalls that Principle 10 states 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 application of this principle, the Office of the Special Rapporteur once again invites the State to move forward with the Penal Guarantees Code bill that would eliminate crimes against honor of public officials.

217. According to the information received, on December 21, 2009, the Telecommunications Superintendence of Ecuador punished broadcaster Teleamazonas by suspending its signal for three days, December 22-25, 2009.[291] According to information received by the Office of the Special Rapporteur, the proceeding against the channel started because of news broadcasts on May 8 and May 22, 2009, that were "based on allegations that could cause social or political damage or unrest." The news broadcasts addressed the alleged existence of a clandestine vote counting center and possible damage to fisheries around Puná Island. The news items had violated rules established in the current

---

[287] Fundamedios. April 8, 2010. *Judge rejects appeal for broadening and clarification submitted by journalist.* Available at: http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=860

[288] Reporters without Borders. June 7, 2010. *Threat of jail lifted for newspaper columnist Emilio Palacio.* Available at: http://en.rsf.org/ecuador-controversial-jail-sentence-amid-30-03-2010,36892.html. El Telégrafo. June 8, 2010. *I couldn't make up to Emilio Palacio.* Available at: http://www.telegrafo.com.ec/actualidad/noticia/archive/actualidad/2010/06/08/_1C20_No-lo-puedo-componer-a-Emilio-Palacio_1D20_.aspx

[289] El Universo. April 20, 2010. *Prosecutor opens preliminary investigation against citizen for offenses against the Prosecutor.* http://www.eluniverso.com/2010/04/20/1/1355/detenido-ofensas-fiscal.html. Fundamedios. April 22, 2010. *Witness detained in political trial over offenses to public authority.* Available at: http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=869

[290] Fundamedios. April 22, 2010. *Andean parliament taking journalist to court*. Available at: http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=871; Diario Hoy. October 29, 2010. *Final hearing over defamation charges postponed.* Available at: http://www.hoy.com.ec/noticias-ecuador/breves-de-pais-224-438960.html

[291] El Telégrafo. December 21, 2009. *Telecommunications Superintendent suspends Teleamazonas.* Available at: http://www.telegrafo.com.ec/files/Actualidad/Resoluci%C3%B3n-de-la-superintendencia-de-telecomunicaciones.pdf. Instituto Prensa y Sociedad (IPYS). December 23, 2009. *Government suspends channel critical of it.* Available at: http://www.ifex.org/ecuador/2009/12/23/station_suspended_radio_refused_licence_renewal/es/

Radio and Television Law.[292] Teleamazonas appealed, and the First Criminal Chamber of the Court of Pichincha ruled that the broadcaster must receive reparations, as the decision of the Telecommunications Superintendence was not constitutional. The Superintendence appealed the case to the Constitutional Court, which in November struck down the Court of Pichincha's ruling and ordered the case returned to the appeals stage.[293]

218. With regard to this, the Office of the Special Rapporteur expresses its concern over the fact that with the legal proceeding ongoing, some officials have strongly rebuked the judges who ruled in favor of the television channel.[294]

219. Also, as it has done on previous occasions, the Office of the Special Rapporteur expresses concern over the vagueness and ambiguity of the provisions of Ecuador's current Radio and Television Law. These kinds of laws are problematic from the point of view of inter-American freedom of expression standards, especially insofar as they impose sanctions that could seriously compromise the fundamental rights of the individuals involved and have a chilling or silencing affect on democratic debate. These sanctions are genuine restrictions of the right to freedom of thought and expression, and they should respect inter-American standards in order to be legitimate. This means that they must be established by a law that is clear and precise.[295] The Inter-American Court has held that under the rule of law, the principle of legality - together with that of non-retroactivity - prevails over the actions of all State bodies and their respective competencies, especially when it comes to the exercise of their punitive power.[296] For this reason, it has specified that the requirements of Article 9 of the American Convention must also be respected in the case of sanctions imposed administratively.[297] Effectively, the vagueness of the violations and of the sanctions established by radio broadcasting regulations allows for arbitrary action by enforcement authorities, thereby compromising freedom of expression as enshrined in Article 13 of the American Convention.

220. With regard to the legal framework, in December 2009 the Office of the Special Rapporteur for Freedom of Expression sent a letter to the National Assembly of the Republic of Ecuador offering its expert opinion on the Organic Communication Law bill being debated by that legislative body. The communication had been requested by the National Assembly itself, as well as by various Ecuadorian civil society organizations.

---

[292] Centro Internacional de Estudios Superiores de Comunicación para América Latina (CIESPAL)/Mediaciones. Sin fecha. *Cronology of processes against Teleamazonas*. Available at: http://www.ciespal.net/mediaciones/index.php/analisis/97-cronologia-de-los-procesos.html

[293] El Comercio. November 19, 2010. *Teleamazonas suspension revived by the Constitutional Chamber.* Available at: http://www4.elcomercio.com/Politica/la_suspension_a__teleamazonas_revive_en_la__corte_constitucional_.aspx; National Telecommunications Council. January 19, 2010. *Conatel dismisses appeal filed by Teleamazonas.* Available at: http://www.conatel.gob.ec/site_conatel/index.php?option=com_content&view=article&catid=243%3Aresoluciones-2010&id=580%3Aresoluciones-enero-marzo-2010&Itemid=394

[294] President Rafael Correa stated the following publicly on February 5, 2010: "This is another example of the level of decay of our justice [system] and of the immense power we are facing, media and financial power. But we will not retreat [and we give] all our support to that brave man, the Telecommunications Superintendent." Ecuavisa. February 5, 2010. *Correa supports to appellate sentence in Teleamazonas case.* Available at: http://www.ecuavisa.com/noticias-internacionales/20155.html; El Ciudadano. February 5, 2010. *Telecommunications Superintendence will appeal ruling in Teleamazonas case*. Available at: http://ww.elciudadano.gov.ec/index.php?option=com_content&view=article&id=9693:-superintendencia-de-telecomunicaciones-apelara-fallo-en-caso-teleamazonas&catid=2:politica&Itemid=43

[295] IACHR. Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter VI (Freedom of Expression and Radio Broadcasting), paras. 137 and following. OEA/Ser.L/V/II. Doc.51. December 30, 2009. Available at: http://www.cidh.oas.org/pdf%20files/RELEAnual%202009.pdf

[296] I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment dated August 31, 2004. Series C No. 111. para. 177; I/A Court H.R., *Case of Baena Ricardo et al. v. Panama.* Judgment dated February 2, 2001. Series C No. 72, para. 107; I/A Court H.R., *Case of Lori Berenson Mejía v. Peru.* Judgment dated November 25, 2004. Series C No. 119, para. 126.

[297] I/A Court H.R., *Case of Baena Ricardo et al. v. Panama.* Judgment dated February 2, 2001. Series C No. 72, paras. 106-115.

221. On August 10, 2010, the Office of the Special Rapporteur sent a new letter to the State, which reviewed an updated version of the bill that was substantially different from the prior version. At that time, the Office of the Special Rapporteur acknowledged the progress that had been made in the new proposal and noted several aspects of the bill that would present difficulties with regard to the freedom of expression standards set by the inter-American system. As of this report's publication deadline, the bill is still under debate in the Legislative Assembly.

222. The Citizen Participation Law, passed by the National Assembly on February 2, 2010, was subject to partial objection by the Executive Branch on March 3, 2010.[298] The objection sought to include media outlets accountability obligations (rendición de cuentas). This provision was not included in the original text passed by the National Assembly.[299] The system of accountability is structured in the law as a supervisory mechanism that is triggered when a petition is made by any member of the citizenry.[300] According to the Law's Article 91, its purpose is to guarantee access to information "on public management;" facilitate supervision of "the governors, functionaries, and those who handle public funds;" supervise compliance with "public policy" and "prevent and avoid corruption and bad governance." The inclusion of media outlets under a system with these objectives seems disproportionate, as the right to access to information applies to public authorities and those who handle public resources, not private subjects who do not handle public resources or carry out public functions.[301]

223. The Office of the Special Rapporteur wishes to recall that Article 13 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." Taking this into account, it is important that the Ecuadorian authorities do not let the legitimate purposes of the Citizen Participation Law be distorted and that the mechanism for accountability provided for therein does not turn into a method of pressuring, harassing, or intimidating the media in order to influence their editorial stance.

224. With regard to obligatory government broadcasts, according to the information received, Ecuador had 230 broadcasts of this type in 2009,[302] in addition to the *Citizen Connection* programs and Dialogue with the President.[303] It is worth recalling that in its Annual Report 2009, the Office of the Special Rapporteur indicated that "the President frequently spends an hour of his weekly television broadcast

---

[298] National Assembly. Citizen Participation Law. Available at: http://www.secretariadepueblos.gov.ec/index.php?option=com_docman&task=doc_download&gid=295&Itemid=204&lang=es

[299] Effectively, Article 88 of the Law, as it was approved by the National Assembly with the inclusion of the Executive Branch's partial objection, reads as follows: "Article 88 Citizens' right to accountability.- Citizens, either individually or collectively in communes, communities, indigenous nationalities and peoples, Afro-Ecuadorian and *montubio* peoples, and other licit forms of organization, may once a year request a giving of accounts from public or private institutions that provide public services, handle public resources, or carry out activities in the public interest, as well as from mass media outlets, as long as that giving of accounts is not being carried out through a different procedure under law and the Constitution."

[300] Citizen Participation Law. Article 89. Definition.- Accountability is a systematic, deliberate, interactive, and useful process that involves authorities and functionaries - or their representatives and legal representatives according to the specific case - who are required to provide information and submit themselves to the evaluation of the citizenry with regard to their acts and omissions during their management period and with regard to the management of public resources.

[301] Citizen Participation Law. Article 99. The accountability has the following objectives: 1. to guarantee to the public periodic and permanent access to information on public administration; 2. to facilitate society's right to exercise control over the actions and omissions of governors, functionaries, or those who handle public funds; 3. to supervise compliance with public policies; and, 4. to prevent and avoid corruption and bad governance.

[302] Ecuador En Vivo. January 27, 2010. *Ecuador is country with most obligatory government broadcasts during 2009, according to Rodas.* Available at: http://www.ecuadorenvivo.com/2010012745171/politica/el_ecuador_ha_sido_el_pais_que_mas_cadenas_nacionales_ha_transmitido_durante_el_2009_segun_rodas.html. Medios Latinos. January 21, 2010. *Study by Ecuador's Fundación Ethos reveals that in 2009, Correa beat Chávez' record with 233 obligatory government broadcasts.* Available at: http://www.medioslatinos.com/modules/news/article.php?storyid=3260

[303] Presentation by César Ricaurte (Fundamedios) during the hearing on the situation of freedom of expression in Ecuador, held at the IACHR in Washington, D.C., on March 23, 2010.

strongly denouncing the press, branding it as 'conspiratorial,' 'corrupt,' 'disruptive,' 'irresponsible' and 'lying.' 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."[304] In 2010, senior officials continued the practice of using obligatory television broadcasts to refer in harsh terms to journalists who have questioned the government's decisions.[305]

225. The Office of the Special Rapporteur has recognized the power of the President of the Republic and senior State officials to use the media with the purpose of informing the population on matters of preponderant public interest that must be reported urgently and through independent media outlets. Effectively, and as the Inter-American Court has indicated, "making a statement on public-interest matters is not only legitimate but, at times, it is also a duty of the state authorities."[306]

226. The exercise of this power, however, is not absolute. The information that governments transmit to the citizenry through the obligatory presidential broadcasts must be strictly necessary for meeting an urgent need for information on issues that are of clear and genuine public interest and during the period of time that is strictly necessary to transmit the information. In this sense, both the IACHR and its Office of the Special Rapporteur,[307] along with some domestic bodies of States party to the American Convention, have, applying international standards, indicated that, "not just any information legitimizes the interruption by the President of the Republic of regularly scheduled programming. Rather, it must be information that could catch the interest of the masses by informing on facts that could be of public significance and that are truly necessary for real citizen participation in public life." Principle 5 of the Declaration of Principles explicitly establishes 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."

227. According to the information received, the State of Ecuador currently has a strong presence in the ecosystem of Ecuadorian media. The State effectively owns 19 media outlets, among them television channels, radio broadcasters, newspapers, magazines and newswires. As stated during the hearing on October 28 at the IACHR, there are no clear rules guaranteeing managerial and editorial independence among public media.[308]

228. The Office of the Special Rapporteur values the role that independent public media play in the public debate. They can and should carry out an essential function in ensuring the plurality and diversity of voices necessary in a democratic society. Their role is fundamental, as they provide content that is not necessarily commercial, is of high quality, and meets the educational, informational, and cultural needs of the population. However, for public media to truly perform their function they must be

---

[304] IACHR. Annual Report 2009. OEA/SER.L/V/II. Doc.51, December 30, 2009. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the state of freedom of expression in the hemisphere), para. 206. Available at: http://www.cidh.oas.org/pdf%20files/RELEAnual%202009.pdf

[305] For example, on March 13, 2010, with regard to a commentary by Jorge Ortiz that was critical of the regularization of the migratory situation of Haitian citizens living in Ecuador, the President said, "Nothing surprises us from that guy. How is it possible that society does not react (...) to so much nonsense, to so much smallness, and not just physical smallness, which is evident, but spiritual and intellectual; to so much wickedness, to so much bad faith (...). Enough, free us from these people, we can't allow this kind of behavior. Gentlemen of the civil society (...) analyze the possibility of bringing him to trial for an attack on human rights." Ecuador En Vivo. March 13, 2010. *Correa: "Ortiz is inciting xenophobia."* Available at: http://www.ecuadorenvivo.com/2010031347658/politica/correa-_-ortiz_esta_incitando_a_la_xenofobia.html

[306] Inter-American Court. *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela.* Preliminary Objections, Merits, Reparations and Costs. Judgment dated August 5, 2008. Series C No. 182, para. 131; IACHR. Annual Report 2008. Volume II: Annual Report 2008 of the Office of the Special Rapporteur for Freedom of Expression. Chapter III: Inter-American Framework on the Right to Freedom of Expression. 202. OAS/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

[307] IACHR. *Report on the human rights situation in Venezuela,* para. 487. OAS/Ser.L/V/II.118. Doc. 4 rev. 1. October 24, 2003. Available at: http://www.cidh.oas.org/countryrep/Venezuela2003sp/indice.htm

[308] Presentation by César Ricaurte (Fundamedios) during the hearing on the situation of freedom of expression in Ecuador, held at the IACHR in Washington, D.C., on March 29, 2010.

independent of the Executive Branch; truly plural; universally accessible; adequately funded to fulfill their legal mandate; and they must include mechanisms for community participation at the different levels of production, circulation, and reception of content.[309]

229. The Office of the Special Rapporteur was informed of a series of events in the state newspaper *El Telégrafo*, which culminated in the resignation of the newspaper's assistant editor and 21 columnists, and the firing or resignation of three editors.[310] According to the information received, on February 5, the board of directors of *El Telégrafo* issued internal memo 003-2010, which established "the need for our columnists and editorial writers to refrain from issuing commentary, strategic information and other strictly internal information on the editorial pages."[311] On March 25, the board of directors of *El Telégrafo* fired director Rubén Montoya for opposing the creation of a new state media outlet using his newspaper's personnel and budget. Montoya said his firing was illegitimate, considering that it was in response to a position that was "respectful but in disagreement" with the government.[312] On March 28, the board of directors prevented the publication of a column by journalist Mariuxi León thanking Montoya for his work at the newspaper, recalling an act of censorship that took place on February 1, 2010, and commenting on the newspaper's internal situation. One day later, León was blocked from entering the newspaper building and they notified her that she had been fired.[313] On April 1, the board of directors did not allow the publication of opinion columns written by Silvia Buendía, Gustavo Abad, and Alicia Ortega,[314] and that same day, the newspaper's assistant editor, Carol Murillo, submitted her resignation.[315] In response to this chain of events, a group of 21 columnists for the newspaper denounced in a public letter what, in their opinion, was happening at *El Telégrafo* and announced their resignation.[316]

### 12. El Salvador

---

[309] Joint Declaration on Diversity in Broadcasting by 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. December 12, 2007. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=719&lID=2

[310] Cf. Hearing on the situation of freedom of expression in Ecuador, held at the IACHR on October 29, 2010, during the 140th Period of Sessions; Diario Hoy. April 2, 2010. *Columnists censored at El Telégrafo*. Available at: http://www.hoy.com.ec/noticias-ecuador/el-telegrafo-censura-a-editorialistas-400592.html

[311] Centro Internacional de Estudios Superiores de Comunicación para América Latina (CIESPAL). April 5, 2010. *From the columnists of El Telégrafo.* Available at: http://www.ciespal.net/mediaciones/index.php/de-la-prensa/nacional/265-de-los-editorialistas-de-el-telegrafo.html. Diario Hoy. April 2, 2010. *Censorship in El Telégrafo for columnists.* Available at: http://www.hoy.com.ec/noticias-ecuador/el-telegrafo-censura-a-editorialistas-400592.html

[312] Instituto Prensa y Sociedad (IPYS). April 1, 2010. *Director, editor of state-run newspaper fired.* Available at: http://www.ifex.org/ecuador/2010/04/01/el_telegrafo_staff_fired/; Fundamedios. April 1. *Mass resignation of columnists at El Telégrafo.* Available at: http://www.fundamedios.org/servicios/newsletter/manual/index.php?idMail=230

[313] Due to these incidents, editors David Sosa and Fausto Lara also resigned. El Universo. March 29, 2010. *El Telégrafo blocks author of censored article from entering building.* Available at: http://www.eluniverso.com/2010/03/29/1/1355/telegrafo-freno-ingreso-autora-articulo-censurado.html. Diario Hoy. April 2, 2010. *Columnists censored at El Telégrafo.* Available at: http://www.hoy.com.ec/noticias-ecuador/el-telegrafo-censura-a-editorialistas-400592.html

[314] Fundamedios. April 1, 2010. *Mass resignation of columnists at El Telégrafo.* Available at: http://www.fundamedios.org/servicios/newsletter/manual/index.php?idMail=230

[315] Centro Internacional de Estudios Superiores de Comunicación para América Latina (CIESPAL). April 5, 2010. *From the columnists of El Telégrafo.* Available at: http://www.ciespal.net/mediaciones/index.php/de-la-prensa/nacional/265-de-los-editorialistas-de-el-telegrafo.html. Diario Hoy. April 2, 2010. *Columnists censored at El Telégrafo*. Available at: http://www.hoy.com.ec/noticias-ecuador/el-telegrafo-censura-a-editorialistas-400592.html

[316] In the letter, the columnists stated that they "reject these public acts of censorship and violation of the right to freedom of expression and the press, incompatible as they are with the Constitution and the project to create public media." Centro Internacional de Estudios Superiores de Comunicación para América Latina (CIESPAL). April 5, 2010. *From the columnists of El Telégrafo.* Available at: http://www.ciespal.net/mediaciones/index.php/de-la-prensa/nacional/265-de-los-editorialistas-de-el-telegrafo.html

230. The Office of the Special Rapporteur observes with satisfaction that on December 2, 2010, El Salvador's Legislative Assembly passed the Access to Public Information Act, which recognizes citizens' right to request and receive truthful and timely information that has been generated or managed by the State, or that is in the State's possession. The legislation establishes the standards for defining official, secret, and confidential information, for creating administrative structures within State bodies in order to receive and process the requests for information, for defining the appeal procedures for denials of information, and for creating the Institute for Access to Public Information, which is in charge of safeguarding the defense and application of the right to access to information. As of the publication deadline of this report, the Act was awaiting the signature of President Mauricio Funes.[317]

231. The Office of the Special Rapporteur takes note of the progress made in the investigation of the September 2, 2009, murder of Franco-Spanish documentary film maker Christian Poveda. According to the information received, the Salvadorian police arrested three individuals suspected of having participated in the crime. According to the information received, as of this moment the Salvadorian authorities have arrested more than two dozen individuals suspected of having participated in Poveda's murder.[318] This murder's impact on the community and especially on communicators and on the important work Poveda was doing has been extremely serious. It is crucial for the State to deploy all its resources, move the investigations forward, convict both the crime's perpetrators and its masterminds, and provide reparations for the family members of the victims.

232. According to the information received, in early January 2010, communicators with Radio Victoria, a community radio station in the department of Cabañas, received death threats several days after the murder of two environmental activists. The broadcaster supported the efforts of local residents against the mining activity of a multinational company. The information adds that the broadcaster has been the subject of threats since the middle of 2009.[319] In this respect, the Office of the Special Rapporteur considers it crucial to recall the State's obligation to protect at-risk journalists. In this sense, 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."

233. On September 24, 2010, Supreme Court of Justice of El Salvador ruled that the second subsection of Article 191 of the Penal Code is constitutional under certain conditions.[320] Prior to the ruling, the article established that although individuals in general could be held criminally liable for maliciously damaging the honor or privacy of public officials, journalists were exempt from this liability and could only be tried civilly for these charges. The Court found that this law violated the principle of equality as found in the first subsection of Article 6 of the Constitution, which states the following: **"**All individuals can freely express and distribute their thoughts as long as they do not subvert the public order or harm the morals,

---

[317] Legislative Assembly of the Republic of El Salvador. December 2, 2010. *Information Access Law passed.* Available at: http://www.asamblea.gob.sv/noticias/archivo-de-noticias/avalan-ley-de-acceso-a-la-informacion. Legislative Assembly of the Republic of El Salvador. December 2010. Access to Public Information Act. Available at: http://www.asamblea.gob.sv/noticias/mediateca/contenidos-de-apoyo/diciembre-2010/LEY%20DE%20ACCESO%20A%20LA%20INFORMACION%20PUBLICA.pdf/view. Associated Press/Chron. December 3, 2010. *El Salvador: Access to Public Information Act passed.* Available at: http://www.chron.com/disp/story.mpl/sp/nws/7322678.html

[318] Reporters without Borders. February 17, 2010. *Another suspect arrested in investigation into filmmaker's murder.* Available at: http://en.rsf.org/salvador-three-more-suspects-arrested-in-17-02-2010,34442.html; La Prensa Gráfica. February 16, 2010. *Three more arrested for Poveda murder.* Available at: http://www.laprensagrafica.com/el-salvador/judicial/93812--tres-capturas-mas-por-asesinato-de-poveda.html

[319] Reporters without Borders. January 8, 2010. *After three environmentalists murdered, community radio threatened over its support for their cause.* Available at: http://en.rsf.org/salvador-after-three-environmentalists-08-01-2010,35986.html; Agencia Pulsar. January 5, 2010. *AMARC press release on threats against Radio Victoria.* Available at: http://www.agenciapulsar.org/nota.php?id=16565

[320] Supreme Court of Justice of El Salvador. September 24, 2010. Final Judgment in the unconstitutionality proceeding No. 91-2007.

honor, or private lives of others. The exercise of this right will not be subject to prior restraint, censorship, or warning; however, those who transgress the law while making use of this right are liable for the crime they commit."

234. In applying this constitutional provision, the Court's judgment extensively cited regional case law and established safeguards in accordance with international law before indicating that when a criminal complaint exists for violation of privacy and honor, with moral damage and specific intent demonstrated, communicators can be ruled criminally liable. In its opinion, this is a direct requirement of Article 6 of the Constitution.

235. The Court also indicated that at the moment of establishing liability for the facts, judges must be sensitive to the importance of freedom of expression when information on matters of public interest or regarding a public official are at issue, and that opinions cannot be subject to criminal prosecution. The ruling included significant discussion on the right to freedom of expression as a right of all individuals and not just journalists, editors, and owners of media outlets. The ruling also addressed the importance of generating the conditions for the existence of true informational pluralism.

236. Despite the important safeguards the judgment establishes - safeguards that today constitute a fundamental guide for the application of criminal law in cases of defamation of public officials in El Salvador - the judgment recognizes the possibility of bringing criminal proceedings against communicators who offend the honor or privacy of public officials, which was previously prohibited by law and considered an example of significant progress in the region.

237. Domestic law, including some constitutional provisions, must be interpreted according to the human rights treaties signed by the State. In this sense, it is improper to rule that in all cases that could eventually be covered by Article 6 of the Constitution - that is, in all cases in which those who exercise freedom of expression fail to comply with the law - the consequence must necessarily be the application of criminal law. In these cases, the legislator must systematically interpret the constitution and establish reasonable differentiations that hew to international law, like that enshrined in the aforementioned subsection two of article 191 or others that can be established for radio broadcasting or social protest. It is in no way acceptable that every kind of abuse of freedom of expression in these areas must necessarily give grounds for a criminal punishment. On the contrary, despite the fact that in these cases a complaint can be brought for abuse of freedom of expression, it must be processed through administrative and civil processes, not criminal ones. This is how cases involving those who infringe the law through the use of freedom of expression are treated. In line with this argument, simply declaring constitutionality by citing Subsection 2 of Article 191 would have eliminated any possibility of interpreting Article 6 of the Constitution in conflict with what the legislator set forth. To complete the adaption of defamation laws to international standards, this approach would leave pending the extension of the rule (of non-application of criminal law) to those who offend public servants but do not enjoy the status of journalists.

238. As the Office of the Rapporteur has expressed, it is vitally important for Salvadorian authorities to establish the rules on this issue in such a way that the provisions of Principle 10 of the Declaration of Principles on Freedom of Expression, approved by the Inter-American Commission on Human Rights in 2000, are recognized. Principle 10 states 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."

### 13. United States

239. The Office of the Special Rapporteur took note of several judicial decisions with important implications for freedom of expression handed down by United States federal courts in 2010.

240. On June 21, 2010, in the case of *Holder v. Humanitarian Law Project*, the Supreme Court rejected a First Amendment challenge to a provision of the criminal prohibition on knowingly providing "material support or resources to a foreign terrorist organization." The plaintiffs in the case challenged the prohibition on four types of material support—"training", "expert advice or assistance", "service" and "personnel"—claiming the statute violated their First Amendment freedom of speech and association rights by prohibiting them from supporting the lawful, nonviolent activities of groups such as the Partiya Karkeran Kurdistan and the Liberation Tigers of Tamil Eelam. The Supreme Court rejected the claim, finding that the Government's interest in combating terrorism is an "urgent objective of the highest order" which justifies the statute's prohibition on forms of speech such as training designated terrorist organizations regarding international law and international bodies.[321]

241. The Office of the Special Rapporteur recalls that in their 2008 Joint Declaration, the Special Mechanisms of the IACHR, the UN, the OSCE and the ACHPR stated: "The criminalization 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 criminalized."[322]

242. On June 24, 2010, the Supreme Court issued its decision in the case of *Doe v. Reed*. In this case, the Supreme Court held that the disclosure of referendum petitions does not in general violate the First Amendment. The Court found that the compelled disclosure of signatory information on referendum petitions is subject to First Amendment review, given that such signatures constitute the expression of a political view. The Court recognized that the disclosure of signatory information may burden the ability to speak, though it does not prevent such speech. Nevertheless, the Court ruled that the government's interest in preserving the integrity of the electoral process by, for example, promoting transparency and accountability through access to information laws, generally suffices to defeat the argument that the disclosure of referendum petitions constitutes an undue burden on free speech.[323]

243. On March 19, 2010, the U.S. Court of Appeals for the Second Circuit ruled in favor of two news organizations whose Freedom of Information Act (FOIA) request regarding documents related to an emergency lending program was only partially satisfied by the Federal Reserve Board. In *Fox News, LLC v. Board of Governors of the Federal Reserve System* and *Bloomberg L.P. v. Board of Governors of the Federal Reserve System*, the appeals court rejected the government's argument that the bank loan information should be with withheld under a FOIA exception governing trade secrets and commercial or financial information obtained from a person and privileged or confidential.[324] According to the information

---

[321] U.S. Supreme Court, *Holder, Attorney General et al. v. Humanitarian Law Project et al.,*, June 21, 2010. Available at: http://www.supremecourt.gov/opinions/09pdf/08-1498.pdf

[322] UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, IACHR Special Rapporteur on Freedom of Expression and ACHPR African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information, 2008 Joint Declaration. Available at: http://www.cidh.org/relatoria/showarticle.asp?artID=735&lID=1

[323] U.S. Supreme Court, *Doe et al. v. Reed, Washington Secretary of State, et al.*, June 24, 2010. Available at: http://www.supremecourt.gov/opinions/09pdf/09-559.pdf

[324] U.S. Court of Appeals for the Second Circuit, *Fox News, LLC v. Board of Governors of the Federal Reserve System,* March 19, 2010. Available at: http://www.ca2.uscourts.gov/decisions/isysquery/df9d06b8-a192-4ffc-aed2-90ab7cdbf6a7/272/doc/09-3795-cv_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/df9d06b8-a192-4ffc-aed2-90ab7cdbf6a7/272/hilite/; *Bloomberg L.P. v. Board of Governors of the Federal Reserve System*, March 19, 2010. Available at:

Continued…

received, a group representing commercial banks—though not the Federal Reserve Board itself—appealed the ruling to the Supreme Court.[325] At the time this report went to press the Supreme Court had not yet decided whether to grant the petition for a writ of certiorari.

244. On April 6, 2010, the U.S. Court of Appeals for the D.C. Circuit ruled that the Federal Communications Commission (FCC) does not have the authority to impose rules requiring Internet providers to offer equal treatment to all Web traffic, a concept known as "network neutrality." In the case of *Comcast v. FCC*, the Appeals Court ruled that the FCC exceeded its authority when it found that Comcast contravened federal policy by interfering with certain peer-to-peer networking applications and obliged the company to change its network management policies. Specifically, the Court found that the FCC's so-called "ancillary authority" to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions" under the Communications Act of 1934 was not a sufficient basis for barring Comcast from interfering with its customers' use of peer-to-peer networking applications.[326]

245. In a related matter, on December 21, 2010, the FCC approved Order FCC 10-201, which includes rules that "require all broadband providers to publicly disclose network management practices, restrict broadband providers from blocking Internet content and applications, and bar fixed broadband providers from engaging in unreasonable discrimination in transmitting lawful network traffic."[327]

246. The Office of the Special Rapporteur recalls that in their 2005 Joint Declaration, the Special Mechanisms of the IACHR, the UN, and the OSCE stated: "Filtering systems which are not end-user controlled – whether imposed by a government or commercial service provider – are a form of prior-censorship and cannot be justified. […] Corporations which provide Internet searching, chat, publishing or other services should make an effort to ensure that they respect the rights of their clients to use the Internet without interference."[328]

247. On July 13, 2010, the U.S. Court of Appeals for the Second Circuit invalidated the indecency policy of the FCC on First Amendment grounds. In the case of *Fox Television Stations, Inc. v. FCC*, the appeals court found that the indecency policy applied by the FCC to broadcast networks and their affiliates beginning in 2004, a policy which punished even "fleeting expletives" with significant fines, was unconstitutionally vague and created a chilling effect far beyond the fleeting expletives at issue in the case.[329]

248. The Office of the Special Rapporteur recalls that: "vague or ambiguous legal provisions that grant, through this channel, very broad discretionary powers to the authorities, are incompatible with

---

…continuation
http://www.ca2.uscourts.gov/decisions/isysquery/df9d06b8-a192-4ffc-aed2-90ab7cdbf6a7/273/doc/09-4083-cv_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/df9d06b8-a192-4ffc-aed2-90ab7cdbf6a7/273/hilite/

[325] Reuters. October 26, 2010. *US Fed won't join banks in appeal to Supreme Court*. Available at: http://www.reuters.com/article/idUSN2615905420101026. The New York Times. October 26, 2010. *Fed Won't Join Appeal to Keep Its Loans Secret.* Available at: http://www.nytimes.com/2010/10/27/business/27fed.html

[326] US Court of Appeals for the D.C. Circuit, *Comcast Corporation v. Federal Communications Commission and United States of America*, April 6, 2010. Available at: http://pacer.cadc.uscourts.gov/common/opinions/201004/08-1291-1238302.pdf

[327] FCC. December 21, 2010. *FCC acts to preserve internet freedom and openness.* Available at: http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db1221/DOC-303745A1.doc

[328] UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, IACHR Special Rapporteur on Freedom of Expression, 2005 Joint Declaration. Available at: http://www.cidh.org/relatoria/showarticle.asp?artID=650&lID=1

[329] U.S. Court of Appeals for the Second Circuit, *Fox Television Stations, Inc., CBS Broadcasting, Inc., WLS Television, Inc., KTRK Television, Inc., KMBC Hearst-Argyle Television, Inc., ABC, Inc., v. Federal Communications Commission, United States of America v. FCC*, July 13, 2010. Available at: http://www.ca2.uscourts.gov/decisions/isysquery/df9d06b8-a192-4ffc-aed2-90ab7cdbf6a7/139/doc/06-1760-ag_opn2.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/df9d06b8-a192-4ffc-aed2-90ab7cdbf6a7/139/hilite/

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. 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 the 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."[330]

249. During 2010, the Office of the Special Rapporteur also received information regarding significant federal legislation in the area of freedom of expression.

250. On May 17, 2010, President Barack Obama signed into law the Daniel Pearl Freedom of the Press Act. The law requires the State Department to report on the status of freedom of the press in foreign countries, and to identify those countries in which there are violations of press freedom such as physical attacks, imprisonment, indirect sources of pressure, and censorship by government agents, criminal groups or armed extremist groups. The Act honors Daniel Pearl, a *Wall Street Journal* reporter who was murdered in Pakistan in 2002.[331]

251. On August 10, 2010, President Obama signed into law the Securing the Protection of our Enduring and Established Constitutional Heritage (SPEECH) Act. The law aims to eliminate the practice of filing lawsuits in foreign countries with more lax standards on defamation—known as "libel tourism"—by prohibiting U.S. courts from enforcing foreign defamation judgments that are inconsistent with First Amendment free speech protections.[332]

252. In addition, on December 8, 2009, after the Special Rapporteurship's 2009 Annual Report had gone to press, the White House issued an "Open Government Directive." The Directive requires executive branch departments and agencies to take a series of steps aimed at making the federal government more open, including: publishing government information online, improving the quality of government information, creating and institutionalizing a culture of open government, and creating an enabling policy framework for open government. The Directive established a series of deadlines, including a 60-day deadline for departments and agencies to establish an Open Government Webpage.[333] The Office of Special Rapporteur applauds this effort to facilitate citizens' access to public information, and encourages the State to continue its efforts to implement the Open Government Directive and improve government transparency.

253. The Office of the Special Rapporteur also received information regarding important freedom of expression developments at the state level during 2010. According to the information received, Kansas[334] (in April) and Wisconsin[335] (in May) became the 38th and 39th states to pass shield

---

[330] IACHR, Office of the Special Rapporteur for Freedom of Expression. Inter-American Legal Framework regarding the Right to Freedom of Expression. OAS/Ser.L/V/II CIDH/RELE/INF. 2/09. December 30, 2009, paras. 70-71.

[331] Daniel Pearl Freedom of the Press Act, Public Law 111-166, May 17, 2010. Available at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ166.111.pdf

[332] Securing the Protection of our Enduring and Established Constitutional Heritage (SPEECH) Act, Public Law 111-223, August 10, 2010. Available at: http://www.gpo.gov/fdsys/pkg/PLAW-111publ223/pdf/PLAW-111publ223.pdf

[333] Executive Office of the President, M-10-06 "Open Government Directive", December 8, 2009. Available at: http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-06.pdf

[334] Governor of the State of Kansas. April 15, 2010. *Governor Parkinson signs reporter shield law*. Available at: http://governor.ks.gov/media-room/73-2010-legislative-session/646-041510-governor-parkinson-signs-reporter-shield-law-

[335] The Reporters Committee for Freedom of the Press. May 19, 2010. *Wisconsin Governor Signs Shield Law for Reporters*. Available at: http://www.rcfp.org/newsitems/index.php?i=11439. The Guardian. May 21, 2010. *Another US State passes a 'shield law'*. Available at: http://www.guardian.co.uk/media/greenslade/2010/may/21/press-freedom-us-press-publishing

laws for reporters that recognize a journalist's right to protect confidential sources.[336] The Office of the Special Rapporteur applauds these developments and recalls that Principle 8 of the IACHR's Declaration of Principles on Freedom of Expression establishes that, "Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."

254. Also, on May 11, 2010, the Supreme Court of New Jersey ruled that the state's "fair report privilege" provides protection from defamation suits to journalists who report accurately from court filings as well as from final judgments. In the case of *Salzano v. North Jersey Media Group*, the Supreme Court of New Jersey held that the fair report privilege applies to filed pleadings in advance of any judicial action regarding those pleadings. The Court stated that, "the public policy underpinning of the fair-report privilege—advancement of the public's interest in the free flow of information about official actions—would be thwarted by the recognition of the initial pleadings exception. A full, fair, and accurate report regarding a public document that marks the commencement of a judicial proceeding deserves the protection of the privilege."[337]

255. In September 2010, the Office of the Special Rapporteur received information indicating that Seattle, Washington cartoonist Molly Norris had entered into hiding after receiving threats against her life. According to the information received, in April 2010 Norris drew a cartoon called "Everybody Draw Mohammed Day" in protest against what she perceived as censorship of and threats against artists who draw representations of the Muslim prophet Muhammad. In July, the press reported that Anwar al-Awlaki, a Yemeni-American cleric associated with al-Qaeda, had issued a *fatwa* placing her on a list of persons to be killed. The information received indicates that Ms. Norris was advised by the Federal Bureau of Investigation (FBI) to relocate and change her identity due to the seriousness of the threat.[338]

256. On October 27, 2010, the Office of the Special Rapporteur received information indicating that a bomb threat had been sent to National Public Radio (NPR). According to press reports, the threat was received by mail and immediately turned over to police and the FBI. Press accounts also suggested a possible connection to the NPR's firing of reporter Juan Williams several days earlier.[339]

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

258. On September 24, 2010 the FBI conducted searches at eight addresses in Minneapolis, Minnesota and Chicago, Illinois linked to individuals and organizations critical of United States policy in the Middle East and Colombia. According to the information received, the persons affected by the raids, some of whom were reportedly subpoenaed to appear before a federal grand jury, include: Meredith Aby, Mick Kelly, Sarah Martin, Tracy Molm, Anh Pham and Jess Sundin in Minneapolis, as well as Joe

---

[336] The Reporters Committee for Freedom of the Press. May 19, 2010. *Wisconsin Governor Signs Shield Law for Reporters*. Available at: http://www.rcfp.org/newsitems/index.php?i=11439. The Guardian. May 21, 2010. *Another US State passes a 'shield law'*. Available at: http://www.guardian.co.uk/media/greenslade/2010/may/21/press-freedom-us-press-publishing

[337] Supreme Court of New Jersey. *Salzano v. North Jersey Media Group Inc.*, May 11, 2010. Available at: http://www.leagle.com/xmlResult.aspx?xmldoc=in%20njco%2020100511273.xml&docbase=cslwar3-2007-curr

[338] New York Daily News. July 11, 2010. *Cleric Anwar al-Awlaki puts 'Everybody Draw Mohammed' cartoonist Molly Norris on execution hitlist*. Available at: http://www.nydailynews.com/news/world/2010/07/11/2010-07-11_cleric_anwar_alawlaki_puts_everybody_draw_mohammed_cartoonist_molly_norris_on_ex.html. Seattle Weekly. September 15, 2010. *On the Advice of the FBI, Cartoonist Molly Norris Disappears from View*. Available at: http://www.seattleweekly.com/2010-09-15/news/on-the-advice-of-the-fbi-cartoonist-molly-norris-disappears-from-view/

[339] Washington Post. October 27, 2010. *NPR receives bomb threat; timing suggests link to Juan Williams firing*. Available at: http://www.washingtonpost.com/wp-dyn/content/article/2010/10/26/AR2010102604909_pf.html. Knight Center for Journalism in the Americas. October 27, 2010. *NPR receives bomb threat, possibly linked to firing of Juan Williams*. Available at: http://knightcenter.utexas.edu/blog/npr-receives-bomb-threat-possibly-linked-firing-juan-williams

Iosbaker and Stephanie Weiner in Chicago. These persons are reportedly linked to organizations such as Freedom Road Socialist Organization and the Minnesota Anti-War Committee.[340] According to the public statements of FBI officials and the warrant to search the residence of Mr. Kelly in Minneapolis, the searches were conducted in relation to an investigation into possible violations of the prohibition on "providing material support or resources to designated foreign terrorist organizations" established in 18 U.S.C.§2339B.[341] As mentioned previously, this criminal provision was challenged by civil society organizations on First Amendment grounds and upheld by the Supreme Court in June 2010 in the case of *Holder v. Humanitarian Law Project*.

259. On October 15, 2010, the U.S. Department of Homeland Security settled a lawsuit that arose after the November 9, 2009 arrest of an activist for recording video outside a federal courthouse in New York, New York. The charge against him was later dismissed. The activist, Antonio Musumeci, subsequently filed a lawsuit challenging the government regulation cited at the time of his arrest. The settlement agreement stipulates that the regulation in question does not prohibit individuals from photographing or recording the exterior of federal courthouses, and provides that the Federal Protection Service will instruct its officers that there are no general security regulations prohibiting photography or video recording outside federal courthouses.[342]

260. On November 20, 2010, four media workers were reportedly arrested while covering the protests outside the Western Hemisphere Institute for Security Cooperation, formerly known as the School of the Americas, a military training facility located in Fort Benning, Georgia. According to the information received, *Russia Today* correspondent Kaelyn Forde and her cameraman Jonathan Conway were arrested, as were Cecilia Kluding, a 17-year old intern for a community radio station in Colorado, and Jihan Abdel-Hafiz, who told the press she is a television journalist. All four media workers appear to have been convicted of violating city ordinances, despite informing the Columbus Recorder's Court judge that they were covering the protest, not participating in it. The information received by the Office of the Special Rapporteur indicates that Forde and Conway, both U.S. citizens, were arrested by the police despite abiding by police instructions and showing their press credentials, and subsequently charged with unlawful assembly, demonstrating without a permit, and failing to disperse. According to the information received, Forde and Conway were held for 29 hours, at which point they were released after being convicted and fined on the charge of demonstrating without a permit and failing to disperse, and after being bailed on the unlawful assembly charge. Kluding and Adbel-Hafiz also appear to have been released after being convicted and paying fines.[343]

---

[340] Minnesota Public Radio. September 24, 2010. *FBI serves terrorism warrants in Minn., Chicago*. Available at: http://minnesota.publicradio.org/display/web/2010/09/24/anti-war-activists-fbi-searches/. Fox News. September 24, 2010. *FBI serves warrants on Minn. Anti-war activists, Chicago addresses, looking for terrorist ties*. Available at: http://www.foxnews.com/us/2010/09/24/fbi-searches-homes-anti-war-activists-minneapolis-chicago-terrorism-case/

[341] U.S. District Court for the District of Minnesota, case No. 10-mj-389SRN, Search and Seizure Warrant, September 23, 2010. Available at: http://tc.indymedia.org/files/kelly-warrant-92210.pdf. Minnesota Public Radio. September 24, 2010. *FBI serves terrorism warrants in Minn., Chicago*. Available at: http://minnesota.publicradio.org/display/web/2010/09/24/anti-war-activists-fbi-searches/; Fox News. September 24, 2010. *FBI serves warrants on Minn. Anti-war activists, Chicago addresses, looking for terrorist ties*. Available at: http://www.foxnews.com/us/2010/09/24/fbi-searches-homes-anti-war-activists-minneapolis-chicago-terrorism-case/

[342] U.S. District Court, Southern District of New York, *Antonio Musumeci v. United States Department of Homeland Security, et al.*, Stipulation and Order of Dismissal, October 15, 2010. Available at: http://www.nyclu.org/files/releases/Final_Stip_and_Order_10.18.10.pdf. New York Civil Liberties Union. October 18, 2010. *NYCLU Settlement Ends Restriction on Photography Outside Federal Courthouses*. Available at: http://www.nyclu.org/news/nyclu-settlement-ends-restriction-photography-outside-federal-courthouses

[343] Ledger-Enquirer. November 23, 2010. *21 Found Guilty of Violating City Ordinances at SOA Watch Protest*. Available at: http://www.ledger-enquirer.com/2010/11/23/1356232/21-found-guilty-of-violating-city.html. Reporters without Borders. November 24, 2010. *Journalists Arrested While Covering "School of the Americas" Protest*. Available at: http://en.rsf.org/united-states-journalists-arrested-while-24-11-2010,38889.html. Committee to Protect Journalists (CPJ). November 23, 2010. *Journalists Arrested at U.S. 'School of the Americas' Protest*. Available at: http://cpj.org/2010/11/journalists-arrested-at-school-of-the-americas-pro.php

261. On October 17, 2010, private security guards for U.S. Senate candidate Joe Miller detained and handcuffed *Alaska Dispatch* reporter Tony Hopfinger in Alaska. According to the information received, Hopfinger was told he was trespassing and detained for about thirty minutes after attempting to ask the candidate questions in a public school, before eventually being freed by Anchorage police. According to press reports, the Department of Public Safety announced that it was investigating the events.[344]

262. The Office of the Special Rapporteur recalls that Principle 5 of the IACHR's Declaration of Principles on Freedom of Expression 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."

263. On April 20, 2010, federal law enforcement agents forced reporters who were covering a gay rights protest to retreat from the White House and adjacent Lafayette Park. The reporters were covering a protest by members of the Armed Forces against the U.S. military's "Don't Ask, Don't Tell" policy. According to the information received, the journalists were removed when the agents undertook to arrest six Armed Forces members who had handcuffed themselves to the White House fence. According to press reports, the U.S. Park Police later acknowledged that the agents' actions in removing the reporters were a mistake.[345]

264. In May 2010, the Department of Defense barred four reporters from further reporting on the military commission proceedings at the Guantánamo Bay, Cuba detention facility, because they published articles identifying a witness whose identity had been protected by the presiding judge even though it had reportedly been in the public domain since 2005. The barred journalists were Carol Rosenberg of the *Miami Herald*, Michelle Shephard of the *Toronto Star*, Paul Koring of the *Globe and Mail*, and Seven Edwards of the CanWest news service.[346] The ban on at least one of the reporters, Carol Rosenberg, was later reported to have been lifted.[347] According to the information received, on September 10, the Defense Department issued new rules for journalists covering the military commissions which established, *inter alia,* that journalists will no longer run the risk of being expelled or barred from Guantánamo Bay because of information they report that was obtained in the course of news gathering outside Guantánamo.[348]

---

[344] NPR. October 18, 2010. *Joe Miller's Private Security Handcuffs Alaska Journalist*. Available at: http://www.npr.org/blogs/itsallpolitics/2010/10/18/130641686/joe-miller-s-security-guards-handcuff-reporter-at-public-event. Alaska Dispatch. October 19, 2010. *Details emerge after Miller's 'security agents' detain journalist*. Available at: http://alaskadispatch.com/dispatches/news/7210-details-emerge-after-millers-security-agents-detain-journalist

[345] Politico. April 20, 2010. *Most transparent White House Ever…* Available at: http://www.politico.com/blogs/bensmith/0410/Most_transparent_White_House_ever.html?showall. Fox News. April 21, 2010. *Police Block Reporters from Gay Rights Protest Outside White House*. Available at: http://www.foxnews.com/politics/2010/04/21/police-block-reporters-gay-rights-protest-outside-white-house/. Politico. April 21, 2010. *Spokesman: Park Police 'screwed up'.* Available at: http://www.politico.com/blogs/bensmith/0410/Spokesman_Parks_Police_screwed_up.html?showall

[346] Committee to Protect Journalists (CPJ). May 7, 2010. *Pentagon bars 4 reporters from Guantanamo hearings.* Available at: http://cpj.org/2010/05/pentagon-bars-4-reporters-from-guantanamo-bay-proc.php. Knight Center for Journalism in the Americas. May 7, 2010. *Pentagon bans four reporters from covering trials at Guantánamo*. Available at: http://knightcenter.utexas.edu/blog/pentagon-bans-four-reporters-covering-trials-guantanamo

[347] New York Times. July 9, 2010. *Pentagon Reinstates Banned Guantánamo Reporter*. Available at: http://mediadecoder.blogs.nytimes.com/2010/07/09/pentagon-reinstates-banned-guantanamo-reporter/. Knight Center for Journalism in the Americas. July 9, 2010. *Pentagon Reinstates Reporter Kicked out of Guantánamo Bay*. Available at: http://knightcenter.utexas.edu/blog/pentagon-reinstates-reporter-kicked-out-guantanamo-bay

[348] Reporters without Borders. September 13, 2010. *Pentagon issues new rules for Guantanamo coverage*. Available at: http://en.rsf.org/etats-unis-pentagon-issues-new-rules-for-13-09-2010,38347.html. The New York Times. September 10, 2010. *Pentagon Eases Some Rules on Guantánamo Coverage.* Available at: http://www.nytimes.com/2010/09/11/us/11gitmo.html

265. On June 23, 2010, according to the information received, photojournalists' access to the Senate of Puerto Rico was restricted, a ban that was extended to reporters the following day. According to press reports, the restrictions on press access were ordered by Senate President Thomas Rivera Schatz to protect the senators' "image." According to the information received, press access to the Senate was renewed on June 29, at the same time that Rivera Schatz's press secretary circulated a letter with four conditions for media coverage of Senate sessions.[349]

266. The Office of the Special Rapporteur recalls that Principle 5 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."

267. On July 15, 2010, the U.S. Court of Appeals for the Second Circuit ordered documentary filmmaker Joe Berlinger to provide Chevron Corporation copies of certain raw footage taken during the making of Berlinger's film *Crude* about the ongoing environmental litigation against Chevron in Ecuador. Berlinger had argued that at least part of the material was protected by the journalists' privilege. Though the Court of Appeals narrowed the District Court's order to turn over all raw footage, it required Berlinger to provide Chevron with material showing: counsel for the plaintiffs in the case of *Maria Aguinda y Otros v. Chevron Corp.*; private or court-appointed experts in that proceeding; or current or former officials of the Government of Ecuador.[350]

268. On April 23, 2010, officers from the San Mateo Sheriff's Office in California searched the home of Jason Chen, editor of the *Gizmodo* technology website, and seized electronic equipment such as computers, servers and data storage devices pursuant to a search warrant.[351] The warrant was issued in relation to the investigation of a missing Apple iPhone prototype, which *Gizmodo* had obtained from a third party.[352] According to the information received, *Gizmodo* argued that the search warrant was invalid under the journalist's privilege in California law.[353] However, press reports indicate that San Mateo prosecutors defended the propriety of the search warrant.[354] In July of 2010 San Mateo County officials

---

[349] El Nuevo Día. June 30, 2010. *Senado reabre sus gradas.* Available at: http://www.elnuevodia.com/Xstatic/endi/template/imprimir.aspx?id=732761&t=3. Inter American Press Association/ International Freedom of Expression Exchange (IFEX). June 30, 2010. *IAPA Condemns censorship, restrictions imposed by Senate.* Available at: http://www.ifex.org/united_states/puerto_rico/2010/06/30/senate_restrictions/

[350] U.S. Court of Appeals for the Second Circuit. *Chevron Corporation, Rodrigo Perez Pallares, Ricardo Reis Veiga v. Joseph A. Berlinger, Crupe Productions, LLC, Michael Bonfiglio, Third Eye Motion Picture Company, Inc., @radical.media, Lago Agrio*, order of July 15, 2010. Available at: http://www.crudethemovie.com/blog/wp-content/uploads/2010/07/7.15.10-ORDER.pdf. U.S. Court of Appeals for the Second Circuit. *Chevron Corporation, Rodrigo Perez Pallares, Ricardo Reis Veiga v. Joseph A. Berlinger, Crupe Productions, LLC, Michael Bonfiglio, Third Eye Motion Picture Company, Inc., @radical.media, Lago Agrio*, Brief and Special Appendix for Respondents-Appelants, June 14, 2010. Available at: http://www.crudethemovie.com/blog/wp-content/uploads/2009/08/Berlinger-Appellate-Brief3.pdf. The New York Times. July 15, 2010. *Appeals Court Rules Filmmaker Must Give Some Footage to Chevron.* Available at: http://artsbeat.blogs.nytimes.com/2010/07/15/appeals-court-rules-filmmaker-must-give-some-footage-to-chevron/

[351] Gizmodo. April 26, 2010. *Police seize Jason Chen's computers.* Available at: http://gizmodo.com/5524843/police-seize-jason-chens-computers. CNET. April 26, 2010. *Police seize Gizmodo's computers in iPhone probe*. Available at: http://news.cnet.com/8301-13579_3-20003446-37.html

[352] Gizmodo. April 26, 2010. *Police seize Jason Chen's computers.* Available at: http://gizmodo.com/5524843/police-seize-jason-chens-computers. CNET. April 26, 2010. *Police seize Gizmodo's computers in iPhone probe*. Available at: http://news.cnet.com/8301-13579_3-20003446-37.html

[353] Gizmodo. April 26, 2010. *Police seize Jason Chen's computers.* Available at: http://gizmodo.com/5524843/police-seize-jason-chens-computers

[354] CNN/CNET. April 28, 2010. *Prosecutors defend Gizmodo search in iPhone probe.* Available at: http://www.cnn.com/2010/TECH/04/28/gizmodo.iphone.search/index.html

agreed to drop the search warrant and return the seized items, in return for a commitment from Mr. Chen to grant officials access to the specific information that the officials were seeking.[355]

269. In April 2010, according to the information received, the U.S. Department of Justice obtained a subpoena in an effort to compel *New York Times* journalist James Risen to reveal the confidential sources for his 2006 book *State of War: The Secret History of the C.I.A. and the Bush Administration*. The subpoena allegedly required him to provide documents and testify before a grand jury.[356]

270. The Office of the Special Rapporteur recalls that Principle 8 of the IACHR's Declaration of Principles on Freedom of Expression establishes that: "Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."

271. On April 15, 2010, the federal government released information under the Freedom of Information Act (FOIA) regarding the destruction of videotapes that allegedly showed Central Intelligence Agency (CIA) agents engaging in torture or other cruel, inhuman or degrading treatment of terrorism suspects with techniques such as waterboarding. According to the information received by the Office of the Special Rapporteur, in 2003 and 2004 the American Civil Liberties Union (ACLU) and other organizations made FOIA requests for documents relating to mistreatment in CIA secret detention facilities.[357] In March 2009, the federal government acknowledged that 92 video recordings of CIA interrogations had been destroyed in 2005.[358] The information released on April 15, 2010 indicates that the decision to destroy the videotapes was taken by the then head of the CIA clandestine service.[359] On November 9, 2010, the Department of Justice announced that it would not pursue charges against CIA officials in relation to the destruction of the videotapes.[360]

272. On October 4, 2010, the Supreme Court declined to hear an appeal by 23 lawyers representing Guantanamo Bay detainees who filed a FOIA request seeking to find out if the National Security Agency (NSA) had wiretapped their phone calls with their clients at Guantanamo. According to the information received, the NSA's refusal to provide the information on national security grounds was upheld by the federal district and appeals courts, and the Supreme Court declined to hear a further appeal.[361]

---

[355] SF Gate. July 18, 2010. *Search warrant dropped in Gizmodo iPhone case*. Available at: http://articles.sfgate.com/2010-07-18/bay-area/21988300_1_iphone-search-warrant-mr-chen; Techeye.net. July 19, 2010. *Search warrant for Gizmodo iPhone4 leak editor dropped.* Available at: http://www.techeye.net/mobile/search-warrant-for-gizmodo-iphone-4-leak-editor-dropped

[356] The New York Times. April 28, 2010. *U.S. Subpoenas Times Reporter over Book on C.I.A.* Available at: http://www.nytimes.com/2010/04/29/us/29justice.html?_r=1&scp=1&sq=Risen&st=cse. The Washington Post. April 30, 2010. *After reporter's subpoena, critics call Obama's leak-plugging efforts Bush-like*. Available at: http://www.washingtonpost.com/wp-dyn/content/article/2010/04/29/AR2010042904656.html

[357] ACLU. December 12, 2007. *Citing Destruction of Torture Tapes, ACLU asks court to hold CIA in contempt.* Available at: http://www.aclu.org/national-security/citing-destruction-torture-tapes-aclu-asks-court-hold-cia-contempt

[358] Reporters without Borders/ International Freedom of Expression Exchange (IFEX). March 10, 2009. *Authorities confirm CIA destroyed 92 videotapes detailing interrogation of detainees held at secret prison*. Available at: http://www.ifex.org/united_states/2009/03/10/authorities_confirm_cia_destroyed/. 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://en.rsf.org/united-states-cia-destroyed-92-interrogation-05-03-2009,30486.html

[359] The Huffington Post/AP. April 16, 2010. *CIA Waterboarding Video Destroyed: Porter Goss Agreed with Decision to Destroy Interrogation Tapes.* Available at: http://www.huffingtonpost.com/2010/04/15/cia-waterboarding-video-d_n_539932.html. SF Gate. April 16, 2010. *Ex CIA Boss OKd destroying interrogation tapes.* Available at: http://articles.sfgate.com/2010-04-16/news/20851745_1_porter-j-goss-cia-official-tapes

[360] New York Times. November 9, 2010. *No Criminal Charges Sought over C.I.A. Tapes*. Available at: http://www.nytimes.com/2010/11/10/world/10tapes.html. The Guardian. November 9, 2010. *No charges over destruction of CIA interrogation tapes*. Available at: http://www.guardian.co.uk/world/2010/nov/09/no-charges-destruction-cia-interrogation-tapes

[361] Reporters without Borders/ International Freedom of Expression Exchange (IFEX). October 7, 2010. *In new blow to FOIA, Supreme Court refuses to consider illegal phone tap case.* Available at: http://www.ifex.org/united_states/2010/10/07/appeal_refused/. Agence France Presse (AFP). October 4, 2010. *US top court refuses to hear Guantanamo wiretap case.* Available at: http://www.commondreams.org/headline/2010/10/04-7

273. The Office of the Special Rapporteur recalls that Principle 4 establishes 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. 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."

**14. Guatemala**

274. The Office of the Special Rapporteur views positively the fact that in December of 2009, the Supreme Court of Justice ordered that the investigation into the murder of politician and journalist Jorge Carpio Nicolle be reopened, in compliance with the judgment of the Inter-American Court of Human Rights. Carpio, a former presidential candidate and editor of the newspaper *El Gráfico*, was murdered in July of 1993. The Office of the Public Prosecutor for Human Rights announced that during the first few months of the year, it had taken measures including taking testimony from witnesses to the crime and requesting autopsies on the victims. As the IACHR has indicated, the Supreme Court's decision was an important step toward complying with the judgment of the regional tribunal and eliminating impunity.[362]

275. According to information received, on September 27, journalist Víctor Hugo Juárez and graphic designer Byron Dávila were murdered. According to reports, both men were found dead in a house in Guatemala City with the bodies bearing signs of violence. Juárez worked in digital media outlets dedicated to corporate communications and had lately been working for the newspapers *Siglo XXI* and *Nuestro Diario*. Motives for the crimes are not yet known.[363]

276. The Office of the Special Rapporteur was informed that the Crimes against Journalists Unit of the Office of the Public Prosecutor had received complaints of different kinds during 2010.[364] Some important examples of cases of attacks and threats reported to the Office of the Special Rapporteur are summarized in the following paragraphs.

277. According to the information received, on August 3, three local reporters from Suchitepéquez were beaten by officers with the Anti-Narcotics Information and Analysis Division. They were covering a police search.[365]

278. The Office of the Special Rapporteur was informed that on August 26, unknown individuals fired on the residence of Edin Rodelmiro Maaz Bol, a journalist with the news organization *Video Prensa*, in Alta Verapaz.[366] The Office of the Special Rapporteur was informed that journalist

---

[362] IACHR. February 3, 2010. Press Release No. 15/10. *IACHR Welcomes Decision of Guatemala's Supreme Court of Justice.* Available at:http://www.cidh.oas.org/Comunicados/English/2010/15-10eng.htm; Prensa Libre. March 25, 2010. *Office of the Public Prosecutor moves forward in Carpio case.* Available at: http://www.prensalibre.com/noticias/Fiscalia-avanza-caso-Carpio_0_231576882.html

[363] Agence France-Press (AFP). September 28, 2010. *Journalist tortured and murdered in Guatemala.* Available at: http://www.google.com/hostednews/afp/article/ALeqM5h_mvn4561uIwXYmAc8jQZjVD1uuw?docId=CNG.02c72437b1107edfcec4d8b628714acc.4b1; El Periódico. October 4, 2010. *Alarm over deaths and violence against journalists.* Available at: http://www.elperiodico.com.gt/es/20101004/pais/177774/

[364] CERIGUA. December 17, 2010. *More than 20 attacks on journalists reported during 2010.* Available at: http://cerigua.org/la1520/index.php/nota-diaria/48-libertad-de-expresion/618-2010-cierra-con-mas-de-20-agresiones-contra-periodistas-; Diario Avanzada. December 21, 2010. *Guatemala ends year with more than 20 attacks on journalists.* Available at: http://www.diarioavanzada.com.mx/noticia.php?id=54202

[365] CERIGUA. August 4, 2010. *Police officers assault journalists in Suchitepéquez.* Available at: http://www.cerigua.org/servicios/diarios/c-040810.pdf; Nuestro Diario. August 4, 2010. *Reporters beaten, attacked with tear gas.* Available at: http://monitoreo.saas.gob.gt/noticias/enviar_noticia_manual.php?cual=5700

[366] CERIGUA/ International Freedom of Expression Exchange (IFEX). August 31, 2010. *Shots fired at journalist's home.* Available at: http://www.ifex.org/guatemala/2010/08/31/maaz_bol_shooting/; Diario Avanzada/CIMAC. December 21, 2010. *Guatemala ends year with more than 20 attacks on journalists.* Available at: http://www.cimacnoticias.com/site/10122104-Cierra-ano-Guatemal.45586.0.html

Héctor Cordero, a correspondent for the television network *Guatevisión* in the Quiché department, revealed to the Guatemalan press that he had received threats toward the beginning of the year after accusing a legislator aligned with the ruling power of nepotism.[367] On November 16, Luis Ángel Sas, a journalist with *El Periódico*, received threatening phone calls related to the publication of articles on drug trafficking.[368]

279. The Office of the Special Rapporteur was also informed that on September 28, unknown individuals entered the house of Marvin Del Cid, a journalist with *El Periódico*, and stole his computer and files related to his research. This was the second time in less than three months that Del Cid had his house ransacked and his research material and equipment stolen. In the first incident, which took place on June 24, the perpetrators left a death threat in the apartment. Del Cid is a reporter with the investigative journalism section of *El Periódico* and often writes on cases of corruption and other public interest irregularities.[369]

280. With regard to the incidents cited, the Office of the Special Rapporteur 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."

281. The Office of the Special Rapporteur received information indicating that on February 26, 2010, the Guatemalan Institute for Social Democracy (DEMOS in its Spanish acronym) filed a writ of unconstitutionality against the General Telecommunications Law currently in effect in Guatemala. The information received indicates that in the writ filed before the Constitutional Court, the petitioners indicated that the law establishes an auction as the only mechanism for accessing radio and television frequencies, leaving out other considerations. They argued that this harms the equality of opportunities of all actors in Guatemalan society with regard to their exercise of freedom of expression.[370]

282. With regard to this, the Office of the Special Rapporteur recalls that the special report on Guatemala prepared by the IACHR recommended that the State eliminate auctions as the sole mechanism for assigning frequencies.

283. The Office of the Special Rapporteur received with concern reports on changes made during 2010 to draft legislation of the Community Media Act, submitted to the Guatemalan Congress in August 2009. The changes would restrict the geographic reach of community radio stations and impose discriminatory standards for accessing the frequencies. According to the information received, the modifications mean that the coverage of community radio stations would be reduced on the municipal

---

[367] CERIGUA. March 8, 2010. *Politicians threaten freedom of expression.* Available at: http://cerigua.org/archivo/index.php?option=com_content&task=view&id=18736; Knight Center for Journalism. February 9, 2010. *Guatemalan TV station accuses politician in death threats to journalist.* Available at: http://knightcenter.utexas.edu/node/121

[368] CERIGUA. December 17, 2010. *More than 20 attacks on journalists reported in 2010*. Available at: http://cerigua.org/la1520/index.php/nota-diaria/48-libertad-de-expresion/618-2010-cierra-con-mas-de-20-agresiones-contra-periodistas-. Knight Center for Journalism. December 1, 2010. *Guatemalan journalist threatened after reporting on military arms theft.* Available at: http://knightcenter.utexas.edu/blog/guatemalan-journalist-threatened-after-reporting-military-arms-theft

[369] Office of the Human Rights State's Attorney. October 4, 2010. Communication with the Office of the Special Rapporteur for Freedom of Expression. Ref. Report on search of house of journalist Marvin David Del Cid, of El Periódico; El Periódico. September 30, 2010. *Journalist Del Cid's house raided*. Available at: http://www.elperiodico.com.gt/es/20101004/pais/177774/

[370] World Association of Community Broadcasters (AMARC in its Spanish acronym). March 10, 2010. *DEMOS Institute files writ of unconstitutionality against Guatemala Telecommunications Law.* Available at: http://legislaciones.item.org.uy/index?q=node/1189; Agencia Púlsar. March 1, 2010. *Institute files writ against Telecommunications Law in Guatemala.* Disponible en: http://www.agenciapulsar.org/nota.php?id=16779

level to a reach of only 2.5km and only on the FM band.[371] The Office of the Special Rapporteur repeats the call it made in 2009 for the Guatemalan State to attend to the need to implement effective policies that ensure equal opportunity in the access to concessions of space for radio and television broadcasting. Likewise, it reminds the State of its obligation to adopt all necessary measures - including affirmative action - to ensure minority groups' access to the media and their enjoyment of that access free from discrimination.[372]

284. As it recommended in 2009, the Office of the Special Rapporteur insists that, "the State [...] 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 well as requirements that are necessary, just, and fair." Likewise, to ensure free, vigorous, and diverse radio and television broadcasting, the private sector media must have guarantees against State arbitrariness; social media should enjoy conditions that prevent them from being controlled by the State or by economic groups; and public media should be independent of the Executive Branch.

285. Principle 12 of the Declaration of Principles establishes 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 adapt its legislative framework on radio broadcasting to international standards on freedom of expression on this subject.[373]

286. Finally, the Office of the Special Rapporteur reiterates the importance of the fact that that Guatemala has adopted an access to information law that, among other things, establishes that information on human rights violations may not be withheld. It is now crucial to adopt measures for implementing the law that truly generate the culture of transparency that the law is intended to foster. In this respect, the Office of the Rapporteur received information indicating that through November 2010, 98 complaints of alleged failure to comply with the Access to Public Information Act were filed with the Human Rights Ombudsman. This is 63 more complaints than in 2009, the majority related to the alleged commercialization of personal information.[374]

287. According to the information received, both the Executive Branch and the Human Rights Ombudsman recognized progress in the application of the law since it entered into force in April 2009. However, they pointed to weaknesses such as a high rate of non-compliance with the obligatory annual report on the application of the law, lack of knowledge of the law among the population, little training of officials in the application of the law, resistance in some institutions to making their information public, and

---

[371] AMARC Guatemala. September 22, 2010. *AMARC Guatemala report on the backward step in the legislative reform intended to comply with IACHR recommendations.* Available at: http://legislaciones.item.org.uy/files/GUA_informeAmarc_paraCIDH_220910.pdf. World Association of Community Broadcasters (AMARC in its Spanish acronym). September 28, 2010. AMARC Guatemala demands access to frequencies and equality of opportunity without discrimination. Available at: http://legislaciones.item.org.uy/index?q=node/1758

[372] IACHR. Annual Report 2009. OEA/SER.L/V/II. Doc.51, December 30, 2009. Volume II*:* Annual Report of the Office of the Special Rapporteur for Freedom of Expression*,* Chapter II (Evaluation of the state of freedom of expression in the hemisphere). para. 237 - 238. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=794&lID=1

[373] IACHR. Annual Report 2009. OEA/SER.L/V/II. Doc.51, December 30, 2009. Volume II*:* Annual Report of the Office of the Special Rapporteur for Freedom of Expression*,* Chapter II (Evaluation of the state of freedom of expression in the hemisphere). paras. 237 y 238. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=794&lID=2

[374] El Periódico. December 23, 2010. *Violations of the Access to Public Information Act have increased*. Available at: http://www.elperiodico.com.gt/es/20101223/pais/187074/

unjustified declarations of "confidential information" with regard to information in the public interest[375] as well as some threats and intimidations experienced by people who have made use of the law.[376]

### 15. Guyana

288. According to the information received, the publication of an article by columnist Freddie Kissoon in the newspaper *Kaieteur News* on June 28, 2010, accusing the President of the nation of being a racist was grounds for a lawsuit for defamation brought by the President against the columnist and the newspaper's editor.[377] The information received by the Office of the Rapporteur indicates that the case's initial hearing took place on August 5, 2010,[378] and as of the date of this report, we do not have information with regard to a ruling in the case.

289. The Office of Rapporteur wishes to recall that Principle 10 of the IACHR's Declaration of Principles on Freedom of Expression states 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." Furthermore, Principle 11 of the same declaration 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. Haiti

290. The Office of the Special Rapporteur notes that after the earthquake that took place in Haiti on January 12, 2010, the main topic on the agenda with regard to freedom of expression in Haiti has been the effort to rebuild media outlets and put them in operation once more. Practically all media outlets were affected by the earthquake, and many of them had to cease publishing or broadcasting. In this sense, according to the information received, of the 50 radio broadcasters in operation before the earthquake, 25 of them were back to broadcasting within a month of the disaster, many from tents and with equipment rescued from the rubble. This was the case for television station *Télé Ginen* and radio station *Radio-Télé Soleil.* The print media were also affected by the catastrophe. Leading Haitian newspaper *Le Nouvelliste* suspended its print edition for 45 days and published only on the Internet during that time. The other national newspaper, *Le Matin*, is being printed in the Dominican Republic. It is no longer distributed daily, now appearing only twice a week. Many media outlets have had to reduce

---

[375] CERIGUA. April 21, 2010. *Compliance with the Access to Information Act faces various obstacles a year after its enactment*. Available at: http://noticias.com.gt/nacionales/20100421-ley-acceso-informacion-obstaculos-ano-vigencia.html; Prensa Libre. April 18, 2010. *Country still held hostage by secrecy*. Available at: http://www.prensalibre.com/noticias/politica/Pais-sigue-aprisionado-secretismo_0_245975404.html

[376] Legislator Nineth Montenegro was threatened after requesting information on how a government assistance program works. Also, there have been cases of individuals threatened for similar reasons in the municipalities of Huehuetenango, Izabal, Concepción, Sololá and Suchitepéquez. Prensa Libre. April 18, 2010. *Country still held hostage by secrecy*. Available at: http://www.prensalibre.com/noticias/politica/Pais-sigue-aprisionado-secretismo_0_245975404.html; CERIGUA. April 21, 2010. *Compliance with the Access to Information Act faces various obstacles a year after its enactment*. Available at: http://noticias.com.gt/nacionales/20100421-ley-acceso-informacion-obstaculos-ano-vigencia.html

[377] The Daily Herald. July 14, 2010. *Jagdeo files libel suit against Kaieteur News and columnist.* Available at: http://www.thedailyherald.com/regional/2-news/5851-jagdeo-files-libel-suit-against-kaieteur-news-and-columnist.html; Fox News. July 16, 2010. *Guyana leader sues newspaper over column that portrayed him as racist.* Available at: http://www.foxnews.com/world/2010/07/16/guyana-leader-sues-newspaper-column-portrayed-racist/

[378] Guyana Chronicle Online. August 6, 2010. *President Jagdeo libel case against Frederick Kissoon begins*. Available at: http://www.guyanachronicleonline.com/site/index.php?option=com_content&view=article&id=17014:president-jagdeo-libel-case-against-frederick-kissoon-begins&catid=2:news&Itemid=3

their staffs due to the economic difficulties.[379] Additionally, the only Creole-language newspaper - *Bon Novel* - was destroyed.[380]

291. The Office of the Rapporteur observes that one of the main contributors to the recovery of the media and the exercise of freedom of expression in the context of the disaster was the establishment of a Media Operations Center through international cooperation. The center included more than 20 computers, a broadband Internet connection, satellite uplinks, and printers. It became an essential source of support for the work of dozens of Haitian journalists. According to the information received, the center's mandate is to offer basic equipment to Haitian journalists, serve as a meeting point for national and international reporters, offer a base of operations to organizations that defend the work of journalists, function as an information center for government authorities and NGOs, and advise the government and international agencies on the recovery of the media outlets effected by the earthquake.[381] In this sense, the Office of the Rapporteur applauds the initiative and the help offered by the State and international donors to affected media outlets to contribute to the recovery of their operating capacity.[382]

292. Separately, the Office of the Special Rapporteur received information indicating that on February 3, 2010, a group of US Marines took a camera away from Homère Cardichon, a photographer with newspaper *Le Nouvelliste*, while he was covering a demonstration in front of the US Embassy in a suburb of Port-au-Prince. The protest was being carried out due to the anguish and desperation of the Haitian population after the earthquake that devastated the country on January 12, 2010, causing the deaths of more than 200,000 Haitians, dozens of journalists among them. According to the information received, an hour later the US soldiers returned the camera to Cardichon, but with the images of the protest erased.[383]

293. In this regard, the Office of the Special Rapporteur recalls that Principle 5 of the IACHR's 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."

294. The information received indicates that Haitian journalists also continue to be threatened and attacked by police officers and politically and economically influential figures.[384] The same

---

[379] International Freedom of Expression Exchange (IFEX). April 12, 2010. *Media slowly resurfacing, operations centre approaching three-month mark* Available at: http://www.ifex.org/haiti/2010/04/15/media_operations_centre/; Committee to Protect Journalists. January 26, 2010. *Haitian media casualties, damages mount.* Available at: http://cpj.org/blog/2010/01/haitian-media-casualties-damages-mount.php; International Freedom of Expression Exchange (IFEX). May 5, 2010. *On World Press Freedom Day, AMARC asserts communication rights of disaster-hit communities* Available at: http://www.ifex.org/international/2010/05/05/amarc_wpfd/

[380] Inter-American Press Association. *IAPA Midyear Meeting, March 19-22, 2010, Oranjestad, Aruba: Haiti.* Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=25&infoid=403&idioma=us

[381] Reporters without Borders. January 21, 2010. *Media Operations Centre gets backing from Haitian government.* Available at: http://www.rsf-es.org/news/haiti-el-centro-operacional-de-los-medios-de-comunicacion-recibe-el-apoyo-del-gobierno-haitiano/; International Freedom of Expression Exchange (IFEX). April 12, 2010. *Media slowly resurfacing, operations centre approaching three-month mark*. Available at: http://www.ifex.org/haiti/2010/04/15/media_operations_centre/

[382] Reporters without Borders. January 21, 2010. *Media Operations Centre gets backing from Haitian government* Available at: http://www.rsf-es.org/news/haiti-el-centro-operacional-de-los-medios-de-comunicacion-recibe-el-apoyo-del-gobierno-haitiano/; Inter-American Press Association. *IAPA Midyear Meeting, March 19-22, 2010, Oranjestad, Aruba: Haiti.* Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=25&infoid=403&idioma=us

[383] Reporters without Borders. February 4, 2010. *US military must explain why marines censored Haitian photographer.* Available at: http://en.rsf.org/haiti-us-military-must-explain-why-04-02-2010,36309.html; Inter-American Press Association (IAPA). *IAPA Midyear Meeting, March 19-22, 2010, Oranjestad, Aruba: Haiti.* Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=25&infoid=403&idioma=us

[384] International Press Institute. September 15, 2010. *Feeding Press Freedom in Haiti*. Available at: http://www.freemedia.at/fileadmin/media/Images/World_Congress_2010/Press_Freedom_Post_Tuesday.pdf; Inter-American Press

Continued…

information points to individual cases like that of Kertis Emma, a correspondent with Radio Caribe FM, who in February was attacked by a police officer while reporting on a local incident. There was also the case of José Guyler C. Delva, who on March 15, 2010, had a new altercation with ex-Senator Rudolph Boulos while doing an interview with the president of the Inter-American Development Bank (IDB).[385] According to the information received, the journalist said that on September 14, 2010, he was the subject of death threats and that he did not have a permanent residence because he had to keep his family constantly on the move.[386]

295. Finally, the information indicates that multiple attacks and acts of intimidation have been reported by more than a score of journalists working for six different media outlets during the presidential campaign. For example, on October 25, 2010, four armed bandits shot to death a bus driver driving seven journalists to cover a campaign event of a presidential candidate, leaving one of the reporters wounded.[387]

296. In this sense, the Office of the Special Rapporteur reminds the State that Principle 9 of the aforementioned Declaration of Principles states: "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."

297. Likewise, on May 15, 2009, the rapporteurs for freedom of expression of the UN, OSCE, OAS, and the African Commission highlighted in their "Joint Declaration on Media and Elections" the importance of open and vigorous debate, of access to information and electoral processes, and of the fundamental role of media outlets in raising electoral issues and informing the citizenry. In particular, the Joint Declaration urges States to: "put in place effective systems for preventing threats and attacks against the media."[388]

### 17. Honduras[389]

---

…continuation
Association. *IAPA Midyear Meeting, March 22-19, 2010, Oranjestad, Aruba: Haiti.* Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=25&infoid=403&idioma=us

[385] Inter-American Press Association. *IAPA Midyear Meeting, March 19-22, 2010, Oranjestad, Aruba: Haiti.* Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=25&infoid=403&idioma=us

[386] International Press Institute (IPI). September 15, 2010. Feeding Press Freedom in Haiti. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=25&infoid=403&idioma=us

[387] Le Nouvelliste. December 14, 2010. SOS *Journalistes condamne les attaques contre la presse*. Available at: http://www.lenouvelliste.com/article.php?PubID=1&ArticleID=86652; Journalism in the Americas. October 26, 2010. *Attack on journalists' campaign bus kills driver in Haiti, wounds reporter.* Available at: http://knightcenter.utexas.edu/blog/attack-journalists-campaign-bus-kills-driver-haiti-wounds-reporter

[388] Joint Declaration on Media and Elections. May 15, 2009. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=745&lID=2

[389] This section corresponds to the section on freedom of expression in Honduras in Chapter IV, Volume I, of the IACHR 2010 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression. The section includes information received until December 1, 2010. However, it is paramount to take into account the murder of journalist Henry Suazo on December 20, 2010, in the town of La Masica, departament of Atlantida. According to information available to this Office, two unknown individuals fired shots at journalist Henry Suazo as he was leaving his home. The journalist was a reporter for the HRN radio station and worked for a local TV station. Suazo had apparently denounced on the radio in days prior that he had received a death threat via a text message sent to his phone. With the death of Henry Suazo, the number of journalists murdered in Honduras in 2010 rises to nine. IACHR. *Office of the Special Rapporteur Condemns Murder of Journalist in Honduras.* Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=830&lID=1; Committee to Protect Journalists (CPJ). December 30, 2010. *Honduran journalist gunned down in front of his home.* Available at: http://www.cpj.org/2010/12/honduran-journalist-gunned-down-in-front-of-home.php; El Heraldo. December 28, 2010. *Another journalist murdered in the north of Honduras*. Available at: http://www.elheraldo.hn/Ediciones/2010/12/28/Noticias/Asesinan-otro-periodista-al-norte-de-Honduras

298. The June 2009 *coup d'état* set off a series of massive human rights violations; the right to freedom of thought and expression was not spared.[390] Although Mr. Porfirio Lobo Sosa was sworn in as President of the Republic of Honduras on January 27, 2010, the danger to social communicators, journalists and human rights defenders persisted. Particularly troubling to the Commission were the number of journalists murdered in 2010; the threats, aggression and harassment perpetrated against journalists and the media; and the fact that these crimes continue to go unpunished, which has a widespread chilling effect on citizen's exercise of their freedom of expression, on their right to access information, and on the strength and vitality of public discourse.

**a. Journalists murdered**

299. In 2010, at least eight journalists were murdered in Honduras.

300. On March 1, 2010, Joseph Hernández Ochoa, a journalist with Channel 51 in Tegucigalpa, was shot to death. His companion, journalist Karol Cabrera, sustained injuries but survived According to the information received, on the night of March 1, the automobile in which journalists Hernández Ochoa from Channel 51 and Cabrera from Radio Cadena Voces and State Channel 8 were traveling was attacked by a number of individuals wielding firearms. Reports indicate that Mr. Hernández Ochoa was shot to death, while Cabrera sustained three bullet wounds, but recovered. According to accounts in the local press, Cabrera –who reported having received threats on several occasions- had police protection at home and was the target of the assailants.[391]

301. David Meza Montesinos, 51, was murdered on March 11, 2010; at the time he was a journalist with Radio América and Radio El Patio in the city of La Ceiba. He was killed at around 17:30, near his home in the coastal city of La Ceiba, located two hundred kilometers north of Tegucigalpa, the capital of the country. The journalist was attacked from a passing vehicle as he was walking down a street in La Ceiba.[392]

302. On March 14, 2010, journalist Nahúm Palacios was murdered in the city of Tocoa; Palacios had been news director for Television Channel 5 in Aguán. The IACHR had requested that the State adopt precautionary measures for him. According to the information received, Nahúm Palacios was murdered by two unknown assailants who attacked with AK-47 automatics on the night of Sunday, March 14, as Palacios was returning to his home in the Los Pinos neighborhood of the city of Tocoa, some 400 kilometers north of Tegucigalpa. The journalist sustained 30 bullet wounds, and the car in which he was driving was shot 42 times. The two persons with him were injured. After the June 28, 2009 *coup d'état,* Nahúm Palacios covered the demonstrations organized by the resistance and publicly criticized the *coup.* According to the information the Commission has received, on June 30, 2009, a military operation was carried out in which the channel's operating equipment was confiscated; Palacios' residence was searched, his children held at gunpoint and his vehicle confiscated. On July 24, 2009, the Commission granted precautionary measures for Nahúm Palacios and requested that the necessary measures be taken to protect his life and personal integrity. According to the information received, the Honduran authorities did not take these measures.[393]

---

[390] IACHR. *Honduras: Human Rights and the Coup d'État.* OEA/Ser.L/V/II. Doc. 55. December 30, 2009.

[391] IACHR, Press release No. 24-10: *Office of the Special Rapporteur for Freedom of Expression Condemns Murder of Journalist in Honduras*. Committee to Protect Journalists. March 5, 2010, "*Journalist Killed, Another Wounded in Honduras Shooting*". International Press Institute. March 15, 2010. "*Second Honduran journalist killed in two weeks*".

[392] CODEH. June 19, 2010, Entry on Davir Meza Montesinos; Committee to Protect Journalists. March 12, 2010. "Honduran Radio Reporter Gunned Down,"; Diario La Tribuna. March 11, 2010. "*Matan al periodista David Meza*" [Journalist David Meza killed].

[393] IACHR, Press Release No. 31/10: *IACHR Deplores Murder of Journalist in Honduras*. Committee to Protect Journalists, March 14, 2010, article on Nahúm Palacios Arteaga. IFEX, March 16, 2010. "Third Honduran Journalist Gunned Down in Two Weeks".

303. On March 26, 2010, José Bayardo Mairena and Manuel Juárez, journalists for R.Z. Television Channel 4 and Radio Excélsior, were murdered as they were driving down a highway in the vicinity of the city of Juticalpa, in the department of Olancho. According to the reports received, Mairena and Juárez were on road near the city of Juticalpa, when they were taken over by another vehicle; those inside the second vehicle fired off several bursts of machine gun fire. Sources that the Office of the Special Rapporteur consulted indicated that Mairena had recently done newspaper reports on the land dispute and organized crime in Honduras.[394]

304. On April 20, 2010, Jorge Alberto "Georgino" Orellana, a journalist with the *Televisión de Honduras* channel, was murdered in the city of San Pedro Sula.[395] According to the information received, Orellana was shot on Tuesday, April 20, at night, minutes after leaving the offices of channel Televisión de Honduras, where he was the anchor of an opinion program dealing with current issues. The journalist died shortly thereafter from the bullet wounds he had sustained.

305. On July 14, Luis Arturo Mondragón Morazán, director of Channel 19 and of the news program "Teleprensa", was killed in El Paraíso, which is in the eastern part of the country. According to the information received, Mondragón was shot four times as he was leaving the offices of Channel 19. In his program, the journalist covered such issues as corruption, crime and environmental problems. He died at the scene, having succumbed to the bullet wounds he sustained.[396]

306. Israel Zelaya Díaz was murdered on August 24, 2010. He was a journalist with Radio Internacional in the city of San Pedro Sula, Honduras. According to the information received, Israel Zelaya was found shot to death in a sugarcane field. His personal belongings had not been stolen. Three months earlier, a fire had done damage to his home; the cause of the blaze was never established. The Office of the Special Rapporteur for Freedom of Expression learned that Zelaya was working on a local news program on Radio Internacional in San Pedro Sula, and routinely complained about public interest matters.[397]

307. Henry Suazo, a correspondent for radio HRN in La Ceiba department and a journalist for a local television station, was killed on December 28, 2010, as he was leaving his home in La Masica. According to the information received, two days earlier the journalist had received a death threat delivered by a text message sent to his cell phone.[398]

308. The Secretariat of Security filed a report with the National Congress on May 5, in which it updated the status of the investigations into these murders.[399] The report was confidential and its contents were not revealed. Authorities at the Secretariat of Security argued that revealing the content of

---

[394] IACHR, Press Release No. R39-10: *Special Rapporteurship Condemns Murder of Honduran Journalists*; El Heraldo. "*Asesinan a dos periodistas al oriente de Honduras*" [Two journalists murdered in eastern Honduras], March 26, 2010; La Prensa. "*Asesinan a 2 periodistas hondureños en Olancho*" [Two Honduran journalists killed in Olancho], March 26, 2010; AMARC. "*Con la muerte de otros dos periodistas son ya cinco los profesionales de la prensa asesinados en Honduras en marzo"* [The death of two more journalists brings the number of journalists murdered in Honduras in March to 5], April 9, 2010.

[395] IACHR, Press Release No. R45-10: *Special Rapporteurship Concerned about the Latest Murder of Journalist in Honduras*; Committee to Protect Journalists. TV Host Slain. "*6th Honduran Journalist killed since March*"; BBC Mundo. "*Asesinado otro periodista en Honduras".* [Another journalist killed in Honduras], April 21, 2010.

[396] IACHR, Press Release No. R62-10: *Office of the Special Rapporteur Expresses Concern at Latest Murder of Journalist in Honduras.* UNESCO. July 1, 2010. "*UNESCO Director-General condemns murder of TV journalist Luis Arturo Mondragón Morazán*". C-Libre IFEX. June 16, 2010. "*Another Journalist Killed*".

[397] IACHR, Press release No. R85-10. *Special Rapporteur for Freedom of Expression Condemns Latest Murder of Journalist in Honduras*. Committee to Protect Journalists. Article on Israel Zelaya Díaz. La Tribuna. August 25, 2010. "*Matan a periodista Israel Zelaya Díaz*" [Journalist Israel Zelaya Díaz murdered].

[398] IACHR, Press Release No. R125-10. Office of the Special Rapporteur for Freedom of Expression Condemns Murder of Journalist in Honduras. December 29, 2010. "Asesinan otro periodista al norte de Honduras" [Another journalist murdered in northern Honduras] Diario El Heraldo, December 28, 2010.

[399] The report was requested by deputy Augusto Cruz Asensio, when the violence against journalists spiked in 2010.

the report could obstruct the investigations.[400] In May 2010, the Vice Minister of Security, Armando Calidonio, told the Commission that "thus far, the deaths of the journalists appear to be unrelated to the practice of their profession."[401] However, both the Office of the Special Prosecutor for Human Rights and nongovernmental organizations that are monitoring the progress made into the investigations of these crimes stated that in some cases, there are credible theories that link the crimes to the victims' practice of journalism. Those nongovernmental organizations maintained that no headway had been made in the investigations and were of the view that the authorities were not interested in solving the murders.[402] The Office of the Special Prosecutor for Human Rights blamed the shortcomings in the investigations on the fact that "the police were ill-equipped to conduct investigations."[403]

309. At the public hearing the Commission held on October 25, 2010 on the *Situation of the Right to Freedom of Expression in Honduras,* the State's representatives asserted that progress has been made in the investigations into the crimes committed against journalists, and indicated that none of the journalists murdered in 2010 was killed for practicing his craft; the State's contention was that these were common crimes.[404] However, like the officials the Commission interviewed during its official visit in May, the State's representatives did not offer any evidence to support their claim.[405]

310. In its observations on the IACHR's 2010 Annual Report, the State pointed out the following: "The preliminary investigations have established that the murders were the work of a common criminal or criminals; it has not yet found anything to suggest that the motive for the crime was the opinions expressed by the journalists or that agents of the State were in any way involved. For that reason, the cases are being investigated by the Office of the Prosecutor for Common Crimes and not by the Special Prosecutor for Human Rights. In two of the cases, the investigations have concluded, the corresponding criminal indictments have been filed, and the suspects in those two cases are in custody pending trial. In another two cases, the investigations have concluded and the Public Prosecutor's Office is expected to present them shortly."[406] It should pointed out that the State did not mention which cases had moved forward and did not provide any evidence to support its claims.

311. The nongovernmental organization C-Libre reported that someone was convicted of the murder of Georgino Orellana; however, suspicions that the crime was politically motivated persist. It also indicated that someone was reportedly in custody for the murder of David Meza, but said that no significant progress had been made in the case.[407]

312. As the Commission maintained after its May 2010 visit, it is imperative that the State urgently undertake investigations, run by independent, specialized bodies that follow special investigative procedures that can reliably establish whether the crimes are related to the practice of the victims' profession and that can enable the prosecution and conviction of those responsible for the crimes. The

---

[400] Diario La Tribuna. May 6, 2010. "*En secretividad investigación sobre asesinatos de periodistas*" [Investigation into murders of journalists cloaked in secrecy].

[401] Diario La Tribuna. April 22, 2010. "*Capturan a implicado en la muerte de periodista*" [Suspect taken into custody and charged in journalist's death].

[402] Information received at the IACHR's meeting with communicators on May 16, 2010, in Tegucigalpa, Honduras.

[403] Meeting with the Office of the Special Prosecutor for Human Rights, May 15, 2010, Tegucigalpa, Honduras.

[404] The representatives of the Honduran State said that the alleged murderer of Georgino Orellana is locked up and that robbery had been the motive for the crime. They also reported that two persons are in custody for the murder of David Meza Montesinos, that the crime was related to organized crime and that "significant headway" had been made in the investigation of the murder of Nahúm Palacios. See IACHR, public hearing on "*Situation of Freedom of Expression in Honduras"* held on October 25, 2010, during the Commission's 140th regular session.

[405] See IACHR, public hearing on "*Situation of Freedom of Expression in Honduras"* held on October 25, 2010, during the Commission's 140th regular session.

[406] In Observations of the State of Honduras on the Draft "General Report on the Situation of Human Rights in Honduras," Memorandum No. SP-A-13-2011 of February 18, 2011, p. 7.

[407] E-mail of November 23, 2010 (in the files of the Office of the Special Rapporteur).

State must also adopt permanent protective mechanisms to ensure the lives and personal safety of media workers who are at risk. Allowing the perpetrators of these crimes to go unpunished not only offends the victims' next of kin but affects society as a whole as well, as it instills fear and a tendency toward self-censorship, as various journalists and social communicators have observed in the meetings held with the IACHR during its visit to Honduras in May 2010.[408]

313. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression reads as follows: "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."

**b. Threats, assaults and harassment of journalists**

314. Sometime after 3:30 am on January 6, 2010, unknown persons set fire to the community radio station Faluma Bimetu (Coco Dulce), which serves the community of Triunfo de la Cruz in the department of Atlántida. The radio station belongs to the Garifuna community. Since the June 2009 *coup,* the radio station had received a number of threats because of its opposition to the *coup d'état* and to various real estate development projects underway in the region. As a result, the radio station told the Commission that its situation was dangerous. Alfredo López, manager of Faluma Bimetu, said that on April 24, shortly before the Commission's visit to Honduras in May 2010, he had made arrangements with the State consisting of two daily police patrols.[409] However, López said that the patrols stopped within a few days.[410] The Honduran State reported that the investigations into this case have "not turned up any suspects who might have caused the fire at the community radio station in question." It reported that "investigations continue in order to find those responsible."[411]

315. In late March 2010, journalist José Alemán, a correspondent for Radio América and contributor to the *Diario Tiempo* in San Marcos de Ocotepeque, left the country because of the threats he received. According to the information received, on March 28, 2010 Alemán received an anonymous call in the morning, in which they threatened him. That same day, unknown persons entered his residence when he was not at home and fired off their weapons inside the reporter's home. According to the information received, the San Marcos de Ocotepeque police told him that they were "incapable" of providing him with security. As a result of these events, Alemán decided to leave the country that very night.[412]

316. On April 9, 2010, unidentified persons fired shots at the residence of Channel 40 journalist Ricardo Oviedo. The journalist, who is also president of the Colón Social Communicators Association, complained that he has been persecuted and harassed since the June 2009 *coup d'état.* On the day his home was attacked, the journalist had covered the police barricade where security forces were stopping buses and checking their passengers. When Oviedo asked why the people were being checked, one of the police officers answered him in a hostile manner using language laced with obscenities.[413]

---

[408] Information received during the meeting the Commission held with social communicators in Tegucigalpa, Honduras, May 16, 2010.

[409] Information received at the meeting the Commission held with social communicators in Tegucigalpa, on May 16, 2010.

[410] Information received at the meeting the Commission held with social communicators in Tegucigalpa, on May 16, 2010.

[411] In Observations of the State of Honduras on the Draft "General Report on the Situation of Human Rights in Honduras," Memorandum No. SP-A-13-2011 of February 18, 2011, p. 8.

[412] Committee to Protect Journalists. April 1, 2010. "*Honduran Journalist Leaves the Country after Attacks*"; Reporters Without Borders, April 2, 2010. *Month of violence turns Honduras into world's most dangerous place for journalists*.

[413] Telephone interview with Ricardo Oviendo, May 14, 2010. See also COPA Press Release, April 28, 2010. "*Otro periodista amenazado en el Aguán*" [Another journalist threatened in El Aguán]; C-Libre/IFEX. "*Canal 40 journalist followed, threatened*.

317. During its May 2010 visit, the Commission received information about an attack made on members of the community radio station *La Voz de Zácate Grande,* in the town of Zácate Grande, which is in the area of the Gulf of Fonseca. This radio station has ties to a movement of *campesinos* in the region who are currently locked in a dispute with a businessman from the area over the control of land. According to the information received, in April 2010 *La Voz de Zácate Grande* was attacked by a group of individuals who supposedly had ties to the businessman in question. Later, persons bearing arms turned up at the radio station claiming to be with the Public Prosecutor's Office. They asked to see the papers authorizing the station to operate. In the days that followed, prosecutor Marco Tulio Campos filed a criminal complaint with the Amapala district court, charging Pedro Canales Torres, José Ernesto Laso, Wilmer Rivera Cabrera, Ethel Verónica Corea, Rafael Osorio, José Danilo Osorio, all employees of the radio station, with the crimes of usurpation of land and the crime of defrauding the public administration by setting up a radio station without CONATEL's authorization.[414] The charges of defrauding the government were dropped. According to the information received, the accused were found guilty of the crime of "usurpation." An appeal filed with the Choluteca Appellate Court was denied.[415]

318. On April 18, 2010, journalist Jorge Ott Anderson, owner of a small cable channel in the city of Colón, received a call on his program in which the anonymous caller warned him that he would be killed at anytime. On May 13, 2010, he received another threat during the night. According to the journalist, the threats against him began two days after the *coup d'état,* on June 30, 2009. They were made by phone and were broadcast live, since the journalist takes calls from viewers live and on the air. The military shut down the channel, which was off the air for two and a half months. According to Ott Anderson, the threats have continued unabated ever since. Their frequency had reportedly increased after Ott Anderson reported on the murder of journalist Nahúm Palacios and the detention of a young man in Bonito Oriental, who had allegedly been mistreated by police in April 2010.[416]

319. In late April 2010, the Society of Jesus reported that Father Ismael Moreno, director of *Radio Progreso,* Gerardo Chévez, a journalist with the station, and Lucy Mendoza, the attorney with the Jesuit Reflection, Research and Communication Team [Equipo de Reflexión, Investigación y Comunicación de la Compañía de Jesús] –ERIC- had reportedly been threatened. According to the information received, the threats that Father Moreno received forced him to go into hiding in late April 2010.[417] According to the same report, journalist Gerardo Chévez was threatened via a text message on March 29, 2010, at approximately three in the afternoon. In the early morning hours that same day, the journalist received another message which read as follows: "*Resistance, we're eliminating the Chévezes first and then the priests."* It is important to point out that on April 11, 2010, Chévez' cousin, the broadcaster Luis Alberto Chévez, had been murdered.[418] Attorney Lucy Mendoza was threatened on April 24, 2010, by way of a text message that told her the following: "*Colonel: You think we don't know you? When you walk in the park, we know when you arrive. We see when you come and with whom. You better get out of all that resistance business.*" Attorney Mendoza, who had been followed and threatened in other ways, has been working for ERIC for some two years; in recent months, she has been providing direct support to the journalists with Radio Progreso.[419]

---

[414] Information received at the Commission's meeting with social communicators, held in Tegucigalpa, Honduras, May 16, 2010. Information also obtained from the IFEX alert of April 29, 2010. See also http://conexihon.com/?q=node/26.

[415] Information supplied by C-Libre, e-mail of November 2010 (on file in the Office of the Special Rapporteur).

[416] Telephone interview with Jorge Ott Anderson, May 14, 2010. Committee to Protect Journalists. May 4, 2010. "*Two Honduran TV reporters receive death threats".*

[417] *Revistazo*. April 22, 2010." *Miembros de la Compañía de Jesús en Honduras, amenazados a muerte*" [Jesuits in Honduras receive death threats]. See also, *Proceso Digital.* April 22, 2010. "*Compañía de Jesús denuncia amenazas contra el Padre Melo y periodistas*" [Jesuits denounce threats against Father Melo and journalists].

[418] Telephone conversation with Gerardo Chévez, May 12, 2010. IFEX. April 26, 2010. "*Journalist receives death threat".*

[419] Information received at the Commission's meeting with social communicators, held in Tegucigalpa, Honduras, May 16, 2010.

320. Jessica Pavón is the news anchor on two news programs on Tegucigalpa's Channel 6: *Notiseis Matutino* [The Channel 6 Morning News] and *Notiseis Nocturno* [The Channel 6 Nightly News]. On May 13, 2010, Pavón received a call on her cell phone and then a message to the following effect: "You feel death. Right, bitch? Because you're dressed in white, we're going to kill you, bitch" [*sic*]. Pavón was in fact wearing white that day. Almost ten minutes later, she received another message, which said the following: "When we see you, we're going to blow your head off, bitch. Get ready, because it's channel 6's turn now. Orlin Castro [one of Pavon's colleagues at Channel 6 who works in San Pedro Sula and had been a recent target of persecution] got away from us. The luck is for you, JESSICA PAVON. Regards el Chele" [sic]. After contacting the police, at 8:00 p.m. Pavón was taken home in a private car by two police officers sent by the Secretariat for Security. Since then she has received a number of calls and similar messages. Pavón filed a complaint with the Office of the Director General of Criminal Investigations and the Public Prosecutor's Office. As a news anchor, she usually reports police news and had recently interviewed persons connected to the teachers union and workers and business people about the negotiations on the minimum wage[420].

321. On May 19, 2010, Arturo Rendón Pineda, the owner of Radio *La Voz de Occidente* in Santa Rosa de Copán, and Manuel Gavarrete, a journalist with that media outlet (and director of the news program "Sucesos"), were both victims of a number of threatening telephone calls. Thus, for example, on May 17, 2010, while the news program was being broadcast, they received three calls at the station threatening the life of the owner of the station and that of journalist Gavarrete and his family. Rendón Pineda denounced that since the *coup d'état,* he and the journalists who work at his radio station have been the targets of serious acts of harassment, such as bursts of machinegun fire outside the station and at Rendón's home.[421] Gavarrete, for his part, complained that his wife had received a call warning her that her children would be killed unless her husband shut up.[422] Rendón Pineda decided to file complaints with the Public Prosecutor's Office and various civil society organizations. According to Rendón Pineda, the harassment and the threats are because of the station's editorial line, which was very critical of the June 28 *coup d'état.* The owner of *La Voz de Occidente* recalled that shortly before receiving the threatening phone calls, they had read an opinion piece over the air that had been published in the newspaper *Tiempo* in which questions were raised about the figures from the Supreme Electoral Tribunal on the November 2009 elections.[423]

322. On June 3, 2010, members of a military and police contingent who planned to capture five leaders of the Zácate Grande Land Recovery and Titling Movement, appeared at the community radio station *La Voz de Zácate Grande.* According to the information received, the members of the security forces placed yellow tape reading "crime scene" on the door to the community radio station, supposedly for the purpose of preventing *La Voz de Zácate Grande* from broadcasting its programming.[424]

323. According to the information received, on August 30, 2010, *Radio Uno*, located in San Pedro Sula, was reportedly sabotaged when the power lines feeding the station's headquarters with electric power were cut. At around 8:20 p.m., while the suppression of a teachers' demonstration some days before was being discussed, the station was suddenly off the air.[425]

---

[420] Telephone interview with Jessica Pavón, May 18, 2010. IFEX. May 17, 2010. "*Canal 6 journalist receives death threats*".

[421] Telephone interview with Arturo Rendón Pineda on May 24, 2010.

[422] Telephone interview with Manuel Gavarrete on May 24, 2010.

[423] The opinion piece in question is titled "Statistics from the Supreme Electoral Tribunal, 2009," and was published on May 17, 2010, in the Honduran newspaper *El Tiempo.*

[424] AMARC. 3 de junio de 2010. "Contingente militar-policial clausura transmisiones de la Voz de Zácate Grande;" IFEX. 30 de agosto de 2010. "*Continued persecution of community radio station in Zacate Grande.*"

[425] IFEX. September 1, 2010. "*Radio station forced off air by vandalism*".

324. On September 14, unidentified persons fired on Honduran journalist Luis Galdámez Álvarez. The communicator's quick reaction foiled the attack. The journalist heads up an opinion program on *Radio Globo* and has been critical of the June 28, 2009 *coup d'état.* Because of the death threats he had received, the IACHR granted precautionary measures for Luis Galdámez Álvarez on July 24, 2009. However, when the measures were not properly implemented and the threats continued, on December 6, 2010 the IACHR requested provisional measures of the Inter-American Court.[426]

325. Furthermore, according to information received, on September 15, 2010 security forces used teargas to break up a march and a concert organized by the San Pedro Sula Frente Nacional de Resistencia Popular, while the 189th anniversary of Honduran Independence was being celebrated. During the course of the measures taken to repress the march and concert, the building housing *Radio Uno* was attacked and its employees assaulted.[427] Once again, the Commission feels compelled to underscore the importance of observance of Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression.

**c. Poor implementation of precautionary measures**

326. In 2010, the Commission granted precautionary measures for 24 persons whose freedom of expression was threatened; most of the beneficiaries were journalists.[428] In many cases, the measures included their immediate families. Nahúm Palacios, the journalist murdered on March 14, 2010, was under that protection at the time of his murder. Both during the Commission's visit in May 2010 and at the hearing on *Mechanisms for implementation of precautionary measures in Honduras,* held in Washington, D.C. on October 25, 2010, civil society organizations and the beneficiaries themselves described the enormous difficulties they had experienced in having the precautionary measures properly implemented.[429]

327. The journalists' mistrust of the police and the lack of an effective response by the authorities appear to be among the reasons for the inadequate implementation of these measures.[430] The situation is compounded by the impunity that the perpetrators of crimes against media workers enjoy, a fact mentioned in preceding paragraphs.

328. It is worthwhile noting that, thus far, the authorities' response to the precautionary measures, when there has been a response, has consisted of offering to supply identification cards, patrols of homes, escorts to and from work, and personal guard services at night.[431] However, some journalists said that they were very fearful of the police because of their association with the repression

---

[426] IACHR, Press Release R96/10: *Office of the Special Rapporteur Expresses Concern over New Attacks against Journalists and Media in Honduras*, September 20, 2010. IFEX. September 16, 2010. *"Journalist survives assassination attempt*". Committee to Protect Journalists. September 16, 2010. "*Critical Honduran reporter survives shooting attack*".

[427] AMARC. September 16, 2010. "*Militares y policías atacan Radio Uno*" [Military and Police Attack Radio Uno]. TeleSur. September 16, 2010. "*Resistencia hondureña denuncia que represión injustificada causó muerte de manifestante*" [Honduran Resistance claim that unwarranted repression caused demonstrator's death].

[428] The journalists for whom the IACHR granted precautionary measures in 2010 are as follows: Marvin Emilio Hernández Duarte and his immediate family (January 8, 2010, MC 196/09, amplification); Gilberto Vides and his immediate family (January 22, 2010, MC 196/09, amplification); Anselmo Romero Ulloa and María Brígida Ulloa Hernández (February 12, 2010, MC 196/09, amplification); Manuel de Jesús Varela Murillo, Ricardo Antonio Rodríguez and their families (February 25, 2010, MC 38/10); Pedro Brizuela, Mateo Enrique García Castillo, and immediate families (March 19, 2010, MC 91/10); X and family (name withheld because he is a minor, March 24, 2010, MC 95/10); Inmer Genaro Chévez and Lucy Mendoza (May 3, 2010, MC 196/09, amplification); Karla Patricia Rivas Sánchez; José Pablo Peraza Chávez; Rita Suyapa Santamaría Velásquez; Alfredo Bográn, Lolany Mariela Pérez Parada; Rommel Alexander Gómez; Lesly Castro; José Domingo Miranda; Héctor Hernández; Víctor Emilio Borjas; Leticia Castellanos and Pablo Ordónez (May 20, 2010, MC 196/09, amplification for journalists from Radio Progreso); Juan Ramón Flores (June 21, 2010, MC 180/10); Edwin Róbilo Espinal (July 22 2010, MC 221/10).

[429] See IACHR, public hearing on "*Situation of Freedom of Expression in Honduras*", held October 25, 2010, during the Commission's 140th regular session.

[430] Telephone interviews with Jorge Ott Anderson and Ricardo Oviedo on May 14, 2010.

[431] Information received at the meeting the Commission held with social communicators on May 16, 2010, in Tegucigalpa.

that followed the *coup d'état* and with groups having ties to organized crime.[432] At the hearing the Commission held in October 2010, representatives of Honduran civil society observed that the State is clearly not committed to protecting journalists and media workers who are at risk, given that there are no proper risk assessments. They also stated that the bodyguards the State provides are at the expense of the person being guarded (a cost of some 250 dollars weekly); that the patrols are stationed in urban areas and are not available in rural areas; that the telephone connections often don't work and there are no personnel who specialize in or are trained in implementing protective measures.[433] The State reported that a Human Rights Unit was created within the Secretariat of Security in March 2010, and is tasked with arriving at a consensus on, implementing and following up on protective measures. It also reported that a Human Rights Investigation Unit had been created within the Secretariat of Security, under the Office of the Special Prosecutor for Human Rights, and that in July 2010 the Working Group of the Inter-Institutional Commission on Human Rights had agreed that a "permanent staff" should be appointed. However it did not report whether those appointments had been made or where staffing was to be reinforced. It also acknowledged that "in some instances, it is difficult to arrive at a consensus on the measures to be taken and how to implement them, but not necessarily for reasons attributable to the State." Among the difficulties mentioned, it cited the "uncooperative attitude on the part of the beneficiary" as the main problem, as well requests from beneficiaries that "exceed the national police's authority, such as providing the beneficiaries with funds to hire private security services."[434] Finally, the State reported that the beneficiaries have to provide their bodyguards with meals since "the State is materially unable to get meals to all the places where bodyguards are posted." It also rejected the claim that patrols only work in urban areas and observed that it does not have the funds to pay for private guard services.[435]

329. The lives of journalists and social communicators in Honduras are fraught with peril. The crimes committed against journalists in 2010 demand efficient and effective responses. It is imperative that the State set up special, independent investigative bodies and protocols, and specialized mechanisms of protection that are effective, stronger and arranged with the journalists themselves. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression is particularly relevant here.

### d. Investigations into shutdowns of media outlets

330. On June 28, 2009, *Channel 36* was taken over by the Armed Forces and was off the air until July 4, when it resumed operation after the Office of the Special Prosecutor for Human Rights intervened. The transmission towers of *Radio Globo* and *Radio La Catracha*, located in the area of Cerro Cantagallo, were taken over.[436]

331. According to the information compiled, on the morning of June 28, 2009 Army Lieutenant Colonel José Arnulfo Jiménez took over the facilities of Channel 36, while Army Lieutenant Darvin Ismael Ardón took control of the Radio Globo and Radio la Catracha transmitters.[437] Both were charged with the crimes of "destroying or damaging the telecommunications service" and "abuse of authority." In the case, brought by the Office of the Special Prosecutor for Human Rights, the defendants argued that they had orders from superiors and had acted in compliance with an order from the Administrative Law Court which allegedly ordered confiscation of propaganda and other materials related to the so-called "fourth ballot

[432] Information received at the meeting the Commission held with social communicators on May 16, 2010, in Tegucigalpa.

[433] Statements made by petitioners Marcia Aguiluz (CEJIL), Mary Agurcia (COFADEH) and Lucy Mendoza (ERIC) at the public hearing on the "*Situation of Freedom of Expression in Honduras*", held on October 25, 2010, during the Commission's 140th regular session.

[434] In Observations of the State of Honduras on the Draft "General Report on the Situation of Human Rights in Honduras," Memorandum No. SP-A-13-2011 of February 18, 2011, pp 8- 9.

[435] In Observations of the State of Honduras on the Draft "General Report on the Situation of Human Rights in Honduras," Memorandum No. SP-A-13-2011 of February 18, 2011, p. 20.

[436] See the report titled *Honduras: human rights and the coup d'état,* IACHR, 2009, paragraphs 414 et seq.

[437] Record from the Initial Hearing, Case No. 0801-2009-48097, before Judge Marta Marlene Murillo Castillo.

box".[438] The two officers argued that they suspected that the two media outlets in question were housing such materials. As the defendants themselves acknowledged at the initial hearing, those materials were never found. However, the takeover of the Channel 36 building lasted eight days. Judge Marta Murillo decided to dismiss the case on the grounds that the military had been following a legitimate order.[439] The Office of the Special Prosecutor for Human Rights filed an appeal on January 13, 2010. According to the information received, the appeal had not yet been decided.[440] However, on August 31, 2010, Judge Lilian Maldonado of the Multi-jurisdictional Courts of Francisco Morazán ruled that Lieutenant Colonel Jiménez was innocent of the charges that the Public Prosecutor's Office and the victims' attorneys had brought against him.[441]

332. On June 28, 2009, *Radio Juticalpa* in the department of Olancho, and *Radio Progreso* in the department of Yoro were also taken over and forced to suspend broadcasting. The Office of the Special Prosecutor for Human Rights filed a formal request with the court seeking indictment of the military officers who led these actions. In the case of the closing of *Radio Juticalpa*, while the lower court ordered that one of the accused members of the army be taken into custody, the Third Court of Appeals revoked that order and dropped the charges against the accused.[442] In the case of the takeover of *Radio Progress*, the charges against the accused were dismissed. As of the date of preparation of this report, the appeal filed by the Office of the Special Prosecutor for Human Rights had not been decided.[443]

333. On September 28, 2009, the equipment of Channel 36, Radio La Catracha and Radio Globo was confiscated, making it impossible for them to go on air. The equipment seizure was the result of a process instituted by CONATEL on the basis of decree PCM-M-016-2009, which had been issued just two days earlier.[444] A number of different security forces took part in the operation, some of whom wore hoods. In October, the State informed the IACHR that the equipment had been returned and that the stations had resumed normal broadcasting, since the decree authorizing the closing of those media outlets had been revoked.[445] On December 15, 2009, the Office of the Special Prosecutor for Human Rights sought indictment of those members of CONATEL who had ordered confiscation of the media outlets' equipment. However, the request was denied: Judge Marta Murillo ordered that the charges against the CONATEL commissioners who had ordered this shutdown be dropped.[446] The Office of the Special Prosecutor for Human Rights filed an appeal to challenge the decision on April 15, 2010, but the appeal has still not been decided.[447]

---

[438] See the report titled *Honduras: human rights and the coup d'état*, IACHR, 2009, paragraphs 82 et seq.

[439] Record of the initial hearing, Case No. 0801-2009-48097, before Judge Marta Marlene Murillo Castillo.

[440] Report sent by e-mail to the Commission by the Office of the Special Prosecutor for Human Rights, May 26, 2010.

[441] See C-Libre/IFEX. September 7, 2010. "*Jueza declara inocente a coronel que cerró varios medios de comunicación*" [Colonel who closed various media outlets found innocent by judge]. *El Libertador*. September 3, 2010. "*Jueza declara inocente a militar responsable del cierre de Canal 36"* [Military officer responsible for shutting down Canal 36 found innocent by judge].

[442] Report sent by e-mail to the Commission by the Office of the Special Prosecutor for Human Rights, May 26, 2010.

[443] Report sent by e-mail to the Commission by the Office of the Special Prosecutor for Human Rights, May 26, 2010.

[444] IACHR, Press release R71/09: 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. 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.

[445] IACHR, *Honduras: Human Rights and the Coup d'état*, paragraph 421.

[446] The accused commissioners were Miguel Ángel Rodas Martínez, Héctor Eduardo Pavón Aguilar, Gustavo Lara López, José Antonio López Sanabria and Germán Enrique Marthel Beltrán.

[447] Information received from the Office of the Special Prosecutor for Human Rights at a meeting held on May 15, 2010. See also *El Libertador*, "Jueza Martha Murillo falla en contra de la Libertad de Expresión; la sentencia aprueba el saqueo y cierre de Canal 36" ["Judge Martha Murillo rules against Freedom of Expression; the ruling rubberstamps the sacking and shutdown of Channel 36"].

**18. Jamaica**

334. The Office of the Special Rapporteur views positively the efforts of the Government of Jamaica, begun in 2007, to review and modify its laws on defamation. However, according to the information received, although the competent commission has met on several occasions in 2010 to discuss the recommendations, the project has not moved forward.[448] In this same sense, the Office of the Special Rapporteur has received information indicating that Jamaica's media outlets have been lobbying for the Parliament to complete the review of these laws, indicating that current rules are very costly and that the risk of being subjected to the high costs of damages often leads them to exclude potentially contentious news items. For this and other reasons, the laws are a true obstacle to the media's function as democracy's watchdog.[449]

335. The Office of the Rapporteur invites the State to make progress in its efforts to effectively review its defamation laws, giving special consideration to inter-American standards, particularly the provisions of Principle 10 of the Declaration of Principles, which states 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."

336. Separately, during the course of 2010, several calls were made by the media to abolish the 1911 Official Secrets Act. Some media outlets consider the it in conflict with the Access to Information Act[450] or the proposed Whistleblower legislation[451], while others argued that the law would be used to silence allegations that are uncomfortable for the administration.[452] The Office of the Rapporteur recalls in this respect that Principle 4 of the IACHR's Declaration of Principles on Freedom of Expression states 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. 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." The Office of the Rapporteur lauds the passage and implementation of the provisions of Jamaica's Access to Information Act in recent years and invites the State to remove the obstacles that could block its effective application.

337. Finally, the Office of the Rapporteur views positively the proposed Whistleblower legislation, which is designed to "encourage and give protection to employees to speak about malpractice and acts of corruption that have been committed or are likely to be committed in the workplace."[453] In

---

[448] Inter-American Press Association (IAPA). *Country reports: Jamaica 66th General Assembly, November 5-9, 2010, Merida, Mexico*. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&infoid=774&idioma=sp

[449] Fox News/AP. October 5, 2010. Jamaica media push for libel law reform. Available at: http://www.foxnews.com/world/2010/10/05/jamaica-media-push-libel-law-reform/#; Jamaica Gleaner News. September 2, 2010. *A shackle to freedom of expression.* Available at: http://jamaica-gleaner.com/gleaner/20100902/letters/letters6.html

[450] Jamaica Gleaner News. September 15, 2010. *US Journalist Bats For Secret Act To Be Abolished – Gleaner Cops Two Fair Play Awards*. Available at: http://jamaica-gleaner.com/gleaner/20100915/lead/lead6.html#; Inter-American Press Association (IAPA). *Country reports: Jamaica 66th General Assembly, November 5-9, 2010*, Merida, Mexico. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&infoid=774&idioma=sp

[451] Jamaica Observer. July 18, 2010. *Official Secrets Act a relic*. Available at: http://www.jamaicaobserver.com/news/Official-Secrets-Act-a-relic_7805999; Inter-American Press Association. *Country reports: Jamaica 66th General Assembly, November 5-9, 2010, Merida, Mexico*. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&infoid=774&idioma=sp

[452] Jamaica Gleaner News. July 4, 2010. *Shut Up!.* Available at: http://jamaica-gleaner.com/gleaner/20100704/lead/lead1.html

[453] Inter-American Press Association. *Country reports: Jamaica 66th General Assembly, November 5-9, 2010, Merida, Mexico*. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&infoid=774&idioma=us; Protected Disclosures Act 2010. Jamaica. Available at:

Continued…

reference to secrecy legislation, the 2004 Joint Declaration establishes that, "'Whistleblowers' are individuals releasing confidential or secret information although they are under an official or other obligation to maintain confidentiality or secrecy. 'Whistleblowers' 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.'"[454]

### 19. Nicaragua

338. On Tuesday, October 26, 2010, during the 140th Period of Sessions, a public hearing was held before the IACHR on the human rights situation in Nicaragua. The information sent on the occasion of the hearing and supplied during the hearing has been very useful for understanding the situation.

339. According to the Office of the Special Rapporteur's understanding, State institutions have blocked journalists from independent media outlets from participating in some press conferences on matters in the public interest. On March 9, the Supreme Elections Council (CSE in its Spanish acronym) prohibited journalists with the newspapers *La Prensa* and *El Nuevo Diario* - as well as journalists with TV station *Canal 2* - from entering a conference on the results of the regional elections carried out the day before. At the same time, media outlets with close ties to the government were able to enter the CSE without trouble to participate in the conference. On the previous day, the CSE also failed to authorize the presence of a reporter with *La Prensa* at an announcement on the preliminary results of the vote.[455] According to the information received, on March 9, officials with the Health Ministry did not authorize a journalist with the newspaper *La Prensa* to participate in another press conference on a plan regarding flu vaccinations.[456] On October 28, the CSE once again blocked *La Prensa* from participating in a press conference on elections to be held on November 3. Journalists for *Canal 2* and *La Prensa* were once again banned from the CSE during the filing of forms by two political parties indicating their intention to participate in the elections.[457]

340. The Office of the Special Rapporteur received information indicating that media outlets that are critical of the government could be the subject of indirect mechanisms of pressure, including surprise inspections and disproportionate actions by different state agencies.[458] For example, according to the information supplied to the Office of the Special Rapporteur, between September 2009 and November 2010, the Labor Ministry had carried out five inspections of the newspaper *La Prensa,* while

---

…continuation
http://www.japarliament.gov.jm/attachments/339_The%20Protected%20Disclosures%20Act,%202010.pdfand
athttp://www.moj.gov.jm/Protected%20Disclosures%20Act%202010.pdf

[454] 2004 Joint Declaration of the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe Representative on Freedom of the Media, and the OAS Special Rapporteur on Freedom of Expression. Available at: http://www.cidh.org/relatoria/showarticle.asp?artID=319&lID=2

[455] Bolsa de Noticias. March 9, 2010. *Irregularities denounced as FSLN celebrates victory.* Available at: http://www.bolsadenoticias.com.ni/2010/marzo/09/fsl.htm; La Prensa. March 9, 2010. *CSE blocks access to La Prensa.* Available at: http://www-ni.laprensa.com.ni/2010/03/09/la-prensa-en-video/18493

[456] Medios Latinos. March 10, 2010. *Nicaragua's La Prensa denounces move toward censoring official information on public interest topics like health.* Available at: http://www.medioslatinos.com/modules/news/article.php?storyid=3430; La Prensa. March 10, 2010. *Health Ministry joins censorship of La Prensa.* Available at: http://www-ni.laprensa.com.ni/2010/03/10/nacionales/18662

[457] La Prensa. November 4, 2010. *Journalists blocked again at the CSE.* Available at: http://www.laprensa.com.ni/2010/11/04/politica/42652. Cf. Johel Simon, Executive Director for the Committee to Protect Journalists (CPJ). June 16, 2010. Hearing on the freedom of expression situation in the Americas. Available at: http://foreignaffairs.house.gov/111/56996.pdf

[458] Cf. Johel Simon, Executive Director for the Committee to Protect Journalists (CPJ). June 16, 2010. Hearing on the freedom of expression situation in the Americas. Available at: http://foreignaffairs.house.gov/111/56996.pdf; en also cf. International Freedom of Expression Exchange (IFEX). July 8, 2009. *Nicaragua at war with media, says CPJ report.* Available at: http://www.ifex.org/nicaragua/2009/07/08/ortega_media_war/es

the Social Security administration had carried out another four. The newspaper *El Nuevo Diario* was also subject to the similar procedures.[459] As the Office of the Special Rapporteur has recognized, all moral persons are subject to the rule of law, and the State has the authority to supervise compliance with the law at all times. However, the State's administrative actions cannot include standards that are discriminatory or that in any way send the message that they are in fact indirect sanctions in retaliation for the editorial stance of independent media.

341. Article 13(3) of the American Convention on Human Rights 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."

342. According to the information received, for several hours on December 9, a group of individuals blockaded the personal home of the general manager of newspaper *La Prensa* and his family.[460] This incident was preceded by other incidents that took place on August 31, when a group of people blocked the entrance to the newspaper, using homemade explosives and obstructing the newspaper's distribution. This act against *La Prensa* took place in the context of protests by 23 of the newspaper's distributors.[461] In the early morning hours of December 7, the former newspaper distributors and individuals allegedly aligned with the government blocked the entrance to *La Prensa* once more to keep the paper from being distributed. Although the Police were present, they did not intervene.

343. According to Principle 9 of the Declaration of Principles, "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."

### 20. Panama

344. The Office of the Special Rapporteur received information according to which on July 7, 2010, the Police arrested Mauricio Valenzuela, a photographer with the newspaper *Panamá América*, stripped him and held him in detention for several hours. According to the information received, Valenzuela was detained by police while taking photographs of a Panama Canal access zone where a workers' strike was taking place. The Office of the Special Rapporteur was informed that President Ricardo Martinelli offered his apologies to the photographer and promised to punish those responsible.[462] This was the second physical attack suffered by the journalist in two months. On May 10, during a prior incident, the photographer was beaten by police and private security guards for having photographed a public official during a social activity in a public place.[463] The Office of the Special Rapporteur requested

---

[459] Inter-American Press Association. November 7, 2010. *Nicaragua's La Prensa audited as means of intimidation.* Available at: http://www.sipse.com/noticias/74238-auditan-prensa-nicaragua-intimidar.html

[460] La Prensa. December 8, 2010. *Mob boycotts La Prensa for no reason.* Available at: http://www.laprensa.com.ni/2010/12/08/nacionales/45853; La Prensa. December 10, 2010. *Aggression toward La Prensa and police passivity.* Available at: http://www.laprensa.com.ni/2010/12/11/politica/46093

[461] Agencia EFE. December 24, 2010. *Nicaraguan newspaper La Prensa attacked*. Available at: http://www.laestrella.com.pa/mensual/2010/12/24/contenido/15143876.asp; Inter-American Press Association. September 2, 2010. *IAPA questions harassment of distribution of Managua's La Prensa.* Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&idioma=sp&id=4430

[462] Panamá América. July 8, 2010. *EPASA photographer arrested and abused.* Available at: http://www.pa-digital.com.pa/periodico/edicion-anterior/nacion-interna.php?story_id=938681; Hora Cero. July 8, 2010. *Martinelli apologizes for arrest and abuse of EPASA photographer.* Available at: http://horacero.com.pa/index.php?option=com_content&view=article&id=24795:hora-cero&catid=24:panama&Itemid=111115

[463] German Press Agency (DPA)/Prensa.com. May 10, 2010. *Police attack against Panamanian photographer denounced.* Available at: http://www.panamanewsbriefs.com/?p=159104; Panamá América. May 10, 2010. *Attack on photographers.* Available at: http://www.pa-digital.com.pa/periodico/edicion-anterior/nacion-interna.php?story_id=918604

information from the Panamanian State on this and other incidents that could have affected the right to freedom of expression during 2010.[464] The Panamanian State informed the Office of the Special Rapporteur that with regard to the incident on July 7, it had not been recorded that the photographer had filed a complaint. As a consequence, there was no investigation into the incident. As far as the incident that took place on May 10, the State reported that the Public Ministry investigated the complaint filed by Valenzuela. The complaint was dismissed in favor of those allegedly responsible as "the conduct that supposedly took place does not fall within the framework of a crime against personal freedom, as (Valenzuela) was not deprived of his freedom nor taken to another place against his will."[465]

345. According to information received, on September 28, the Second Superior Court of Justice of Panama sentenced Sabrina Bacal, the news director for *Canal Dos*, and Justino González, a journalist with radio station *KW Continente*, to one year in prison for the offense of defamation to the detriment of two officials of the Immigration Directorship. The ruling also banned them from carrying out activities linked to their professions for a year and substituted the prison term for a fine of US$3,650 each.[466] The ruling struck down two rulings to acquit issued by two criminal courts in the First Criminal Circuit of Panama. The Office of the Special Rapporteur was informed that President Ricardo Martinelli pardoned the two convicted journalists on October 7.[467] Although this pardon is without a doubt a positive development, the Office of the Special Rapporteur considers that this decision does not prevent the possibility of new criminal punishment in the future for reports denouncing possible irregularities of interest to the public.[468] The Panamanian State said in a communication to the Office of the Special Rapporteur that, "During the course of the investigation, due process was complied with and (the accused) were guaranteed all their rights provided for by Law."[469]

346. The Office of the Special Rapporteur was also informed of a criminal sentence of 500 days in prison handed down against journalist Rafael Antonio Ruíz for the crime of defamation, commuted to the payment of US$1,000. The ruling was issued on October 14 by the Second Court of Justice. According to the information received, the case began with a news item published by Ruíz in October of 2005 in the newspaper *El Siglo* about a member of the presidential guard who was allegedly the subject of a court investigation.[470] In regard to this case, the Panamanian State responded to the Office of the Special Rapporteur that the journalist had been investigated "for an offense against the

---

[464] IACHR Office of the Special Rapporteur for Freedom of Expression. Request for information from the Panamanian State under Article 41 of the American Convention on Human Rights. Ref.: Request for information on incidents related to the protection of freedom of expression in the Republic of Panama. July 23, 2010, and October 20, 2010.

[465] Republic of Panama. Ministry of Foreign Affairs. Communication with the Office of the Special Rapporteur for Freedom of Expression. A.J.D.H. 211 December 1, 2010.

[466] On December 28, 2010, in response to a request for information from the Office of the Special Rapporteur regarding the case of Sabrina Bacal and Justino González, the State of Panama provided the September 28, 2010 judgment of the Second Superior Tribunal of Justice of the First Judicial District. The Office of the Special Rapporteur observes that Magistrate Luis Mario Carrasco dissented with regard to the ban on practicing the profession of social communication for one year, considering that "it is excessive and disproportionate."

[467] Republic of Panama. Governance Minister. Executive Decree No. 864, October 7, 2010. Available at: http://mensual.prensa.com/mensual/contenido/2010/10/07/uhora/indulto.pdf

[468] Second Superior Court of Justice of the First Judicial District. Judgment No. 250 S.I., dated September 28, 2010. IACHR Office of the Special Rapporteur for Freedom of Expression. Press Release R101/10. *Office of the Special Rapporteur Concerned About Criminal Conviction of Journalists in Panama.* Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=822&lID=2; Inter-American Press Association (IAPA). October 6, 2010. *IAPA sees court ruling against two journalists in Panama as a step backward for freedom of the press.* Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4454&idioma=sp

[469] Republic of Panama. Ministry of Foreign Affairs. Communication with the Office of the Special Rapporteur for Freedom of Expression. A.J.D.H. 211. December 1, 2010.

[470] Panamá América. October 15, 2010. *Second Court convicts journalist Rafael Antonio Ruiz.* Available at: http://www.pa-digital.com.pa/periodico/edicion-actual/hoy-interna.php?story_id=974312; La Estrella. October 14, 2010. *Another journalist convicted of defamation.* Available at: http://www.laestrella.com.pa/mensual/2010/10/14/contenido/14105318.asp

honor of the Seventh Circuit Public Prosecutor of the First Judicial Circuit of Panama and in compliance with all guarantees provided for by Law."[471]

347. These criminal convictions imply a serious step backward in the Panamanian State's thus-far demonstrated willingness to bring alleged offenses against honor involving public officials and the public interest to trial in the civil system. Likewise, the ban on exercising one's profession for one year disproportionately limits the freedom of expression of the journalists affected.

348. The Office of the Special Rapporteur also received information according to which on April 30, the Second Court of the Civil Circuit condemned the newspaper *La Prensa* to pay a public prosecutor US$300,000 in moral damages. According to the information received, the public prosecutor filed a complaint for defamation over the publication of a report in *La Prensa* on August 30, 2005, that was based on the content of an official communication referring to the dismissal of the official.[472]

349. Due to the 2008 annulment of a presidential pardon benefiting 62 journalists, the Office of the Special Rapporteur has learned that the Panamanian press is concerned over the possibility that pending trials against journalists will be restarted or that arbitrary detentions will be carried out. According to the information received, the concern among Panamanian journalists grew as a result of the arrests of communicators Carlos Núñez and José Otero (see below), as there is uncertainty over whether the sentences are in effect or not and fear of being arrested during routine police operations.[473] In its 2008 annual report, the Office of the Special Rapporteur expressed its concern over the issue as follows: "The Special Rapporteur's Office is concerned with the situation of judicial uncertainty affecting 62 journalists whose pardons for criminal defamation offenses may now be without effect. On June 30, 2008, the Supreme Court of Justice held that the pardons granted by former president Mireya Moscoso in 2004 were unconstitutional."[474] The Panamanian State responded to the Office of the Special Rapporteur that among the decrees declared unconstitutional, in addition to the journalists there were 120 other individuals convicted of various crimes. It would therefore be necessary to identify this group of communicators to verify their legal status.[475]

350. According to information provided to the Office of the Special Rapporteur, journalist Carlos Núñez was arrested on June 26 during a routine police action during which his personal information was submitted into an information system known as "pele-police."[476] In this information system, police found the communicator had been convicted of an "offense against honor," sentenced to 12 months of prison, and banned from holding a position as a public official during the same time period.

---

[471] Republic of Panama. Ministry of Foreign Affairs. Communication with the Office of the Special Rapporteur for Freedom of Expression. A.J.D.H. 211. December 1, 2010. On December 28, 2010, in response to a request for information from the Office of the Special Rapporteur regarding the case of Rafael Antonio Ruíz, the State of Panama provided the December 30, 2008 judgment of the Twenty-fourth Criminal Circuit Court of the First Judicial Circuit of the Province of Panama, as well as the August 17, 2010 judgment of the Second Superior Tribunal of Justice. The latter judgment confirmed the defamation conviction against Rafael Antonio Ruiz.

[472] Inter-American Press Association. May 10, 2010. *IAPA condemns conviction of Panama's La Prensa newspaper* Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4372&idioma=us. La Prensa. May 6, 2010. *Judge condemns* La Prensa *to pay US$300,000 to public prosecutor.* Available at: http://mensual.prensa.com/mensual/contenido/2010/05/06/hoy/panorama/2179220.asp

[473] Inter-American Press Association. November 2010. *66th General Assembly. Information by country: Panama.* Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&infoid=787&idioma=us

[474] IACHR. Annual Report 2009. OEA/SER.L/V/II. Doc.51, December 30, 2009. Volume II*:* Annual Report of the Office of the Special Rapporteur for Freedom of Expression*,* Chapter II (Evaluation of the state of freedom of expression in the hemisphere). para. 201 Available at: http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf. On December 28, 2010, in response to a request for information from the Office of the Special Rapporteur regarding the pardons, the State of Panama provided the June 30, 2008 judgment of the Supreme Court of Justice.

[475] Republic of Panama. Ministry of Foreing Affairs. Communication with the Office of the Special Rapporteur for Freedom of Expression. A.J.D.H. 211. December 1, 2010.

[476] Inter-American Press Association. November 2010. *66th General Assembly. Information by country: Panama.* Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&infoid=787&idioma=sp

The ruling was handed down on December 21, 2006, and according to the information received, Núñez had not been notified of the ruling.[477] In a 2004 article in the newspaper *La Crónica*, Núñez had denounced environmental damage to a river, allegedly caused by landowner, who brought charges against the communicator.[478] The journalist was imprisoned until July 14, 2010, at which time the sentence was replaced with a fine worth 34 standard daily wages.[479]

351. The Office of the Special Rapporteur was informed that on October 16, José Otero, a journalist with the newspaper *La Prensa*, was also detained for several hours after a routine inspection with the "pele police" system, where he was registered under a complaint against him from 1998. The complaint was related to an alleged offense against honor, whose file had been closed in 2001.[480]

352. The Office of the Special Rapporteur feels it is important to highlight that, in a decision that we value for its importance in the defense of freedom of expression, Panama decided in 2007 to decriminalize defamation ofenses when the information includes information or opinions critical of official acts or omissions of senior public officials. This decision should favor those who previously benefited from the pardon.

353. The Office of the Special Rapporteur observes with concern an opinion from the Office of the Public Prosecutor dated September 17. The opinion calls for Article 196 of the Penal code, which partially decriminalizes offenses against honor when it comes to information on senior State officials, to be declared unconstitutional.[481] The Office of the Special Rapporteur has said that applying criminal sanctions to offenses against honor has a chilling and intimidating effect on the exercise of freedom of expression, since that approach is disproportionate and truly unnecessary in a democratic society. The use of criminal mechanisms to punish expression about issues in the public interest or public officials could constitute a measure of indirect censorship for its intimidating and inhibiting effect on the debate of matters of public relevance.[482]

354. The Office of the Special Rapporteur reiterates that Principle 10 of the Declaration of Principles states 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

---

[477] On December 28, 2010, in response to a request for information from the Office of the Special Rapporteur regarding the case of Carlos Ñúñez, the State of Panama provided the December 21, 2006 judgment of the Twenty-fourth Criminal Circuit Court of the First Judicial Circuit of the Province of Panama, as well as the June 20, 2008 judgment of the Second Superior Tribunal of Justice. The latter judgment confirmed in its entirety the criminal conviction of December 21, 2006.

[478] Committee to Protect Journalists (CPJ). June 30, 2010. *Veteran Panamanian journalist jailed on defamation charges.* Available at: http://cpj.org/2010/06/veteran-panamanian-journalist-jailed-on-defamation.php. Criminal Court of the Fourteenth Circuit of the First Circuit of the Province of Panama. December 21, 2010. Judgment No. 186.

[479] Reporters without Borders. July 19, 2010. *Retired journalist freed after being held for 19 days* Available at: http://en.rsf.org/panama-retired-journalist-arrested-to-29-06-2010,37839.html; Committee to Protect Journalists (CPJ). *Veteran journalist jailed on defamation charges*. http://www.ifex.org/panama/2010/06/30/nunez_lopez_arrested/; Republic of Panama. Foreigner Minister. Communication with the Office of the Special Rapporteur for Freedom of Expression. A.J.D.H. 211 December 1, 2010.

[480] La Prensa. October 19, 2010. *Executive, champion of out-of-date "Pele Police."* Available at: http://mensual.prensa.com/mensual/contenido/2010/10/19/hoy/panorama/2375478.asp. La Estrella. October 17, 2010. *Series of attacks against journalists.* Available at: http://www.laestrella.com.pa/mensual/2010/10/17/contenido/291696.asp. Ministry of Foreing Affairs. Communication with the Office of the Special Rapporteur for Freedom of Expression. A.J.D.H. 211 December 1, 2010.

[481] Public Ministry. National State's Attorney. September 17, 2010. Vista N° 24.

[482] IACHR. Office of the Special Rapporteur for Freedom of Expression. October 8, 2010. Press Release R101/10. *Office of the Special Rapporteur Concerned About Criminal Conviction of Journalists in Panama.* Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=822&lID=2; Inter-American Press Association. November 2010. *66th General Assembly. Information by country: Panama.* Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&infoid=787&idioma=us

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."

355. Furthermore, Principle 11 of the same declaration 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."

356. The Office of the Special Rapporteur received information indicating that administrative proceedings against companies owned by journalists have been moved forward after those journalists issued opinions that were critical toward the government. According to the information received, sports commentator Juan Carlos Tapia, who often does political commentary, said he was the subject of "persecution" from the Economy and Finance Ministry due to his opinions on the government. The journalist also said he has received death threats over his journalism work.[483] Guillermo Antonio Adames, journalist and owner of the radio station *Omega Stereo*, received warnings that he would be the subject of a tax audit one day after having criticized several public officials in an interview published in the newspaper *La Prensa* on November 14. According to the information received, a few days after the publication, a team of auditors from the General Directorship for Revenue of the Economy and Finance Ministry visited the headquarters of *Omega Stereo*.[484] State representatives rejected the idea that the audit of the media outlet was done in retaliation and said that it was part of routine activity designed to prevent tax evasion.[485]

357. The Office of the Special Rapporteur was also informed that on July 4, 2010, Francisco Gómez Nadal, a Spanish journalist with residency in Panama, was warned that he would be prevented from returning to the country if he traveled abroad. According to the information received, Gómez Nadal was detained for several hours by immigration officials in the Panama City international airport. The information indicates that the detention took place several days after he published several articles that were critical of senior Panamanian officials in the newspaper *La Prensa.*[486] The State informed the Office of the Rapporteur that the Labor Ministry's Department of Migrant Labor informed the National Immigration Office, by means of a note dated July 5, 2010, that Gómez Nadal did not have a work permit. The State also responded that neither the Ministry of Public Safety nor the Immigration General Directorship had any record of a complaint filed by Francisco Gómez Nadal.[487] On July 4, the journalist filed a writ of *habeas corpus* with the Supreme Court of Justice, as well as a complaint with the People's Ombudsman's Office that was accepted on July 5.[488]

---

[483] La Estrella. February 28, 2010. *Juan Carlos Tapia denounces persecution.* Available at: http://www.laestrella.com.pa/mensual/2010/02/28/contenido/208524.asp; TVN Noticias Panamá. April 12, 2010. *Tapia says he has been threatened.* Available at: http://tvn-2.com/NOTICIAS/noticias_detalle.asp?id_news=30744

[484] La Prensa. November 14, 2010. *Mr. President should understand that the campaign is over. It's time to govern.* Available at: http://www.prensa.com/hoy/panorama/2398553.asp. TVN Noticias. November 22, 2010. *Guillermo Adames' company audited.* Available at: http://www.tvn-2.com/noticias/noticias_detalle.asp?id_news=42228; La Estrella. November, 19, 2010. *Communicator owner of Omega Stéreo denounces threats.* Available at: http://www.laestrella.com.pa/mensual/2010/11/19/contenido/09565975.asp

[485] Panamá América. March 12, 2010. *Vallarino rejects criticism of audit.* Available at: http://www.pa-digital.com.pa/periodico/buscador/resultado.php?story_id=897892&page=6&texto=dirección%20general%20de%20ingresos; La Prensa. November 24, 2010. *Tax authority criticizes Adames* Available at: http://mensual.prensa.com/mensual/contenido/2010/11/24/hoy/panorama/2412216.asp. La Estrella. November, 19, 2010. *Communicator owner of Omega Stéreo denounces threats.* Available at: http://www.laestrella.com.pa/mensual/2010/11/19/contenido/09565975.asp

[486] Reporters without Borders. July 12, 2010. *Government tries to expel Spanish journalist resident in Panama.* Available at: http://en.rsf.org/panama-government-tries-to-expel-spanish-12-07-2010,37931.html; La Prensa. July 4, 2010. *Gómez Nadal: Detention was completely arbitrary.* Available at: http://mensual.prensa.com/mensual/contenido/2010/07/04/uhora/local_2010070416124019.asp

[487] Ministry of Foreing Affairs. Republic of Panama. October 22, 2010. A.J.D.H No.179. Report of the Office of the Special Rapporteur for Freedom of Expression.

[488] Gómez Nadal, Francisco. July 4, 2010. Writ of habeas corpus (preventative) against the Immigration and Naturalization National Directorship; People's Ombudsman's Office of the Republic of Panama. July 7, 2010. Resolution No. 672ª-10.

358. The Office of the Special Rapporteur recalls that Principle 13 of the Declaration of Principles indicates 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."

### 21. Paraguay

359. According to information received by the Office of the Special Rapporteur, journalist Gabriel Bustamante of radio station *FM Ayolas* and a correspondent with newspapers *La Nación* and *Crónica*, all located in Ayolas, was the subject of death threats and three attempted murders during July. According to the information, the attacks are related to stories by the journalist on an alleged case of municipal corruption. Bustamante filed a complaint about the situation with the authorities; one of the attackers has been identified and is currently a fugitive.[489]

360. The Office of the Special Rapporteur also received information on the attempted murder of journalist Martín Caballero, with *Radio Sagrado Corazón*, located in Villa Hayes. On the night of August 11, Caballero was chased by a vehicle from which shots were fired at him, while at the same time a man on a motorcycle threatened him with a pistol. According to the information received, Caballero has made public denouncements with regard to a prolonged workers' strike at a steel company, as well as with regard to bad practices among area police.[490]

361. The Office of the Special Rapporteur was informed that journalist Rosendo Duarte, correspondent with newspaper ABC Color in Salto del Guairá, was threatened on August 25 during the broadcast of the radio program that he hosts. The threat came from the family member of an individual suspected of working in narcotics trafficking, about whose arrest Duarte had written a news article.[491]

362. According to information received, on October 22, community radio station *San Rafael FM 89.1*, in the Alto Vera Itapúa district, suffered a fire that was apparently intentional. The Office of the Special Rapporteur was informed that unknown individuals broke into the radio station's facilities in the early morning hours and set fire to equipment crucial for the broadcaster's operation.[492]

363. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression states: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material

---

[489] Reporters without Borders. July 27, 2010. *Three attempts to murder provincial reporter.* Available at: http://en.rsf.org/paraguay-three-attempts-to-murder-27-07-2010,38040.html; Sindicato de Periodistas del Paraguay. July 24, 2010. *P-MAS candidate attacks journalist, who suspects he has protection from Filizzola.* Available at: http://www.sindicatodeperiodistas.org.py/detalle_denuncia.php?id_noticia=179; Sindicato de Periodistas del Paraguay. July 25, 2010. *Brother of P-MAS council candidate tries to murder journalist Ayolas.* Available at: http://www.sindicatodeperiodistas.org.py/detalle_noticia.php?id_noticia=180

[490] International Freedom of Expression Exchange (IFEX)/Sindicato de Periodistas del Paraguay. August 16, 2010. *SPP condemns actions against journalist, attempt to censor radio station.* Available at: http://www.ifex.org/paraguay/2010/08/16/caballero_threatened/; ABC Color. August 15, 2010. *SPP denounces threat against host.* Available at: http://www.abc.com.py/nota/169316-SPP-denuncia-amenaza-contra-locutor/

[491] ABC Color. August 26, 2010. *ABC correspondent threatened.* Available at: http://www.abc.com.py/nota/amenazan-corresponsal-abc/; Sindicato de Periodistas del Paraguay. August 27, 2010. *Sindicato de Periodistas del Paraguay repudiates threat against ABC Color journalist.* Available at: http://www.nanduti.com.py/v1/noticias-mas.php?id=20665

[492] Voces Paraguay: October 24, 2010. Paraguay. *Attack on Alto Vera radio station repudiated.* Available at: http://noticiasderadiodelmundo.blogspot.com/2010/10/paraguay-repudian-atentado-sufrido-por.html. ABC Color. October 22, 2010. *Itapúa community radio station set on fire.* Available at: http://www.abc.com.py/nota/incendian-radio-comunitaria-en-itapua

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."

364. The Office of the Special Rapporteur was informed that on April 5, a civil and commercial legal proceeding ended with the civil sanction of Aldo Zuccolillo, director of the newspaper *ABC Color*. Zucolillo was ordered to pay US$50,000, plus interest, to magistrate Carmelo Castiglioni in reparation of moral damages. The newspaper had criticized Castiglioni for having handed down a high court ruling acquitting former president Luis González Macchi. According to the information received, the judge's ruling found that ABC Color "could have mentioned that the ruling (of magistrate Castiglioni) was sufficiently well argued." The Office of the Special Rapporteur was informed that the judge found that the information was not false but rather "inappropriate and inexact." Also, the judge indicated that ABC published a right to reply by Castiglioni, but not in the same space as the information at issue.[493] Aldo Zuccolillo announced he would appeal the ruling.[494]

365. The Office of the Special Rapporteur recalls that Principle 11 of the aforementioned Declaration of Principles 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."

366. The Office of the Special Rapporteur received information concerning the passage of the Telecommunications Bill by the Chamber of Deputies on July 8 and by the Senate on October 29. The reform bill modifies six articles in the Telecommunications Law currently in force; places a signal strength limit of between 50 and 300 watts for community, educational, association and citizen radio stations; and restricts the broadcasting of private and public advertising on these stations. This bill, which is supposedly intended to combat pirate radio stations, also establishes prison time for up to two years or a fine equal to between 300 and 500 standard daily wages for those who operate without a license or without prior authorization from the National Telecommunications Commission.[495] President Fernando Lugo vetoed the law on November 12, but on December 10 the Chamber of Deputies rejected the presidential veto. As of the publication deadline of this report, the presidential veto was being discussed in the Senate.[496]

367. The Office of the Special Rapporteur offered its opinion on the changes to the Telecommunications Law being discussed in the legislature. In the opinion of the Office of the Special Rapporteur, some of the reforms proposed by the bill are problematic from the point of view of inter-American standards on freedom of expression, particularly the provisions that limit community radio signal strength, the ban on broadcasting any kind of advertising, and the establishment of criminal sanctions for

---

[493] ABC Color. April 5, 2010. *Judge convicts ABC for criticizing court ruling.* Available at: http://www.abc.com.py/nota/98598-Jueza-condena-a-ABC-por-criticar-fallo-judicial; Ultima Hora. April 7, 2010. *Castiglioni says ruling against media outlet is historic.* Available at: http://www.ultimahora.com/notas/310922-Castiglioni-alega--que-fallo-contra-medio-es-histórico

[494] Radio 1 de marzo. April 7, 2010. *Businessman Zuccolillo announces appeal of ruling that ordered him to pay a judge.* Available at: http://www.780am.com.py/articulo.php?articulo=11998; Portal Paraguayo de Noticias. April 7, 2010. *Zuccolillo announced appeal of ruling that ordered him to pay a judge*. Available at: http://www.ppn.com.py/html/noticias/noticia-ver.asp?id=60142&rss=go

[495] Community Radio and Alternative Media Association of Paraguay. July 6, 2010. *Paraguay: Press release from the Community Radio and Alternative Media Association of Paraguay.* Available at: http://www.sccportal.org/Noticias.aspx?M=News&PID=2184&NewsID=3789; International Freedom of Expression Exchange (IFEX)/ World Association of Community Broadcasters (AMARC). July 14, 2010. *Organizations reject discriminatory telecommunications initiative in Paraguay.* Available at: http://www.ifex.org/paraguay/2010/07/14/iniciativa_discriminatoria/es/; Sindicato de Periodistas del Paraguay. July 14, 2010. *Bill on alternative radio contradicts the OAS and the UN on access to advertising.* Available at: http://www.sindicatodeperiodistas.org.py/detalle_noticia.php?id_noticia=171; Knight Center of Journalism in the Americas. July 16, 2010. *Sindicato de Periodistas del Paraguay criticizes community radio bill*. Available at: http://knightcenter.utexas.edu/es/blog/sindicato-de-periodistas-del-paraguay-critica-proyecto-de-ley-de-radios-comunitarias

[496] World Association of Community Broadcasters (AMARC). December 10, 2010. *Chamber of Deputies overrides Lugo's Telecommunications Law veto.* http://www.agenciapulsar.org/nota.php?id=18714. ABC Color. November 12, 2010. *Lugo vetoes Telecommunications Law.* Available at: http://www.abc.com.py/nota/lugo-veto-la-ley-de-telecomunicaciones/

people who carry out unauthorized radio broadcasts. These rules would establish discriminatory conditions that would tend to exclude or limit participation of certain expression transmitted through non-profit community media outlets in the public debate. Also, the establishment of criminal sanctions is disproportionate and beyond the measures necessary for prevention, such as the establishment of a proportional regime of punishment that includes civil sanctions.[497]

### 22. Peru

368. The Office of the Special Rapporteur expresses satisfaction at the Peruvian State's decision to suspend the application of a sanction canceling the operating license of the radio station *La Voz*, in Bagua.[498] According to the information provided, on October 5, 2010, the Transportation and Telecommunications Ministry issued a resolution restoring the authorization issued in 2007 - that is, the authorization to provide commercial radio broadcasting services with frequency modulation in the area of Bagua, Bagua Grande, in the Amazonas department - and annulled the June 8, 2009, cancellation of the broadcasting license.[499] The resolution that suspended the broadcasting permission was adopted following the serious acts of violence that took place in Bagua on June 5, 2009, and, according to information available at that time, after several state authorities stated that *La Voz* had incited those acts.[500] In a letter to the Office of the Special Rapporteur that was received on November 12, 2010, the Peruvian State indicated that, "The cancellation of the operating license was due to the radio broadcaster's failure to comply with its legal and regulatory obligations established during its installation and test period. Also, given that these painful events in Bagua intervened between the detection of the lack of compliance and the application of the sanction, this gave a basis to allege that the administrative sanction was, in reality, an abuse of official regulations. In order to dispel any doubt with regard to the Peruvian State's firm adherence to its international human rights obligations (...) the Transportation and Communications Ministry decided to suspend (...) the application of the sanction."[501]

369. The government's decision indicated above is greatly important given that, as the government states in its communication, State actions that affect freedom of expression have to not only conform to the law, but avoid any suspicion that they have in reality been taken to punish a media outlet for its editorial stance. The simple idea that the State is able to or wishes to use its power to affect freedom of expression can produce a chilling or inhibiting effect that affects the environment of freedom in which this right should be guaranteed. For this reason, the Office of the Special Rapporteur particularly values this decision, as well as the motives behind it.

370. The Office of the Special Rapporteur considers the creation of a special jurisdiction for processing cases of crimes committed against journalists in the course of carrying out their work as an important step forward. According to the information provided, on November 5, Administrative Resolution

---

[497] Report of the IACHR Office of the Special Rapporteur for Freedom of Expression. October 15, 2010. Ref.: Bill to reform the Telecommunications Law.

[498] Transportation and Telecommunications Ministry. October 15, 2010. Communication No.1966-2010-MTC/01. Communication with the Office of the Special Rapporteur for Freedom of Expression.

[499] Through Vice-Ministerial Resolution No. 751-2010-MTC/03, Vice-Ministerial Resolution No. 211-2009-MTC/03, which ordered the cancellation of the radio broadcasting license of *La Voz*, in Bagua, and placed Vice-Ministerial Resolution No. 064-2007-MTC/03, which authorized the original license, back into effect.

[500] In the incidents that took place in June 2009, at least 30 people died and others were wounded. Victims included indigenous leaders and members of security forces. The incidents were the result of an operation carried out by the National Police of Peru to disperse a blockade maintained by indigenous groups on the highway that provides access to the city of Bagua. The act of protest was organized by indigenous peoples from the Peruvian Amazon after legislative measures were passed that affected their right to property over their lands and territories. IACHR. Annual Report 2009. OEA/SER.L/V/II. Doc.51, December 30, 2009. Volume II*:* Annual Report of the Office of the Special Rapporteur for Freedom of Expression*,* Chapter II (Evaluation of the state of freedom of expression in the hemisphere). para. 479. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=794&lID=1

[501] "Transportation and Telecommunications Ministry. October 15, 2010. Communication No.1966-2010-MTC/01. Communication with the Office of the Special Rapporteur for Freedom of Expression.

No 187/2010 took effect. The resolution broadens the competence of the National Criminal Chamber and the Extra provincial Criminal Courts of Lima to hear cases of homicide, assassination, serious injury, kidnapping, and extortion perpetrated against journalists during the course of their work.[502]

371. With regard to attacks on media outlets and journalists, the Office of the Special Rapporteur learned that the most numerous cases of aggression are physical and verbal attacks and threats committed by private individuals, although there have also been reports of some cases of attacks, harassment, and judicial pressure brought by civilian officials and members of the police force.[503]

372. Among the cases reported, the Office of the Special Rapporteur was informed that on August 4, unknown individuals threw two homemade bombs at the installations of radio station *La Bravaza* in the province of Pacasmayo, Libertad department. The bombs caused damage to equipment. The Office of the Special Rapporteur was informed that prior to the attack, the broadcaster had been revealing alleged corruption in the municipality of Guadalupe[504]. On October 5, a group of individuals sympathetic to the "We Are All Ucayali" political movement destroyed the broadcasting equipment of radio station *Melodía*. The station's director, Raúl Velásquez, received death threats[505]. The Office of the Special Rapporteur was also informed that on October 20, someone set fire to radio station *Libertad*, in the city of Atalaya, Ucayali, due to the conflicts there from disputes over local elections.[506]

373. The Office of the Special Rapporteur was informed that on March 31, a municipal official physically attacked Ronaldo Escobar Alegría, a journalist and the director of the program Vox Populi, broadcast on radio station Vox Populi in the province of Urubamba, Cusco. The attack was over criticism of the local mayor's office[507]. On March 12, Florencio Rebata, a journalist with radio station *Vida Mix*, was struck by a Huaral Municipality councilman[508]. On April 7, municipal police with the municipality of Huaraz attacked Orlando Rucana Cuba, a journalist and director of bimonthly magazine *La Revista* as he was filming the removal of informal vendors[509]. The Office of the Special Rapporteur received information on

---

[502] Official Newspaper El Peruano. November 5, 2010. Administrative Resolution No. 187/2010-CE-PJ. Available at: http://www.lozavalos.com.pe/alertainformativa/index.php?mod=contenido&com=contenido&id=4789; Inter-American Press Association (IAPA). November 24, 2010. *IAPA welcomes creation of special jurisdiction in Peru to deal with serious crimes against journalists.* Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&idioma=us&id=4478

[503] In order to see the records of attacks on freedom of expression in Peru, also see National Journalist Association of Peru. December 28, 2010. *194 attacks on the Peruvian press in 2010*. Available at: http://www.anp.org.pe/noticias/pronunciamientos-anp/711-194-atentados-a-la-prensa-peruana-en-2010; Instituto Prensa y Sociedad (IPYS) http://www.ipys.org/comunicados.shtml and Instituto de Defensa Legal http://www.idl.org.pe/

[504] National Journalist Association of Peru. August 4, 2010. *Unknown individuals throw homemade bombs at La Bravaza radio station.* Available at: http://www.anp.org.pe/ofip/alertas/573;%20Inter-American%20Press%20Association. Inter-American Press Society (IPYS). November 2010. Information by Country: Peru. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&infoid=789&idioma=us

[505] The radio broadcaster was attacked due to its criticism of a mayoral candidate and for reporting on the damage caused by a group of individuals in the municipality building. Reportaje Perú. October 5, 2010. *Sympathizers with a political group destroy radio station in Atalaya.* (On file at the office of the Special Rapporteur); National Association of Journalists. No date. *Political movement activists destroy Radio Melodía equipments*. Available at: http://www.anp.org.pe/ofip/alertas/644

[506] Instituto Prensa y Sociedad (IPYS). October 20, 2010. *Unknown individuals set radio station on fire.* Available at: http://www.ipys.org/alertas/atentado.php?id=2508; El Comercio. October 20, 2010. *Mob sets radio station on fire during post-election protest.* Available at: http://www4.elcomercio.com/2010-10-20/Noticias/Mundo/Noticias-Secundarias/incendio-radio_Peru.aspx

[507] Instituto Prensa y Sociedad (IPYS). April 7, 2010. *Journalist stabbed for denouncing Mayor.* Available at: http://www.ipys.org/alertas/atentado.php?id=2250. Inter-American Press Association (IAPA). November 2010. Information by Country: Peru. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&infoid=789&idioma=us

[508] According to the information received, the attack arose from the journalist's criticism of the councilman's job performance. Instituto Prensa y Sociedad (IPYS). April 13, 2010. *Journalist assaulted by city councilor.* Available at: http://www.ifex.org/peru/2010/04/07/rebata_reyes_assaulted/; National Journalist Association of Peru. No date. *Councilman insults and strikes journalist.* Available at: http://www.anp.org.pe/ofip/alertas/435

[509] The police had ordered the journalist to stop filming. When he continued filming, they struck him in the head and left him unconscious. International Freedom of Expression Exchange. April 12, 2010. *Journalist beaten, knocked unconscious by local police.* Available at: http://www.ifex.org/peru/2010/04/12/rucana_beaten/; Contacto Informativo Huaral. April 11, 2010. *Municipal*

Continued…

an April 8 attack suffered by Lenín Quevedo and Andrés Velarde, journalists with the channel *Vía Televisión,* at the hands of two police officers from the Morales police station in the San Martín province[510]. The Office of the Special Rapporteur was also informed of a September 1 attack on Eder Sotomayor Santiago and Moisés Ayme Ticona, journalists with the *TV Canal 56* program La Hora Noticias. They were attacked by followers of the mayor, who was up for reelection in the province of Ica. According to the information, the attack took place when the reporters were covering the reading of a court ruling against the mayor[511]. On October 1, Antonio Mollehuanca, news director for *La Voz de Radio Espinar*, was attacked and humiliated by a group of individuals who broke into the station and beat him. The incident took place in the Yauri neighborhood of Espinar, Cusco. According to the information, they hung a sign around Mollehuanca's neck saying, "I am a traitor to the people" and paraded him through the streets.[512]

374. The Office of the Special Rapporteur received information according to which on March 25, 2010, journalist Alfredo Zamora Nolly, host of a program on radio station *LEGT*, in the Ucayali department, received a telephone call from a penitentiary warning him that a group of hitmen had been hired to kill him. According to the information received, Nolly said on air that a source imprisoned in the Pucallpa jail warned him that alleged hitmen had received US$1,000 as an advance payment for ending his life. The information adds that Nolly has recently denounced several acts of corruption in the government and the local police force.[513]

375. With regard to these incidents, 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."

376. With regard to court proceedings, the Office of the Special Rapporteur was informed of the partial annulment of the trial for defamation against the mayor-elect of Lima, Susana Villarán. According to the information provided, on November 17, the 26th Criminal Court of Lima annulled part of the proceeding brought in this case and sent the initial proceedings to the 36th Criminal Court, before which the risk of a conviction still exists.[514] On November 15, the Office of the Special Rapporteur for Freedom of Expression expressed its concern over the reading of the judgment and the possibility of a

---

…continuation
*police and neighborhood security guards make journalist pass out with blow to the head.* Available at: http://contactoinformativohuaralperu.blogspot.com/2010/04/alerta-peru-huaraz-anp.html

[510] Both journalists tried to to get a comment from police officers mentioned in a report on alleged police corruption. National Journalist Association of Peru. April 8, 2010. *Police accused of allegedly taking bribes attack journalists.* Available at: http://www.anp.org.pe/ofip/alertas/438; Inter-American Press Association. November 2010. Information by Country: Peru. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&infoid=789&idioma=us

[511] National Journalist Association of Peru. No date. *Journalist brutally beaten by followers of Ica mayor.* Available at: http://www.anp.org.pe/ofip/alertas/616. Inter-American Press Association (IAPA). November 2010. Information by Country: Peru. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&infoid=789&idioma=us

[512] The attack was caused by comments by the journalist supporting political dialog with regard to a conflict over a hydroelectric project. Instituto Prensa y Sociedad (IPYS). November 11, 2010. *Journalist attacked and humiliated by radicals.* Available at: http://www.ipys.org/alertas/atentado.php?id=2518; La República. November 11, 2010. *Journalist attacked by Espinar residents.* Available at: http://www.larepublica.pe/11-11-2010/periodista-fue-agredido-por-pobladores-de-espinar-informan

[513] Latin American Observatory for Freedom of Expression (OLA in its Spanish acronym)/IFEX. March 31, 2010. *Journalist refuses to be silenced despite plot to kill him.* Available at: http://www.ifex.org/peru/2010/03/31/zamora_death_threat/; Oficina de los Derechos Humanos del Periodista (OFIP). March 30, 2010. *Journalist alerted from prison that hitmen want to kill him.* Available at: http://ofip.blogspot.com/2010/03/alerta-peru-padre-abad-desde-penal.html

[514] Perú.com. November 17, 2010. *Susana Villarán half saved over her denouncement of Jorge Mufarech.* Available at: http://www.peru.com/noticias/lima20101117/127729/Susana-Villaran-se-salva-a-medias-por-denuncia-de-Jorge-Mufarech--; Semana Económica. November 17, 2010. *Partial annulment of Jorge Mufarech's lawsuit against Susana Villarán.* Available at: http://semanaeconomica.com/articulos/60855-anulan-en-parte-querella-de-jorge-mufarech-contra-susana-villaran

conviction in the criminal trial for aggravated defamation to the detriment of Jorge Mafarech Nemy, former labor minister under Alberto Fujimori.[515]

377. The Office of the Special Rapporteur received information according to which Alejandro Carrascal Carrasco, the director of weekly newspaper *Nor Oriente* of Bagua Grande, was convicted of the crime of aggravated defamation against the former director of the Utcubamba Superior Public Technology Institute and sentenced to one year in prison. He was also subject to a fine equivalent to 120 working day wages, as well as 5,000 nuevos soles (approx. US$1,800) to be paid to the plaintiff.[516] On January 11, the journalist was arrested. One day later the judgment was read to him in the First Criminal Court of Utcubamba.[517] On March 3, 2010, the Utcubamba Mixed Chamber upheld all aspects of the judgment. The defendant presented an appeal for annulment of the ruling before the Supreme Court. The journalist remained in prison for more than five months and was released on June 18 after a ruling by the Permanent Criminal Chamber of the Supreme Court of Justice to close the file on the case and annul the prior rulings.[518]

378. This Office learned of a judgment handed down by the 33rd Criminal Court of Lima on October 29 against blogger José Alejandro Godoy for the alleged crime of aggravated defamation. The judgment convicted the blogger and sentenced him to the maximum penalty, meaning three years in prison - suspended for three years - and the payment of 300,000 nuevos soles (approx. US$107,000) in civil damages, as well as a fine equivalent to 120 working days' wages[519]. The criminal complaint was presented by Jorge Mufarech, who served as labor minister during the Alberto Fujimori government, after Godoy published an article on his blog *Desde el Tercer Piso* with several links to articles making reference to accusations over alleged crimes that Mufarech had faced in the past. The journalist appealed the ruling.[520] As of the publication deadline of this report, the final ruling is unknown.

---

[515] In 2009, Susana Villarán published an opinion article on a website that recalled the 2004 complaint filed by several individuals - including her - against Mr. Mufarech alleging crimes of corruption committed while he was minister. On August 10, 2009, Mufarech Nemy filed a criminal complaint against Villarán for the crime of aggravated defamation over the article. The criminal complaint of corruption originally formulated by Villarán had already caused Mr. Mufarech to file a previous criminal complaint, and in October of 2006, the competent judge issued an order finding the case inadmissible. IACHR. Office of the Special Rapporteur for Freedom of Expression. *Press Release No. R113/10. Office of the Special Rapporteur Expresses Concern over Criminal Defamation Case against the Elected Mayor of Lima.* Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=826&lID=1

[516] Supreme Court of Justice of the Republic. Permanent Criminal Chamber. June 18, 2010. R.N. No. 1372-2010 Amazonas. Available at: http://historico.pj.gob.pe/CorteSuprema/SalasSupremas/SPP/documentos/R.N.N_201372-2010-Amazonas.pdf.

[517] Committee to Protect Journalists (CPJ). January 14, 2010. *Peru: Editor of weekly newspaper imprisoned for defamation.* Available at: http://cpj.org/es/2010/01/peru-editor-de-semanario-preso-por-difamacion.php. La República. April 2, 2010. *Abusive judgement against journalist.* Available at: http://www.larepublica.pe/02-04-2010/abusiva-sentencia-periodista

[518] The Criminal Chamber of the Supreme Court of Justice concluded that, of the nine publications subject to the complaint, only two were defamatory, and in both cases the statute of limitations had expired. In another seven publications, the high court found that their content was in the public interest. In spite of being "intensely disrespectful to the plaintiff" it does not contain "insults or humiliation; the terminology it uses, although strong and perhaps somewhat exaggerated, cannot be classified as criminal and does not cross the line beyond what is constitutionally guaranteed freedom of expression. Also, it has sufficient basis in fact." For this reason, the Criminal Chamber ordered the journalist to be freed immediately. Supreme Court of Justice of the Republic. Permanent Criminal Chamber. June 18, 2010. R.N. No. 1372-2010 Amazonas. Pages 7 and following. Available at: http://historico.pj.gob.pe/CorteSuprema/SalasSupremas/SPP/documentos/R.N.N_201372-2010-Amazonas.pdf; Reporters without Borders. June 21, 2010. *Journalist Alejandro Carrascal Carrasco freed: "It's time to decriminalize defamation."* Available at: http://es.rsf.org/peru-el-director-de-un-semanario-fue-13-01-2010,36064

[519] José Alejandro Godoy must also appear to sign his attendance before the court once a month and may not change his residence or leave the country without authorization from a judge. Judicial Branch of Peru. 33rd Criminal Court of Lima. October 29, 2010. Case File 24304-2009-0-1801-JR-PE-33. Resolution No. 21.

[520] Instituto Prensa y Sociedad (IPYS). October 29, 2010. *Maximum sentence against blogger in Peru without precedent and unconstitutional.* (On file at the Office of the Special Rapporteur); El Comercio. October 29, 2010. *Citizen convicted over link published on his blog.* Available at: http://elcomercio.pe/lima/661206/noticia-ciudadano-fue-sentenciado-tres-anos-prision-link-que-publico-su-blog

379. The Office of the Special Rapporteur received information indicating that the Criminal Case-Transfer Court of Cajamarca ruled on September 1 to sentence journalist Marco Bonifacio Sánchez to prison time, suspended, and the payment of 5,000 nuevos soles (about US$1,800) in civil damages, as well as 13 days of community services, for the crimes of libel and aggravated defamation against Marco La Torre, the mayor of Cajamarca. The journalist, who hosts the program "El Canillita" on Canal 19 Turbo Mix, criticized the official's administration using strong language. The sentence has been appealed.[521] As of the publication deadline of this report, the final ruling is unknown.

380. On August 5, the First Mixed Court of Satipo sentenced journalist Fernando Santos Rojas to a prison term of one year for the crime of aggravated defamation against the Satipo mayor. The Office of the Special Rapporteur was informed that in addition to the prison term, the Court sentenced the journalist to pay 25% of his income over 120 days as a fine and 2,000 nuevos soles (about US$713) to the plaintiff. The prison sentence was conditionally suspended, but Santos Rojas will be subject to a year of probation during which he must present himself to the court at the end of each month "to control and justify his activities." He will not be allowed to leave his neighborhood without authorization from a judge and must correct his articles and opinion pieces about the mayor. The journalist appealed the sentence.[522] As of the publication deadline of this report, the final ruling is unknown.

381. The Office of the Special Rapporteur was informed that on April 7, the First Single Judge Court of the Criminal Circuit of Ilo sentenced Enrique Lazo Flores, a journalist and director of the newspaper *La Región*, to a suspended prison sentence of 18 months. The court found him guilty of the crime of defamation against a local public official who felt he had been wronged by articles that were critical of his performance. According to the information received, the journalist also must pay 500 nuevos soles (some US$178) in civil damages.[523]

382. The sentences listed imply serious limitations to the freedom of expression of the journalists involved by blocking them from referencing matters of public interest in which public officials are involved and by restricting their freedom to move around to find information due to the risk of violating the conditions of their suspended prison terms.

383. The Office of the Special Rapporteur has repeatedly expressed concern over the application of the crime of defamation in Peru to individuals who have simply exposed issues or expressed opinions that were critical of those who hold or have held public office. Denouncing or expressing opinions against public officials or those who have held public office is broadly protected by Article 13 of the American Convention on Human Rights. This type of expression can under no circumstances be categorized as an act of criminal defamation for the sole reason that the person in question feels offended. Those who hold or have held public office have the duty to withstand a greater level of criticism and questioning specifically because they voluntarily assumed the administration of important public responsibilities. The application of criminal law that tends toward silencing criticism or

---

[521] As an example of terms the journalist used, he called the mayor "crazy," "mentally retarded," and an "ass." Judicial Branch of Peru. 3rd Transitory Criminal Case-Transfer Court. September 1, 2010. Case File 01967-2008-0-601-JR-PE-03. Sentence No. 79. Resolution No. 27; Instituto Prensa y Sociedad (IPYS). September 14, 2010. *Judge sentences journalist to conditional release.* (On file at the Office of the Special Rapporteur).

[522] As the Office of the Rapporteur was informed, the case began in June 2008, when the journalist used a radio program to question the abilities, aptitude, and transparency of the mayor of Satipo, a town located 440 kilometers east of Lima. During the trial, Santos Rojas repeated his statements and argued that he did not defame the mayor but rather was simply giving his opinion on the official based on certain notorious facts. Judicial Branch of Peru. First Mixed Court of Satipo. August 5, 2010. Case File No. 2009-60. Sentence and ruling not numbered; IACHR. Office of the Special Rapporteur for Freedom of Expression. *Press Release No. R88/10. Office of the Special Rapporteur Expresses its Concern over Criminal Conviction of Journalist in Peru.* Available at: http://www.cidh.org/relatoria/showarticle.asp?artID=816&lID=1

[523] International Federation of Journalists (FIP in its Spanish acronym). April 8, 2010. *IFJ rejects defamation conviction that punishes Peruvian journalist with 18 months in prison.* Available at: http://www.ifj.org/en/articles/la-fip-rechaza-la-condena-por-difamacion-que-castiga-a-un-periodista-peruano-a-18-meses-de-carcel; Ilo al Día. April 8, 2010. *Journalist Enrique Lazo sentenced to a year and a half suspended prison term.* Available at: http://www.iloaldia.com/index.php?option=com_content&view=article&id=2900:sentencian-a-un-ano-y-medio-de-pena-suspendida-a-periodista-enrique-lazo&catid=40:locales&Itemid=86

denouncements against public officials seriously affects freedom of expression, not only for the individual tried, but for society as a whole.

384. The Inter-American Court of Human Rights and the Inter-American Commission on Human Rights have established repeatedly that freedom of expression must be guaranteed not only with regard to the distribution of ideas and information favorably received or considered inoffensive or indifferent, but also with regard to those that offend, shock, upset or are unpleasant or perturbing for the State or any segment of the population. Also, there must be special protection for messages related to matters of public interest and public officials carrying out their work. Likewise, both the IACHR and the Inter-American Court have repeated categorically that opinions cannot be subject to subsequent liability.

385. In this respect, Principle 10 of the Inter-American Commission on Human Rights' Declaration of Principles on Freedom of Expression 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."

386. 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."

387. The Office of the Special Rapporteur calls on the competent Peruvian judicial authorities to take these current international standards on freedom of expression into account when resolving cases related to this fundamental right.

388. In other cases reported, the Office of the Special Rapporteur was informed of a request by the Office of the Public Prosecutor in April to send the director of *Radio TV Oriente* in Yurimaguas, Geovanni Acate, to prison for 10 years. According to the information received, the Office of the Public Prosecutor accused Acate of crimes "against the public order" and "against the powers of State and the constitutional order" through the "instigation of the crime of rebellion" during its coverage of the clashes in June 2009 in the Bagua Amazon region.[524] On December 21, the Mixed Court of Ato Amazonas acquitted Acate.[525]

389. Principle 1 of the aforementioned Declaration of Principles 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." Likewise, Principle 13 states that, "Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression."

390. The Office of the Special Rapporteur expresses its concern at the current status of the criminal proceeding against individuals accused of having ordered the murder of the journalist Alberto Rivera in 2004. According to the information received, the victim's representatives requested that the process be nullified, and the case was raised to the First Transitory Criminal Court of the Supreme Court of Justice. In that instance, on June 16 the court ruled by three votes to two to acquit the accused.

---

[524] Agencia Púlsar. April 14, 2010. *Office of the Public Prosecutor seeks 10 years in prison for director of Radio Oriente.* Available at: http://www.agenciapulsar.org/nota.php?id=17048

[525] Together with the journalist, prison terms were also sought for the priest Mario Bartolini and four other grassroots leaders. The judge acquitted the priest but not the leaders, who were sentenced to four years in prison. Coordinadora Nacional de Radio. December 21, 2010. *Director of Radio Oriente acquitted.* Available at: http://www.cnr.org.pe/nueva_web/nota.shtml?x=4951; Spacio Libre. June 21, 2010. *Father Bertolini and journalist Acate acquitted, but two social leaders are convicted and sentenced.* Available at: http://spaciolibre.net/?p=5933

However, four out of five votes are needed for the ruling to take effect. For this reason another judge was brought in to cast a deciding vote. On December 16, the judge voted to annul the acquittal, tying the vote three to three. For this reason, the court is waiting for another judge to cast the tie-breaking vote. Shortly before being murdered, journalist Alberto Rivera Fernández criticized the municipal administration and linked senior local officials with drug trafficking activity.[526]

391. 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."

392. The Office of the Special Rapporteur was informed of the December 10, 2010, ruling of the Constitutional Tribunal (case file No. 00655/2010/PHC/TC) clarifying a judgment dated October 27, 2010, concerning the authority to publish information obtained illegally. In the December 10 ruling, the Constitutional Tribunal stated the following in Paragraph 4: "That with regard to the interception of telecommunications and their distribution by the media, the distribution of information that affects the personal or familial privacy of any individual, the private life of the person whose communication was intercepted, or third parties, is prohibited, except when the information is of public interest or relevance, which should be determined in each individual case by the media outlet. In the case of excess, the journalist, as well as the editors and/or owners of the media outlets, will be liable for those excesses, according to the determinations of the competent authorities." Also, the Constitutional Tribunal establishes in Paragraph 7 that, "those who carry out the interception, including if it is the journalist, commit a crime; those who encourage those interceptions, including if it is the journalist, also commit a crime. Likewise, those who have access to the information and intend to distribute it, be they journalists, editors, or owners of media outlets, must evaluate whether doing so will affect the personal or familial privacy or private lives of those whose communications were intercepted, their family members, or third parties. In this last case, the control is subsequent to the act, as the Constitution prohibits prior censorship."[527]

393. With regard to this, the Office of the Rapporteur recalls the Joint Declaration of the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression and the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), dated December 21, 2010, according to which, "Public authorities and their staff bear sole responsibility for protecting the confidentiality of legitimately classified information under their control. Other individuals, including journalists, media workers and civil society representatives, who receive and disseminate classified information because they believe it is in the public interest, should not be subject to liability unless they committed fraud or another crime to obtain the information."[528]

### 23. Dominican Republic

394. The Office of the Special Rapporteur notes that on January 12, a Santiago de los Caballeros preliminary investigation court upheld the order of preventative detention against a businessman suspected of being the mastermind behind the murder of cameraman Normando García, a murder that took place in August of 2008. According to the information received, the Dominican

---

[526] El Comercio. December 17, 2010. *Deciding judge casts vote to annul acquittal of Luis Valdez.* Available at: http://elcomercio.pe/politica/685523/noticia-juez-dirimente-vota-anular-absolucion-luis-valdez; La República. June 15, 2010. *Supreme Court will hear Alberto Rivera case today.* Available at: http://www.larepublica.pe/16-06-2010/corte-suprema-ve-hoy-caso-del-periodista-alberto-rivera

[527] Constitutional Tribunal. December 10, 2010. Case File No. 00655-2010-PHC/TC. Ruling of the Constitutional Tribunal. Paras. 4 and 7.

[528] IACHR Office of the Special Rapporteur for Freedom of Expression and UN Office of the Rapporteur for Freedom of Expression. December 21, 2010. Joint Declaration on WikiLeaks. Available at: *http://www.cidh.oas.org/relatoria/showarticle.asp?artID=829&lID=1*

authorities also identified two of the alleged perpetrators of the crime and placed them in preventative detention. The Office of the Special Rapporteur was informed that the cameraman was murdered for circulating footage that exposed the businessman's participation in a different crime.[529]

395. The Office of the Special Rapporteur received information on a series of attacks against communicators. For example, on June 2, attorney and commentator Jordi Veras, director of *Canal 25* debate program "*Mañana Boreal*", suffered an attempt on his life in Santiago de los Caballeros. According to the information, a masked individual fired on the journalist as he was arriving at the channel where he worked, seriously wounding him. The Office of the Special Rapporteur takes note that the Dominican authorities investigating the attack have identified the individuals suspected of being the masterminds and perpetrators, placed them in preventative detention, and begun legal proceedings[530].

396. The Office of the Special Rapporteur was informed that on June 19, a motorcyclist armed with a pistol fired on journalist Ramón Ramírez and producer Zoila Villa as they were leaving *Canal 35* in Santo Domingo, where they produce the program *Contenido Semanal*.[531] The Office of the Special Rapporteur also received information according to which on July 4, journalist Robinson Cruz González, co-producer of the program "The Government of Boca Chica", on *Teleimaginen Canal 13*, was wounded by gunfire while traveling with his wife in Santo Domingo.[532]

397. The Office of the Special Rapporteur received information according to which in September, State security agencies discovered a plan to murder the journalist Esteban Rosario, producer of the television program "Behind the News". According to the information received, the Police and the Office of the Public Prosecutor alerted the journalist to the danger he faced after learning that an unknown individual had contracted a group of hit men to kill him. According to the information, the journalist regularly used his program to denounce public administration irregularities and recently published a book titled *Corruption in Santiago Municipalities*.[533]

398. The Office of the Special Rapporteur was informed that threats had been received by Fausto Rosario Adames, the director of the weekly newspaper *Clave* and its electronic version, Clave Digital, after the weekly published articles on drug trafficking activity. According to the information received, Mr. Rosario was warned on August 4 that he ran the risk of being murdered over his investigation of a case of local corruption linked to drug trafficking. That same day, another Dominican journalist received a message with similar warnings about Rosario. The warning of the journalist coincides with serious acts of violence that, according to the information received, could be directly

---

[529] Public Ministry. Office of the Public Prosecutor, Santiago de los Caballeros. January 11, 2010. *Suspect in murder of cameraman Normando García Azabache to remain in prison.* Available at: http://fiscaliasantiago.gov.do/?p=132; Reporters without Borders. January 14, 2010. *Businessman accused of paying two men to murder cameraman 18 months ago.* Available at: http://en.rsf.org/dominican-republic-businessman-accused-of-paying-two-14-01-2010,36096.html

[530] Reporters without Borders/ International Freedom of Expression Exchange (IFEX). June 3, 2010. *TV host wounded in shooting, motive still unknown.* Available at: http://www.ifex.org/dominican_republic/2010/06/03/rodriguez_shot/; Listín Diario. December 28, 2010. *Judge sets review of Jordi Veras for January.* Available at: http://www.listin.com.do/la-republica/2010/12/28/171586/Jueza-dejapara-enero-la-revision-del-caso-Jordi-Veras

[531] Dominican Journalists Professional Association. June 20, 2010. *Dominican Journalists Professional Association condemns attack on Tito Ramírez.* Available at: http://atodasluces.net/index.php?option=com_content&view=article&id=264:colegio-dominicano-de-periodistas-condena-agresion-contra-tito-ramirez&catid=40:pais&Itemid=67; Inter-American Press Association (IAPA). November 2010. Information by Country: Dominican Republic. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&infoid=791&idioma=us; Barahonero.com. June 19, 2010. *Gunmen try to murder journalist Ramón Ramírez and Zoila Villa*. Available at: http://www.barahonero.com/2010/06/pistoleros-intentan-asesinar-al.html

[532] El Comercio de Santo Domingo. July 7, 2010. *Investigation sought in gunfire attack against journalist Robinson Cruz.* Available at: http://www.elcomerciodesantodomingo.com/index.php?option=com_content&view=article&id=2441:piden-investigar-ataque-a-tiros-contra-periodista-robinson-cruz; Inter-American Press Association (IAPA). November 2010. Information by Country: Dominican Republic. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&infoid=791&idioma=us

[533] 7 Días. September 16, 2010. *Esteban Rosario receives death threat.* Available at: http://www.7dias.com.do/app/article.aspx?id=83262; Diario Digital. September 16. *Plan to assassinate journalist detected.* Available at: http://www.diariodigital.com.do/articulo,56740,html

related to the threats. According to the information, on the afternoon of August 4, Rosario announced to his collaborators that *Clave* was closing. The Office of the Special Rapporteur received information indicating that President Leonel Fernández met with Rosario and several colleagues in his office to learn about the situation and order protective measures.[534]

399. The threats received by the journalists are of great concern to the Office of the Special Rapporteur, and the Office takes note of the measures taken by the State. In this respect, Principle 9 of the Inter-American Commission on Human Rights' Declaration of Principles on Freedom of Expression establishes 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."

400. According to information received by the Office of the Special Rapporteur, on August 21 Kendy Joel Jiménez, a cameraman with Canal 12, was arrested and beaten by officers with the Metropolitan Transportation Authority (AMET in its Spanish acronym) in an attempt to prevent him from recording a traffic operation being carried out by AMET in the Higüey area. The cameraman was freed several hours later.[535]

401. The Office of the Special Rapporteur also received information indicating that on March 25, 2010, *Canal 53, Cibao TV Club*, was ordered to stop broadcasting by the Dominican Telecommunications Institute (Indotel in its Spanish acronym). According to the information received, Indotel justified the closure order by saying it had found the television channel was making "illegal broadcasts" by using two broadcast frequencies without permission. The information adds that after blocking the two frequencies, Indotel authorized the channel to begin broadcasting again. However, the channel's owner indicated that he cannot begin broadcasting again because the authorities temporarily confiscated his broadcasting equipment.[536]

402. States have the authority to regulate the use of the electromagnetic spectrum and supervise compliance with the law. However, Principle 5 of the Declaration of Principles states, among other things, that disproportionate or unjustified interference into any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law.

403. Finally, the Office of the Special Rapporteur takes note of the Dominican State's initiative to ask law and communications professionals to draft a reform of Law 6132, on Expression and Spreading of ideas, as well as a group of bills related to the media and access to information that jointly make up the Communication Code. According to the information received, the government is promoting a series of public debates to discuss the proposals prior to sending them to the legislature. The Office of the

---

[534] IACHR. Office of the Special Rapporteur for Freedom of Expression. August 10, 2010. Press Release R80/10. *The Special Rapporteur expresses its concern over threats received by the editor of a Dominican Republic weekly newspaper.* Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=807&lID=2; Hoy. August 5, 2010. *Why did Clave close?* Available at: http://www.hoy.com.do/el-pais/2010/8/5/336760/Por-que-cerro-Clave/; El Nacional. August 5, 2010. *Said that crisis forced Clave newspapers to close.* Available at: http://www.elnacional.com.do/nacional/2010/8/5/56511/Aseguran-crisis-obligo-cierre-periodicos-Clave. Diario Libre. August 4, 2010. *Fausto Rosario says Clave and Clave Digital officially closed.* Available at: http://www.diariolibre.com/noticias_det.php?id=255941&l=1. El Comercio de Santo Domingo. August 6, 2010. *Presidente Leonel Fernández meets with journalist Fausto Rosario*. Available at: http://www.diariolibre.com/noticias_det.php?id=255941&l=1

[535] Listín Diario. August 21, 2010. *Higüey journalists are mistreated by AMET agents.* Available at: http://www.listindiario.com.do/la-republica/2010/8/21/155642/Gremios-denuncian-que-periodistas-de-Higuey-son-maltratados-por-Amet; El Nacional. August 21, 2010. *AMET agent breaks cameraman's face and hands.* http://www.elnacional.com.do/nacional/2010/8/21/58201/Agente-de-la-Amet-rompecara-y-manos-camarografo

[536] Reporters without Borders . March 31, 2010. *Controversy after broadcasting authority forces TV station off the air.* Available at: http://en.rsf.org/dominican-republic-controversy-after-broadcasting-31-03-2010,36905.html; Portal Clave Digital.com/El Poder Miami. March 27, 2010. *Closed channel aired Dr. Fadul's program, which strongly criticized President Fernández.* Available at: http://elpoderdemiami.com/2010/03/27/canal-cerrado-transmitia-el-programa-del-dr-fadul-con-fuertes-criticas-al-presidente-fernandez/

Special Rapporteur invites the Dominican State to distribute the draft bills widely in order to stimulate a vigorous and well-informed national debate and to be able to trust that the changes hew to international freedom of expression standards.[537]

### 24. Suriname

404. According to the information received, senior Suriname government officials are being investigated for incidents of violence that took place in the military barracks of Fort Zeelandia on December 8, 1982, in which five journalists died. According to the information received, President Desi Bouterse has taken political responsibility for the incidents that took place. However, according to the information received, there still has been no punishment of those responsible, nor has full reparation been provided to the victims.[538] Principle 9 of the Declaration of Principles on Freedom of Expression, approved by the IACHR, states: "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."

### 25. Trinidad y Tobago

405. The Office of the Special Rapporteur views positively the support given by the Government of Trinidad and Tobago toward improving news coverage during elections.[539] Likewise, according to the information received, the new government has demonstrated a significant willingness to respect freedom of expression and, in particular, the rights of media outlets.[540]

### 26. Uruguay

406. In its 2009 annual report, the Office of the Rapporteur viewed positively the fact that the Uruguayan State has taken measures to incorporate the standards of the inter-American system on the subject of freedom of expression into its domestic legal system. In particular, the Office of the Rapporteur indicated that in June of 2009, the General Assembly of the Legislative Branch passed Law No. 18.515,

---

[537] Diario Dominicano. September 20, 2010. *Communication Code*. Available at: http://www.diariodominicano.com/n.php?id=60526&sec=editorial; Hoy. September 22, 2010. *Molina fears that interests will block reform*. Available at: http://www.hoy.com.do/el-pais/2010/9/22/342937/print; El Caribe.com. September 10, 2010. *Law 6132 will be subject to changes*. Available at: http://www.elcaribe.com.do/site/index.php?option=com_content&view=article&id=255151:ley-6132-sera-objeto-de-cambios&catid=104:nacionales&Itemid=115

[538] Reporters without Borders. August 12, 2010. *Bouterse's installation as president must not mean impunity for past murders of journalists.* Available at: http://en.rsf.org/surinam-bouterse-s-installation-as-12-08-2010,38124.html y en http://www.ifex.org/suriname/2010/08/12/bouterse_charges/; The International Freedom of Expression Exchange (IFEX). August 18, 2010. *President responsible for murder of journalists and activists.* Available at: http://www.ifex.org/suriname/2010/08/18/impunity_elected/; The New York Times. April 13, 2008. *Long Memories May Ensnare a Dictator*. Available at: http://www.nytimes.com/2008/04/13/weekinreview/13romero.html; BBCCaribbean.com. July, 20, 2010. *Desi Bouterse back in power.* Available at: http://www.bbc.co.uk/caribbean/news/story/2010/07/100720_presidentbouterse.shtml; Reuters. August 12, 2010. *Strongman Bouterse sworn-in as Suriname president.* Available at: http://www.reuters.com/article/idUSTRE67B47P20100812; Al Jazeera. February 20, 2009. *Ex-Suriname head faces murder trial.* Available at: http://english.aljazeera.net/news/americas/2009/02/2009220201340400544.html; Freedom House. May 3, 2010. *Freedom in the World 2010 – Suriname*. Available at: http://www.unhcr.org/refworld/category,COI,,,SUR,4c0cead32,0.html; IACHR. Report on the Human Rights Situation in Suriname. Chapter II: The Right to Life and the Right to Personal Integrity. OEA/Ser.L/V/II.61. doc 6 rev 1. October 6, 1983.

[539] International Freedom of Expression Exchange (IFEX). March 11, 2010. *Electoral authorities agree to collaborate to improve journalistic performance in election coverage.* Available at: http://www.ifex.org/trinidad_and_tobago/2010/03/11/elections_roundtable/. Association of Caribbean Media Workers. March 8, 2010. *T&T Electoral Authorities Agree to Collaborate for Better Coverage of Elections.* Available at: http://www.acmediaworkers.com/archive/2010/pdf2010/20100308-EBConElectionCoverage.pdf.

[540] Inter-American Press Association. *Country reports: Trinidad y Tobago. 66th General Assembly, November 5-9, 2010, Merida, Mexico.* Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&infoid=774&idioma=us

which makes important changes to the Penal Code and the Press Law by eliminating sanctions for the dissemination of information or opinions on State officials and matters of public interest, except when the person allegedly affected by that dissemination is able to demonstrate the existence of "actual malice." As the Office of the Rapporteur has indicated, the new rules add that human rights treaties constitute the guiding principles for interpreting, applying, and integrating civil, procedural, and criminal law on freedom of expression. They also recognize the relevance of the decisions and recommendations made on this issue by the Inter-American Court and the IACHR.[541] Despite this important progress, the Office of the Special Rapporteur received information according to which in August, a criminal prosecutor had requested the confiscation of all the copies of the book *Secrets of the Communist Party*, as well as a prison sentence of 24 months with possibility of parole for the author, the journalist Álvaro Alfonso, for the crime of defamation. The Office of the Public Prosecutor argued that the journalist had acted with "actual malice." According to the information received, the Office of the Public Prosecutor had alleged that the continued sale of the book to the public constituted "perpetuation" of the crime. Among other claims, the text accused a member of the Communist Party and former Uruguayan legislator of collaborating with the military while under arrest during the dictatorship (1973-1985) by identifying their comrades.[542] As of the publication deadline of this report, no information has been received on developments in the case.

407. In this respect, the Office of the Rapporteur recalls that Article 13 of the Convention prohibits prior censorship, which includes a prohibition of seizing or prohibiting the distribution of printed material. The Convention allows for the imposition of subsequent sanctions that are proportionate and necessary in a democratic society, meaning they must adhere to a strict test of proportionality.

408. The Office of the Special Rapporteur was informed that on September 9, an appeals court ordered the file in a lawsuit against weekly newspaper *Búsqueda* definitively closed. The lawsuit had been brought in 2009 by former senator Leonardo Nicolini following a 2007 article that the politician found damaging to his honor[543]. On September 15, an official with the council of the department of Treinta y Tres withdrew a lawsuit for defamation against journalists with the radio station *FM Conquistador* and several council members.[544]

409. The Office of the Special Rapporteur was informed that on July 21, the Uruguayan government began a process to draft a new Radio and Television Act to regulate audio-visual communications services on different technological platforms, promoting plurality and diversity. The new law would also promote transparent, equal, and egalitarian citizen access to the use of the electromagnetic spectrum. The Executive Branch has expressed its commitment that the new legislation

---

[541] Legislative Branch of the Oriental Republic of Uruguay. July 15, 2009. Law 18.515. *Media.* Available at: http://www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=18515&Anchor= IACHR. Press Release No. R38/09. June 22, 2009. *The Office of the Special Rapporteur for Freedom of Expression 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.* Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=750&lID=1; Committee to Protect Journalists (CPJ). 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 9, 2009. *Decriminalization of press offenses promulgated by Head of State*. Available at: http://www.rsf.org/La-despenalizacion-de-los-delitos.html; International Federation of Journalists (FIP in its Spanish acronym)/IFEX. June 24, 2009. *IFJ welcomes legislative changes eliminating "press crimes."* Available at: http://www.ifex.org/uruguay/2009/06/26/press_crimes_eliminated/

[542] La República. August 4, 2010. *Public Prosecutor requests book "Secrets of the Communist Party" confiscated.* Available at: http://www.larepublica.com.uy/politica/419284-fiscal-pidio-requisa-del-libro-secretos-del-pcu; El Corresponsal. August 4, 2010. *Two years of prison sought for nationalist Aguas Corrientes mayor along with confiscation of book written by him, entitled "Secrets of the Communist Party."* Available at: http://diarioelcorresponsal.blogia.com/2010/080401-piden-condena-de-2-anos-para-el-alcalde-nacionalista-de-aguas-corrientes-y-la-re.php

[543] Inter-American Press Association. November 2010. 66th General Assembly. Information by Country: Uruguay Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=26&infoid=792&idioma=us

[544] FM Conquistador. September 15, 2010. *Complaint against journalists withdrawn by architect Susana Martínez in lawsuit against National Party council members.* Available at: http://www.fmconquistador.com/vernoticias.php?ids=4151; Uruguay Press Association. September 11, 2010. *Uruguay Press Association rejects defamation trial against Treinta y Tres journalists.* Available at: http://www.apu.org.uy/noticias/apu-rechaza-juicio-por-difamaciona-periodistas-contra-treinta-y-tres

will not establish any content regulation that could interfere with the editorial stances of the media.[545] As of this report's publication deadline, the bill is being drafted.

410. The Uruguayan government's Access to Public Information Unit (UAIP in its Spanish acronym) resolved on October 6 that the Courts have the legal obligation to inform the general public with regard to their case files, including the identities of the parties and the court where each case is being heard. According to the information received by the Office of the Special Rapporteur, the decision results from a complaint filed by the Center for Archives and Access to Public Information (Cainfo in its Spanish acronym) over the Supreme Court of Justice's refusal to provide information requested for the preparation of an academic study. The UAIP commented that "the Judicial Branch is included in the (transparency) requirements" of Law 18.381, the Right to Access Public Information, promulgated in October 2008.[546]

411. The Office of the Special Rapporteur was informed that on August 2, the Executive Branch issued the regulations for the Right and Access to Public Information Acct, which permit the law to be applied and its established procedures executed.[547] According to the information received, the government has committed to adopting important mechanisms for applying the legislation, given that two years after the law took effect a high rate of failure of compliance with the law's transparency obligations is reported. A report from Cainfo found that of the 66 institutions evaluated during 2010, 61% qualified in the mid or low levels as far as adherence to the legislation. That is to say, they complied with less than 60% of the law's provisions.[548] The Office of the Rapporteur invites the State to continue with and strengthen its efforts toward implementing the existing legislation.

### 27. Venezuela[549]

412. The Commission notes that notes that Rafael Segundo Pérez, a former Carabobo state police officer, was sentenced to 25 years in prison after being convicted of the crimes of contract killing and conspiracy to commit crime, all in connection with the murder of journalist Orel Zambrano. The Carabobo Sixth Examining Court delivered the sentence on May 19. According to the information received, the journalist was murdered on January 16, 2009, in the city of Valencia. Orel Zambrano was director of the political magazine *ABC*, an editorial writer for the newspaper *Notitarde* and vice president of a private radio station, *Radio América 890 AM*. According to the reports received, the journalist had reported that members of the Makled family, in the state of Carabobo, were allegedly involved in the drug trafficking business. In August, Colombian authorities detained the alleged Venezuelan drug trafficker Walid Makled. In November, President Juan Manuel Santas promised the Venezuelan State that the suspect would be swiftly extradited to stand trial for his links to a number of murders, one of which was

---

[545] Presidency of the Oriental Republic of Uruguay. July 21, 2010. *Uruguay commits to drafting a new radio broadcasting law.* Available at: http://www.presidencia.gub.uy/sci/noticias/2010/07/2010072204.htm; La República. July 22, 2010. *New Law of Radio and TV introduced*. Disponible en: http://www.larepublica.com.uy/politica/417989-presentan-una-nueva-ley-de-radio-y-tv

[546] Center for Archives and Access to Public Information. October 6, 2010. *Ruling: Judicial Branch required to report to citizens.* Available at: http://www.cainfo.org.uy/noticias/3-general/113-unidad-de-acceso-a-la-informacion-publica-el-poder-judicial-esta-obligado-a-informar-a-los-ciudadanosas. Inter-American Press Association (IAPA). November 2010. 66th General Assembly. Information by Country: Uruguay Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=26&infoid=792&idioma=us

[547] Presidency of the Oriental Republic of Uruguay. August 2, 2010. Decree regulating the application of the law and execution of the proceedings established under law No. 18.381 dated October 17, 2008. Available at: http://www.cainfo.org.uy/images/Documentos/Legislacion/decreto_reglamentario_leyuy.pdf; El País. August 4, 2010. *Regulations under information access law established.* Available at: http://www.elpais.com.uy/100804/pnacio-506117/politica/reglamentan-ley-de-acceso-a-informacion

[548] Center for Archives and Access to Public Information. November 2010. Online Active Transparency Index. *The Uruguayan State and the providing of public information through the Internet.* Pages 4 and 34, Available at: http://www.cainfo.org.uy/images/Publicaciones/libro_ita.pdf

[549] This section corresponds to the section on freedom of expression in Venezuela in Chapter IV, Volume I, of the IACHR 2010 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.

that of Orel Zambrano. Two other persons are also being prosecuted in Venezuela for their involvement in the journalist's murder.[550]

413. The Commission also notes that on August 12, the Zulia State Legislative Council unanimously approved the Zulia State Transparency and Information Access Act. According to the wording of the first article of that law, the law is intended to facilitate citizen oversight of state public affairs, to ensure that personal information is properly protected within the state government, and enable persons to participate in decision-making and oversight of the business of government in the state of Zulia.[551]

### A. Acts of aggression presumably related to the practice of journalism

414. The Commission is troubled by a number of incidents in which State agents or private citizens allegedly behaved aggressively toward persons working in the communications business during coverage of the news. According to information received, on June 7 a group of motorcyclists allegedly hurled five Molotov cocktails at the Torre de la Prensa (Press Building), headquarters of *Cadena Capriles* in Caracas. *Cadena Capriles* publishes newspapers, magazines and hosts news portals. Although the explosive devices never detonated, they did alarm the workers in the building. No organization claimed responsibility for the attack.[552] According to what the IACHR was told, on June 8 the Public Prosecutor's Office launched an investigation and performed technical tests and procedures at the scene of the incident.[553] In August 2009, a number of journalists working for Capriles had allegedly been the victims of violent assaults, presumably by government sympathizers.[554] Nevertheless, as of the date this report went to press, none of the assailants had been brought to trial. Early on the morning of August 3, motorcyclists threw two homemade bombs at the offices of the newspaper *Las Noticias de Cojedes*, in San Carlos, Cojedes state. According to the information received, one of the explosive devices blew up against a car, and the other against the façade of the building that is home to the newspaper. The newspaper publishes complaints of community problems and prior to the attack had investigated cases of discoveries of spoiled food from the Venezuelan Food Producer and Distributor [*Productora y Distribuidora Venezolana de Alimentos*] (PDVAL). The Public Prosecutor's Office launched an investigation.[555]

415. On September 26 in El Tigre, Anzoátegui state, persons presumed to be PSUV (*Partido Socialista Unido de Venezuela*, United Socialist Party of Venezuela) sympathizers allegedly attacked Sara Vargas, a journalist with channel Órbita TV, and Susana Quijada, a journalist with TV Sur, as they were covering the moment when the former mayor and member of the opposition, Ernesto Paraqueima, cast his vote. According to the reports received, shortly after interviewing the former mayor, who had been beaten up by supporters of the party in power, someone had grabbed the camera from the Órbita

---

[550] Public Prosecutor's Office. May 19, 2010. *Former Carabobo police office sentenced to 25 years for murder of Orel Sambrano and Francisco Larrazábal*. Available at: http://www.ministeriopublico.gob.ve/web/guest;jsessionid=99E6CE71A48F599F434E36B1B56CBA05; Reporters Without Borders. May 21, 2010. *First suspect convicted in journalist Orel Sambrano's murder.* Available at: http://en.rsf.org/venezuela-breakthrough-arrests-of-suspected-02-03-2010,36575.html; Agencia EFE. November 21, 2010. *Chávez says he believes Santos' word on Wakled's extradition.* Available at: http://www.sandiegored.com/noticias/543/Chavez-dice-que-cree-en-la-palabra-de-Santos-sobre-extradicion-de-Makled/.

[551] Zulia State Legislative Council. August 12, 2010. *Transparency Law unanimously approved*. Available at: http://www.clezulia.gov.ve/index.php?option=com_content&view=article&id=4474%3Aley-de-transferencia-fue-aprobada-por-unanimidad&catid=1&Itemid=1

[552] Associated Press and France Presse. June 9, 2010. *Five Molotov cocktails hurled at various Venezuelan newspapers*. Available at: http://www.clarin.com/mundo/america_latina/Lanzan-bombas-molotov-diarios-Venezuela_0_277172330.html

[553] Public Prosecutor's Office. June 9, 2010. *PPO stepped up investigation into explosives thrown at Cadena Capriles.* Available at: http://www.ministeriopublico.gob.ve/web/guest/buscador/-/journal_content/56/10136/49993

[554] IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the state of freedom of expression in the hemisphere), para. 705.

[555] Public Prosecutor's Office. August 4, 2010. *PPO investigates detonation of 2 explosive devices intended for Las Noticias de Cojedes*. Available at: http://www.ministeriopublico.gob.ve/web/guest/buscador/-/journal_content/56/10136/52738

TV cameraman. The camera, which was on the ground broken, was picked up and hurled at the head of Sara Vargas; in trying to avoid the blow, she cut her hand and needed ten stitches. In the same incident, government sympathizers had reportedly surrounded Susana Quijada and grabbed her microphone.[556]

416. The IACHR received information on an attack that journalist Andrea Rocha and cameraman Víctor Davalí, from the press retinue of opposition deputy Ismael García, reportedly experienced after recording the destruction that presumed government sympathizers had allegedly caused at the scene of a campaign event staged by the Podemos party on May 28. When members of the group realized that they had been caught on film, they demanded that the journalists hand over the film. When the cameraman refused, the group surrounded him, and beat and kicked him. Andrea Rocha managed to safely reach in a vehicle and get away. One member of the group reportedly threw a stone that broke the vehicle's window and injured the reporter's arm.[557]

417. On September 25, the Vice President of Venezuela, Elías Jaua, allegedly shoved a journalist from *Globovisión*, Johnny Ficarella, when he tried to interview him about the flooding caused by the rains in the community of Marapa, Vargas state. According to the information received, within minutes soldiers tried to confiscate the film from the *Globovisión* cameraman.[558] On September 30, another *Globovisión* journalist, Beatriz Adrián, was allegedly shoved and beaten by a group of persons, as she was asking for information in a shelter of victims of the rains. According to what was reported to the Commission, the attack allegedly happened in the presence of Vice President Elías Jaua, who reportedly did not intervene to stop the attack.[559] On October 17, a group of persons presumed to be supporters of the government allegedly attacked the teams of journalists from the newspapers *El Siglo* and *Notitarde* as they were covering the process of collecting signatures for a petition to protest the fact that specimens were being sent from the Valencia Aquarium to South Korea.[560] On November 17, teams of journalists from *Globovisión* and *Televén,* who were covering the damage done by the heavy rains, were said to have been attacked in Guarico, Lara state, by an official from the mayor's office and persons wearing PSUV shirts. According to the information received, the presumed assailants reportedly attempted to use force to disrupt the journalists' work.[561]

### B. Disciplinary, administrative and criminal proceedings against media outlets and journalists

418. The Office of the Special Rapporteur for Freedom of Expression continued to receive information on judicial proceedings instituted for airing opinions or reporting information of great public interest. The Office of the Special Rapporteur is troubled by the fact that a number of cases brought against media outlets or journalists critical of the government began after the highest ranking officials of the State were publicly critical of their editorial position.

---

[556] El Universal. September 26, 2010. *Voting in Anzoátegui marked by aggression and taunting*. Available at: http://www.eluniversal.com/2010/09/26/v2010_ava_proceso-en-anzoategu_26A4523533.shtml; El Nacional. September 26, 2010. *Former mayor of El Tigre and journalists attacked by PSUV sympathizers.* Available at:: http://el-nacional.com/www/site/p_contenido.php?q=nodo/157171/Sufragio%202010/Ex-alcalde-de-El-Tigre-y-periodistas-fueron-agredidos-por-simpatizantes-de-PSUV

[557] Instituto de Prensa y Sociedad. June 9, 2010. *Press team the target of violence.* Available at: http://www.ifex.org/venezuela/2010/06/09/aragua_protest/es/

[558] *Colegio Nacional de Periodistas*. September 25, 2010. *President of National Press Association asks Vice President Jaua for respect*. Available at: http://www.cnpven.org/data.php?link=2&expediente=626

[559] Colegio Nacional de Periodistas. October 1, 2010. *National Press Association communiqué responds to attack on Beatriz Adrián*. Available at: http://www.espaciopublico.org/index.php/noticias/1-libertad-de-expresi/885-comunicado-del-cnp-ante-agresion-a-beatriz-adrian

[560] *Espacio Público*. October 18, 2010. *Journalists assaulted in Carabobo state*. Available at: http://www.espaciopublico.org/index.php/noticias/1-libertad-de-expresi/898-agreden-a-periodistas-en-el-estado-carabobo

[561] Colegio Nacional de Periodistas*. National Press Association deplores assault on journalists in Lara.* Available at: http://www.cnpven.org/data.php?link=2&expediente=648

419. The Office of the Special Rapporteur was informed that on June 11, 2010, a criminal court in the city of Valencia convicted journalist Francisco "Pancho" Pérez and sentenced him to three years and nine months in prison and a fine of some US$20,000 for supposed crimes of defamation against the mayor of the city of Valencia, Edgardo Parra. The court also ordered additional penalties involving political disqualification and disqualification from the practice of his profession. According to the information received, the conviction was the result of a complaint concerning a column published in the newspaper *El Carabobeño* in March 2009, in which the reporter mentioned the fact that members of the mayor's family were in the municipal government.[562] According to the information received, on Tuesday November 30, 2010, the Carabobo State Court of Appeals overturned Pérez' conviction.[563] The Office of the Special Rapporteur applauds the court's ruling.

420. On March 8, 2010, Oswaldo Álvarez Paz, former governor of the state of Zulia and a member of the National Assembly, made a statement on the program *Aló Ciudadano*, aired on *Globovisión*, in which he complained that high-ranking state officials supposedly had ties to drug trafficking. The following day, PSUV deputy Manuel Villalba filed a complaint with the Public Prosecutor's Office asking that Álvarez Paz's conduct be investigated for commission of a number of offenses criminalized in Venezuela's Penal Code, including conspiracy against the republican form of government, public instigation to commit crime, public intimidation, false information and creating uncertainty among the public. On March 22, Álvarez Paz was detained and the court confirmed his detention on March 24. Álvarez Paz was held in a unit of DISIP.[564] Álvarez Paz was held in custody for almost two months. On May 7, 2010, the Public Prosecutor's Officer dropped the "conspiracy" charge, which had been the most serious charge, carrying a penalty of six to eight years' imprisonment under Venezuelan law.[565] As a result, on May 13, 2010, he was released on bail; as conditions for his release, he was prohibited from leaving the country, had to appear before the court hearing the case every fifteen days, and was prohibited from making any public statements about the case against him.[566] As of the date this report went to press, the case against Álvarez Paz was still open and his trial had not yet been held.[567]

---

[562] *Cf*. Hearing on the right to freedom of expression and information in Venezuela, held on October 29, 2010, during the Commission's 140th Session; *Espacio Público*. June 11, 2010. *Espacio Público rejects conviction of journalist Francisco Pérez*. Available at: http://www.espaciopublico.org/index.php/inicio-mainmenu-1/1-libertad-de-expresi/805-espacio-publico-rechaza-condena-contra-periodista-francisco-perez

[563] El Universal. *Conviction of "Pancho" Pérez overturned*. December 1, 2010. Available at: http://www.eluniversal.com/2010/12/01/pol_art_anulan-fallo-contra_2123719.shtml. Agencia Carabobeña de Noticias. *"Pancho Pérez" conviction overturned*. November 30, 2010. Available at: http://www.acn.com.ve/regional/item/18950-este-30-de-noviembre-le-dictan-sentencia-a-pancho-p%C3%A9rez.html

[564] El Universal. March 23, 2010. *Oswaldo Álvarez Paz taken into custody and held in El Helicoide*. Available at: http://www.eluniversal.com/2010/03/23/pol_art_detienen-y-recluyen_23A3629571.shtml. LA Times. March 25, 2010. *Venezuela ex – governor to remain in jail without bail over drug remarks.* Available at: http://articles.latimes.com/2010/mar/25/world/la-fg-venezuela-governor25-2010mar25

[565] El Universal. May 7, 2010. *Álvarez Paz near release on bail*. Available at: http://politica.eluniversal.com/2010/05/07/pol_art_alvarez-paz-a-pocos_1891456.shtml

[566] IFEX. May 19, 2010. Former governor granted parole after two months in detention. Available at: http://www.ifex.org/venezuela/2010/05/19/alvarez_paz_parole/19 de mayo de 2010. El País. May 14, 2010. *Political opponent who linked Chávez to ETA and FARC released*. Available at: http://www.elpais.com/articulo/internacional/Liberado/opositor/vinculo/Chavez/ETA/FARC/elpepiint/20100514elpepiint_10/Tes

[567] According to information received from Juan Carlos Álvarez, by e-mail dated November 13, 2010 (on record with the Office of the Special Rapporteur for Freedom of Expression). Aporrea. August 10, 2010. *Antonio Rivero told media outlets that he knew beforehand that the Military Proscutor would investigate him.* Available at: http://www.aporrea.org/oposicion/n163204.html. Aporrea. August 14, 2011. *Court orders precautionary measures for Antonio Rivero.* Available at: http://www.aporrea.org/actualidad/n163383.html. On this issue, it is worth noting that the State of Venezuela said that Rivero "hasn't been detained or subjected to any kind of trial, as the Commission stated." Observations by the State of Venezuela to the draft of the General Report on the Situation of Human Rights in Venezuela, 2010. Communication of February 22, 2011, observations on the section on Freedom of Thought and Expression. It is worth noting that, as stated in the relevant paragraph, the Commission never stated that Rivero has been "detained."

421. On March 24, Congressional Deputy Manuel Villalba also asked the Public Prosecutor's Office to launch an investigation into Guillermo Zuloaga, president of *Globovisión*, for statements made at an assembly of the Inter-American Press Association.[568]

422. On March 25, 2010, the IACHR expressed its deep concern over the use of the State's punitive power to criminally prosecute persons whom the authorities consider to be political opponents in Venezuela.[569] The IACHR also stated that "the lack of independence and autonomy of the judiciary with respect to the political branches constitutes one of the weakest points of democracy in Venezuela, a situation that seriously hinders the free exercise of human rights in Venezuela. In the Commission's judgment, it is this lack of independence that has allowed the use of the State's punitive power in Venezuela to criminalize human rights defenders, penalize peaceful social protest, and persecute political dissidents through the criminal justice system."[570] The IACHR underscored the fact that "it is extremely troubling that those who make allegations or state opinions about the situation in the country are charged with such offenses as the instigation to commit a crime. The public statements made by many government officials supporting the detention of Álvarez Paz and calling for criminal proceedings to be brought against other individuals such as Guillermo Zuloaga, simply because they expressed their opinions in public forums, demonstrate a troubling consensus among the government authorities that it is legitimate to identify those who criticize the government with criminals."[571]

423. The IACHR also learned that in August, the military prosecutor's office charged former director of Civil Protection, retired general and independent candidate for the National Assembly, Antonio Rivero, with the crimes of slandering the Armed Forces and disclosing private or secret military information. The charges carry a sentence of three to 10 years in prison. General Rivero went into retirement in April 2010, and shortly thereafter called a press conference where he denounced Cuba's supposed influence over the Armed Forces. The military justice system ordered precautionary measures that prohibited Rivero from leaving the country and from making statements to the domestic or international media about information that might "compromise the Bolivarian National Armed Forces."[572]

424. On March 30, a Táchira state court convicted Gustavo Azócar, a journalist and former candidate for the office of Governor of Táchira state, and sentenced him to two and a half years' imprisonment, with conditional release, for the crime of "unlawful enrichment from the business of government." The court also imposed an additional penalty which was to disqualify Azócar from participation in politics. According to the information reported to the Commission, the case started in 2000 when a complaint was filed in the Public Prosecutor's Office when the station at which the journalist then worked allegedly stopped airing commercials advertising a state entity. Azócar was prohibited from speaking about his case and in July 2009 was incarcerated for eight months for publishing, on a personal blog site, news related to his legal situation. Media organizations believe that Azócar's conviction was politically motivated, as he was critical of the local government; they also believe it was in retaliation for accusations he made alleging corruption.[573]

---

[568] Diario El Impulso. March 24, 2010. *Manuel Villalba requested investigation of Guillermo Zuloaga*. Available at: http://www.elimpulso.com/pages/vernoticia.aspx?id=99763

[569] IACHR. Press Release 36/10 of March 25, 2010. IACHR concerned about the use of the punitive power of the State to silence opponents in Venezuela. Available at: http://www.IACHR.oas.org/Comunicados/English/2010/36-10eng.htm

[570] IACHR. Press Release 36/10 of March 25, 2010. IACHR concerned about the use of the punitive power of the State to silence opponents in Venezuela. Available at: http://www.IACHR.oas.org/Comunicados/English/2010/36-10eng.htm

[571] IACHR. Press Release 36/10 of March 25, 2010. IACHR concerned about the use of the punitive power of the State to silence opponents in Venezuela. Available at: http://www.IACHR.oas.org/Comunicados/English/2010/36-10eng.htm

[572] El Universal. August 9, 2010. *Military Prosecutor's Office charges Antonio Rivero.* Available at: http://www.eluniversal.com/2010/08/09/pol_ava_fiscalia-militar-imp_09A4317051.shtml; New York Times. 11 de agosto de 2010. *Ex – General in Venezuela, a Chávez Foe, faces inquiry*. Disponible en: http://www.nytimes.com/2010/08/12/world/americas/12venez.html.

[573] Public Prosecutor's Office. March 27, 2010. *Journalist Gustavo Azócar sentenced to prison for two years six months.* Available at: http://www.ministeriopublico.gob.ve/web/guest/buscador/-/journal_content/56/10136/36783

425. The Commission was also informed of a number of court cases against persons who expressed comments critical of the authorities. The Ministry of the People's Power for Communications and Information allegedly requested that journalist and humorist Laureano Márquez be prosecuted for an editorial he wrote on January 29, in which he imagined the day when a presidential succession would take place in Venezuela.[574] In the opinion of the Ministry of the People's Power for Communications and Information, the humorous article was "a blatant call for the public to refuse to recognize the constitutional order and incited it to violence," an "invitation to a genocidal and terrorist plot to overthrow the government." The Ministry also announced that it would file a criminal complaint against the newspaper so that the "appropriate" sanctions might be enforced.[575] Regarding this issue, the State of Venezuela stated that Márquez "only suffered criticism through the mass media by some citizens who thought that he was calling for the disregard of the constitutional order" [576]. It is worth noting that public officials, though entitled to their right to freedom of expression, are subject to strict limitations as a consequence of their particular duties and responsibilities[577].

426. A baseball fan, Miguel Hernández Souquett, was tried on December 1, 2010, for having worn a shirt that read "Hugo, Screw Your Revolution." He could receive a sentence of 3 to 6 years in prison for the crime of offending heads of government. According to the information reported to the Commission, Miguel Hernández wore the shirt at a sports event on the island of Margarita. As he was leaving the stadium, he was allegedly stopped by the police and taken to a unit of the Bolivarian Intelligence Service (SEBIN). A court ordered that he be released, but he was required to make regular appearances before the judge. He was later notified that he would stand trial.[578] In the observations by the State of Venezuela to the draft of the General Report on the Situation of Human Rights in Venezuela, 2010, the State informed that "this citizen is not [currently] detained" [579].

427. On November 12, 33 people were reportedly arrested at a Caracas metro station for having demonstrated to protest train delays and service problems.[580]

428. On June 8, the Health Commission of the Anzoátegui Legislative Council launched an investigation into the Director of the Tropical Medicine Center of the Universidad de Oriente, Antonio Morocoima, for statements made concerning Chagas disease and a possible outbreak of that sickness. According to the information received, Venezuela's Parasitological Association supported Morocoima and asked authorities to rely on research papers which, the Association said, would back up what the scientist was saying.[581]

---

[574] Tal Cual Dig*ital*. January 29, 2010. *A Venezuela without Esteban*. Available at: http://www.talcualdigital.com/Avances/Viewer.aspx?id=31096&secid=44. See also Reporte 360. January 29, 2010. *Minci will charge Laureano Márquez*. Available at: http://www.reporte360.com/detalle.php?id=24154

[575] Ministry of the People's Power for Communications and Information. Communiqué dated January 29, 2010. Available at: http://www.minci.gob.ve/noticias/1/195620/comunicado_del_ministerio.html.

[576] Observations by the State of Venezuela to the draft of the General Report on the Situation of Human Rights in Venezuela, 2010. Communication of February 22, 2011, observations on the section on Freedom of Thought and Expression.

[577] On this issue, see *infra* par. *** 469.

[578] Espacio Público. November 12, 2010. *Fan will have to stand trial for anti-revolutionary message on T-shirt.* Available at: *http://www.espaciopublico.org/index.php/noticias/1-libertad-de-expresi/914-fanatico-debera-comparecer-ante-tribunales-por-mensaje-antirrevolucionario-en-franela*

[579] Observations by the State of Venezuela to the draft of the General Report on the Situation of Human Rights by the IACHR, 2010. Communication of February 22, 2011, observations on the section on Freedom of Thought and Expression.

[580] El Nacional. November 12, 2010. *33 people detained after protests at Caracas metro*. Available at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/165218/Ciudad/Protesta-en-estaci%C3%B3n-del-Metro-de-Propatria-dej%C3%B3-33-personas-detenidas

[581] Sociedad Parasitológica Venezolana. May 27, 2010. *Communiqué from the Sociedad Parasitológica Venezolana*. Available at: http://www.asovac.org/2010/05/31/comunicado-de-la-sociedad-parasitologica-venezolana/. Espacio Público. June 11, 2010. *Parliament of the state of Anzoáteguí begins investigation against doctor from that state.* Available at:

Continued…

429. The IACHR received information to the effect that on April 7, *Globovisión* journalist Beatriz Adrián was reportedly held for several hours at the Directorate of Military Intelligence (DIM) for having taped an interview in the parking lot of a business center located in the building that houses the Office of Comprehensive Security of the Armed Forces Social Security Institute (IPSFA). According to the information received, the journalist was interviewing someone who had been summoned to make a statement in the Office of the Military Prosecutor.[582]

430. The Office of the Special Rapporteur received information to the effect that members of the Venezuelan Army had detained Colombian journalists Philip Moreno, Milton Uscátegui and Paula Osorio on July 16. According to the reports received, the Venezuelan military held the journalists in custody for two days. The news material that the journalists had gathered (a video containing recordings taken on Venezuelan soil) were said to have been confiscated by members of the Venezuelan Army. According to the reports received, the journalists were deported to Colombia on July 18, 2010. On August 3, 2010, the Office of the Special Rapporteur for Freedom of Expression asked the Venezuelan State to provide information regarding these events. Thus far, it has not replied.[583]

### C. Ban on publishing certain materials in the print media

431. On August 13, 2010, the newspaper *El Nacional* published on its front page a picture of nude and presumably lifeless bodies inside what was said to be the Bello Monte morgue in Caracas, Venezuela. The photograph was accompanied by an article on the increase in violent crime in Caracas. After officials publicly complained about the photograph published on the cover of *El Nacional,* the newspaper *Tal Cual* published the same photograph on August 16, 2010 out of solidarity with *El Nacional*[584].

432. As a result of the photograph published in the two newspapers, representatives from the Ombudsperson's Office filed a petition seeking protection in which they requested that all the print media be ordered to refrain from publishing images that are "violent, bloody and grotesque (sic), irrespective of whether they are depicting events and inasmuch as such pictures violate the mental and moral integrity of children and adolescents."[585] Representatives of the Public Prosecutor's Office brought a similar action against the newspaper *El Nacional,* to protect the collective and diffuse rights of children and adolescents. In that action, the Public Prosecutor's Office asked that the court order "that […] publication of images, information and advertising of any type, containing blood, weapons, messages of terror, physical aggression, images that depict war and messages on killing and death be prohibited as they can affect the psychological health of children and adolescents."[586]

---

…continuation
http://www.espaciopublico.org/index.php/noticias/1-libertad-de-expresi/803-parlamento-del-estado-anzoategui-inicio-investigacion-en-contra-de-medico-de-esa-entidad

[582] Federación de Periodistas de América Latina y el Caribe. April 8, 2010. *FEPALC joins the SNTP in condemning the detention of a Venezuelan journalist*. Available at: http://www.fepalc.org/noticias_det.php?Itemid=516

[583] El Tiempo. July 16, 2010. *Colombian journalists detained in Venezuela held incommunicado.* Available at: http://www.eltiempo.com/archivo/documento/CMS-7810897

[584] Comittee to Protect Journalists. August 20, 2010. *Venezuelan censorship over morgue photos is selective.* Available at: http://cpj.org/blog/2010/08/venezuelan-censorship-over-morgue-photos-is-select.php. El Universal. August 16, 2010. *Newspaper Tal Cual denounced for Publishing Photo of Morgue*. Available at: http://www.eluniversal.com/2010/08/16/pol_ava_denuncian-a-diario-t_16A4345011.shtml

[585] Office of the Ombudsperson of the Bolivarian Republic of Venezuela. August 16, 2010. *Ombudsperson's Office asks print media to refrain from publishing images that adversely affect children and adolescents*. Available at: http://www.defensoria.gob.ve/index.php?option=com_content&view=article&id=589:defensoria-solicita-a-tribunales-medida-preventiva-para-que-medios-impresos-se-abstengan-de-publicar-imagenes-que-atenten-contra-la-infancia-y-la-adolescencia-&catid=7:principal&Itemid=79

[586] *Cf*. Decision of the Judge of the Twelfth Court of First Instance for Mediation and Protection of Children and Adolescents. Communication 107/10 addressed to Miguel Enrique Otero, Editor of the newspaper "*El Nacional,"* dated August 16,
Continued…

433. On August 16, 2010, the Judge of the Twelfth Court of First Instance for Mediation and Protection of Children and Adolescents, William A. Páez, ruled that the right to freedom of expression is not absolute and has limits when it affects other basic rights, such as "the right to have one's physical, mental and moral integrity respected; the right to timely, truthful and impartial information, especially when it conflicts with the best interests of children and adolescents, which always takes preference."[587] The magistrate therefore decided that "the newspaper *El Nacional* is prohibited from publishing images, information, and advertisements of any type that contain blood, weapons, messages of terror, physical assaults, images that evoke content about war, and messages about deaths that could alter the psychological well-being of children and adolescents who reside in the Bolivarian Republic of Venezuela, until the merits of the present petition seeking protection are decided."[588]

434. On August 17, 2010, the same magistrate decided the merits of the petition brought by the Ombudsperson's Office seeking an order of protection and prohibited the newspaper *Tal Cual* from "publishing images containing violent, bloody or grotesque content, irrespective of whether they are depicting events, and which in one way or another are detrimental to the mental and moral *integrity* of children and adolescents…" Applying the principle of *jura novit curia,* the court also stated that "All print media published in the Bolivarian Republic of Venezuela shall refrain from PUBLISHING IMAGES that are violent, bloody or grotesque, irrespective of whether they are depicting actual events, as they may in one way or another be detrimental to the mental and moral integrity of children and adolescents …"[589] The magistrate reasoned that "when the media are used in a superficial way, heavily biased in favor of a given sector, they [the media] become a weapon wielded against the citizenry."[590]

435. On August 19, 2010, the magistrate lifted the general ban established on all the print media, but left the ban in place in the case of the newspapers *El Nacional* and *Tal Cual.*[591]

436. The defense of the superior interests of children and adolescents is a common objective of all nations that is protected by international law. This important interest may give rise to legal restrictions on freedom of expression, which should be clear, precise and proportional in conformity with article 13.2 of the Convention. In turn, judges have the ability to apply such restrictions in concrete cases in which they should, within the strict requirements of article 13.2, weigh the legal interests in conflict taking into account the superior interest of the child. None of these requirements is compatible with the existence of judicial decisions of an injunctive nature that impose generic prior contraints on content in an ambiguous or imprecise manner, as was ordered by the judge in the situation just discussed[592].

---

…continuation
2010. Available at: http://www.el-nacional.com/www/files/ADMISION_DICTADA_MEDIDA_PREVENTIVA_INNOMINADA_17_8_2010.pdf

[587] *Cf.* Decision of the Judge of the Twelfth Court of First Instance for Mediation and Protection of Children and Adolescents. Communication 107/10 addressed to Miguel Enrique Otero, Editor of the newspaper "*El Nacional,"* dated August 16, 2010. Available at: http://www.el-nacional.com/www/files/ADMISION_DICTADA_MEDIDA_PREVENTIVA_INNOMINADA_17_8_2010.pdf

[588] *Cf.* Decision of the Judge of the Twelfth Court of First Instance for Mediation and Protection of Children and Adolescents. Communication 107/10 addressed to Miguel Enrique Otero, Editor of the newspaper "*El Nacional,"* dated August 16, 2010. Available at: http://www.el-nacional.com/www/files/ADMISION_DICTADA_MEDIDA_PREVENTIVA_INNOMINADA_17_8_2010.pdf

[589] *Cf.* Decision of the Judge of the Twelfth Court of First Instance for Mediation and Protection of Children and Adolescents. Communication 111/10 addressed to Editor/President of the Newspaper "*Tal Cual,"* dated August 17, 2010. Available at: http://static.eluniversal.com/2010/08/17/medida_de_proteccion.jpg

[590] *Cf.* Decision of the Judge of the Twelfth Court of First Instance for Mediation and Protection of Children and Adolescents. Communication 111/10 addressed to Editor/President of the Newspaper "*Tal Cual,"* dated August 17, 2010. Available at: http://static.eluniversal.com/2010/08/17/medida_de_proteccion.jpg

[591] Agencia Venezolana de Noticias. August 19, 2010. *Ban on publishing violent images in print media lifted*. Available at: http://www.avn.info.ve/node/12388

[592] At the time, the IACHR's Office of the Special Rapporteur for Freedom of Expression and the UN Special Rapporteur for Freedom of Expression, in an August 19, 2010 joint press release, expressed their concern regarding these events. Press
Continued…

### D. The Law on Social Responsibility in Radio and Television is extended to include cable channels, and RCTV is taken off the air

437. In late late 2009 the Bureau of Social Responsibility issued Administrative Order No. 1/09 of December 22, 2009, in which it published the *Technical Standard on Domestic Audiovisual Production Services* (hereinafter, the "Technical Standard").[593] This Technical Standard extends the reach of the Law so that it applies to cable television channels, unless:

> "1. Over 70% of a channel's weekly programming consists of programs, advertising or commercials that, taken together, do not qualify as domestic production under the terms of Article 2 of this technical standard.// 2. When more than 70% of the total time of a channel's weekly programming consists of programs, advertising or commercials that, taken together, do not qualify as domestic production under the terms of Article 2 of this technical standard."[594]

438. As can be inferred from the text of the provision cited above, the Technical Standard divides cable television channels into "domestic" and "international". Whereas the system created by the Technical Standard applies to domestic cable television channels, which implies enforcement of the Law on Social Responsibility in Radio and Television, that system does not apply to international cable television channels.[595] The Technical Standard establishes certain specific obligations, such as broadcasting of government messages or speeches (Article 5); a ban prohibiting commercial interruption of programs (Article 6); registration of these channels in the record created for that purpose (Article 10); and others. Finally, the conditions it imposes in the area of advertising are more restrictive than the conditions imposed under the Law on Social Responsibility in Radio and Television; whereas the Law on Social Responsibility allows five commercial interruptions every 60 minutes, the Technical Standard bans any commercial interruption and confines advertising to the intervals between various programs.[596]

439. The Technical Standard establishes a procedure where cable channels will be evaluated to determine whether they qualify as "domestic" or "international". Channels that were already broadcasting when the norm was approved are to submit to CONATEL,[597] "within fifteen (15) working days from the date of publication of this technical standard, the paperwork to show that they either are or are not purveyors of domestic audiovisual production services for a sample period of four (4) months of

---

…continuation
Release R82/10. Rapporteurs for Freedom of Expression concerned over Prior Censorship in Venezuela. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=811&lID=1

[593] CONATEL. Administrative Order 01/09 of December 22, 2009. Technical Standard on Domestic Audiovisual Production Services. Available at: http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf

[594] CONATEL. Administrative Order 01/09 of December 22, 2009. Technical Standard on Domestic Audiovisual Production Services. Article 3. Available at: http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf

[595] In this connection, Article 4 of the Technical Standard provides that "Domestic Audiovisual Production Services shall comply with the provisions of the Law on Social Responsibility in Radio and Television." Available [in Spanish] at: http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf

[596] CONATEL. Administrative Order 01/09 of December 22, 2009. Technical Standard on Domestic Audiovisual Production Services. Article 6. Available at: http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf

[597] See, in this regard, CONATEL. December 2009. *Guide to doing notifications for Domestic Audiovisual Production Services*. Available at: http://docs.google.com/viewer?a=v&q=cache:wSCBZFiZ01kJ:www.conatel.gob.ve/download/Servicio_Produccion_Nacional_Audiovisual/Guia_Notificacion_PNA_%2812-2009%29.pdf+para+los+servicios+de+Producci%C3%B3n+Nacional+Audiovisual+%22Gu%C3%ADa+para+realizar+notificaciones+%22+site:www.conatel.gob.ve&hl=en&gl=us&pid=bl&srcid=ADGEESiilcds2V6qHGI5mtWFieEj6Fynro3K9xhit4kMnrhSXr2mzBYchVagBvIF1wQ7Ftf6JgiBEUbkxJl7iDLYFjoXrLbS4r4XEU7XXOv6HoQ3-JiKtEjav0_HDZPj0R08j6pRfRm-&sig=AHIEtbTUEin-D4wSYmTqSx92OAXpf2ZliQ&pli=1

programming aired prior to publication of the standard."[598] The provision also states that if channels fail to produce the required documentation, they will automatically be regarded as Domestic Audiovisual Production Services.

440. Finally, the last paragraph of Transitory Provision One requires that cable television providers exclude "those audiovisual production services that have failed to produce for the National Telecommunications Commission the documentation to which this article refers and those that are not listed in the register of domestic audiovisual production services."[599]

441. A number of earlier reports have documented the tension between government authorities and channel RCTV due to the latter's editorial position. The authorities have described the channel as "horsemen of the Apocalypse", "fascists", the force behind "a campaign of terrorism against the people, the law and the Republic," "liars, perverts, immoral people, rebels and terrorists" and other epithets.[600] In 2007, its license expired and was not renewed.[601] Around the middle of that year, RCTV began to broadcast on cable television, which meant that the provisions of the Law on Social Responsibility in Radio and Television did not apply to it. As previously observed, the language of that law is too vague and imprecise for the law to constitute a legitimate restriction on freedom of expression. Under the Law on Social Responsibility in Radio and Television, those television channels that are subject to its provisions are required to carry the blanket presidential broadcasts. According to the information supplied by civil society organizations that monitored the use of this resource, there were 1,932 blanket official broadcasts between February 1999 and July 2009, which amounted to 52 uninterrupted days of presidential broadcasts.[602]

442. Given the new provision issued by CONATEL, RCTV decided to change its programming to conform to the parameters established by the Technical Standard for international channels, a decision it reported to the State on January 13, 2010.[603] This meant drastic programming changes, such as cancellation of a number of programs produced in Venezuela.[604] In the words of RCTV International, "within the established time period it applied the new programming parameters described for International Channels operating within Venezuelan territory; it did so in order to continue to function as we are, an International Channel."[605]

443. Despite the programming changes RCTV made, on January 15, 2010 CONATEL classified RCTV International as a domestic audiovisual production service, and so notified RCTV International on Thursday, January 21, 2010. RCTV challenged that decision by filing a writ for

---

[598] CONATEL. Administrative Order 01/09 of December 22, 2009. Technical Standard on Domestic Audiovisual Production Services. Transitory Provision One. Available at: http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf

[599] CONATEL. Administrative Order 01/09 of December 22, 2009. Technical Standard on Domestic Audiovisual Production Services. Transitory Provision One. Available at: http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf

[600] 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. 115.

[601] See IACHR. 2007 Annual Report. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Situation of Freedom of Expression in the Region).

[602] IACHR. 2009 Annual Report of the Inter-American Commission on Human Rights. *Report of the Special Rapporteur for Freedom of Expression.* Chapter 2, Para. 572. OEA/Ser.L/V/II. Doc. 51, December 30, 2009. Available at: http://www.IACHR.oas.org/pdf%20files/Annual%20Report%202009.pdf

[603] CONATEL. Administrative Order 1,569 dated March 4, 2010. On file with Office of the Special Rapporteur. See also Apporea. March 5, 2010. *Conatel rejects RCTV's inscription as extemporaneous*. Available at: http://www.aporrea.org/medios/n152383.html

[604] *El Universal*. January 21, 2010. *RCTV radically changes its programming*. Available at: http://www.eluniversal.com/2010/01/21/til_art_rctv-cambia-radicalm_1731007.shtml

[605] Communiqué from RCTV Internacional, dated January 21, 2010. Available at: http://www.rctv.net/Noticias/VerNoticia.aspx?Noticiaid=8207&CategoriaId=31

constitutional protection (*amparo*).[606] Since the petition seeking *amparo* relief was pending before the courts, RCTV -which felt it had proven that it was an "international" channel- decided not to carry the blanket presidential broadcasts on the following Friday and Saturday. CONATEL did an evaluation of the content, using a sample taken from the four months that preceded issuance of the Technical Standard. As a result, the changes that RCTV made to its programming starting on December 22, 2009, did not count since, in order to be classified as an "international producer" under the technical standard issued on December 22, 2009, RCTV had to be in compliance with the requirements stipulated therein four months before the standard was issued, in other words, as of August 22, 2009.

444. On Saturday night, January 23, 2010, Minister Cabello made public statements in which he asserted that there were cable channels that were not in compliance with Venezuelan law. According to administrative order 01/09 of the Bureau of Social Responsibility, if channels fail to comply with the Technical Standard established in that regulation, cable television providers are to eliminate them from their programming. In effect, the final paragraph of Transitory Provision One of the Technical Standard reads as follows:

> "Cable providers are to exclude from their programming any audiovisual production services that have not produced for the National Telecommunications Commission the documentation to which this article refers, as well as those not listed in the register of domestic audiovisual production services."[607]

445. The Minister therefore served notice to all cable operators that they were to take off the air those channels that were not in compliance with the law, under penalty of facing administrative proceedings. Specifically, Minister Cabello said the following:

> "If a cable operator -let's call it Cable Venezolana- found that a certain channel was not in compliance with Venezuelan law, and Cable Venezolana did nothing to remove that channel from its offerings, we would institute an administrative proceeding against Cable Venezolana, the provider which brings the channel into the home. I should point out that in this instance, the cable operators themselves have been telling CONATEL which channels are not in compliance with the Law on Social Responsibility, even though they have been classified as Domestic Audiovisual Producers, and they simply operate on that basis.
> (…)
> We're not obligating them to anything; this is simply a matter of compliance. And we're not sanctioning anyone (…) What I'm saying is this: this time the cable operators have done what they are supposed to do. If they don't, I will enforce the Organic Law on Telecommunications and institute administrative proceedings. We'll take action against the cable operator, but thus far this hasn't happened. We've already called them and told them: look, read the technical standard, then look at which channels are classified as domestic audiovisual producers and which channels are international producers, and then verify that. The cable operators have discovered which channels are not in compliance. In keeping with the technical standard, they simply drop any channel that is not in compliance with Venezuelan law.
> [Question from a journalist on how much time operators have to drop channels]
> This was approved on Thursday and the list went out. To be honest, the operators should have already done it. They have a little time, perhaps. Here, everyone has to do one's duty. (…) By now, anyone who is not in compliance… well the operators will begin to make their decisions. I guarantee you, that's how it will be![608]"

---

[606] CONATEL. Administrative Order 1,569 of March 4, 2010. On file with Office of the Special Rapporteur. See also Apporea. March 5, 2010. *Conatel rejects RCTV's inscription as extemporaneous*. Available at: http://www.aporrea.org/medios/n152383.html

[607] CONATEL. Administrative Order 01/09 of December 22, 2009. Technical Standard on Domestic Audiovisual Production Services. Transitory Provision One. Available at: http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf

[608] Venezolana de Televisión. Minister Cabello's press conference. Available at: http://www.youtube.com/watch?v=UPQ0nu2WC_I&feature=related

446. At midnight, January 23, RCTV and five other television stations went off the air.[609]

447. The Commissioner for Venezuelan Affairs and the Special Rapporteur for Freedom of Expression expressed their deep concern over the fact that the channels in question were taken off the air. In press release 08/10 they expressed the following:

> "The decision to take a cable channel off the air for alleged non-compliance with the Law of Television and Radio Social Responsibility means, for all intents and purposes, the closure of a channel for not complying with this law. This decision therefore has enormous repercussions when it comes to freedom of expression, and as such must comply with all the guarantees consecrated in law, in the Venezuelan Constitution and in the international treaties to which the Bolivarian Republic of Venezuela is a party. In particular, in order for the closing of a media outlet to be legitimate, it is necessary that prior to the exhaustion of due process, an independent and impartial state body verify that the media outlet committed an offense clearly established by law and that the agency charged with enforcing the law adequately and sufficiently justifies the decision. These minimum guarantees of due process cannot be sidestepped on the pretext that the media outlet in question is a cable channel. // In this case, the channels that were so suddenly taken off the air did not have an opportunity to defend themselves with due process and before an impartial authority. These channels were punished summarily, without due process and without justification under Venezuelan law. With this decision, the right to freedom of expression in Venezuela is further eroded, as it blocks cable media outlets from operating independently and without fear of being silenced on account of the focus of their reporting or their editorial stance."[610]

448. In the case described here, the cable television providers were informally warned that they should take the supposedly noncompliant television channels off the air; if they failed to do so, they would face administrative proceedings and penalties. That indirect pressure is based on retroactive enforcement of a provision that had reportedly been devised to get at RCTV specifically. This would imply a violation of the principle of legality, which presupposes that any restrictions on freedom of expression must be established by pre-existing law, written in clear and unambiguous language in order to provide the necessary "foreseeability", as both the IACHR and the European Court have recognized.[611] Moreover, as the Office of the Special Rapporteur for Freedom of Expression wrote in its 2009 Annual Report, "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."[612]

---

[609] In addition to RCTV, the following channels were also taken off the air: América TV, TV Chile, American Network, Ritmo Son and Momentum. See IFEX. January 26, 2010. *Cable companies take six television stations off the air following communications regulator's orders*. Available at: http://www.ifex.org/venezuela/2010/01/26/cable_stations_off_air/. Committee to Protect Journalists. February 25, 2010. *Venezuela bars RCTV, 5 other stations from cable, satellite*. Available at: http://cpj.org/2010/01/venezuela-bars-rctv-5-other-stations-from-cable-sa.php

[610] Office of the Special Rapporteur for Freedom of Expression of the IACHR. Press release No. R08/10 of January 24, 2010. Available at: http://www.IACHR.org/relatoria/showarticle.asp?artID=781&lID=1

[611] European Court of Human Rights, Case of Tolstoy Miloslavsky v. United Kingdom, Judgment of July 13, 1995, para. 37, where it wrote that: "The expression 'prescribed by law' [in Article 10 of the European Convention on Human Rights] requires firstly that the impugned measures should have a basis in domestic law. It also refers to the quality of the law in question, requiring that it be accessible to the persons concerned and formulated with sufficient precision to enable them […] to foresee, to a degree that is reasonable in the circumstances, which a given action may entail."

[612] In this regard it is worth recalling that the Inter-American Court held that "Although 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." IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter VI (Freedom of Expression and Broadcasting), para. 144; I/A Court H.R., *Case of the Constitutional Court v. Peru.* Judgment of January 31, 2001. Series C No. 71, paragraphs 69-70.

449. The IACHR was told that in February 2010, five of the six suspended cable channels were authorized to broadcast again. The exception was RCTV International. Later that same month, RCTV International agreed to its classification as a "domestic audiovisual producer."[613] In effect on February 22, 2010, RCTV International notified CONATEL of its intention to provide two services: one domestic audiovisual production service, which would be subject to the laws described in the preceding paragraphs, and RCTV Mundo, an "international" channel whose "domestic" content would not exceed 29%.[614] On March 4, 2010, CONATEL ruled that the petition that RCTV International filed to register that channel as a domestic audiovisual production service had been submitted too late, and it would therefore take no further action. In so doing, CONATEL applied Article 32 of the Organic Law on Telecommunications which provides that no further action shall be taken on applications filed with CONATEL for licensing if, through the interested party's fault, the proceedings come to a standstill for more than fifteen working days.[615] CONATEL also claimed that the documentation presented in connection with RCTV Mundo had been "inaccurate and incomplete" and, as a result, CONATEL could not do the necessary evaluation to determine whether this was a "domestic" or "international" channel.[616] At the present time, RCTV is not being carried by cable providers.

450. RCTV filed an action asking the courts to strike down the Technical Standard and the decision that classified RCTV as a domestic audiovisual production service. On August 11, 2010, Examining Court of the Administrative Political Chamber of the Supreme Court agreed to hear the nullification action; the next step was to be the hearing.[617] As of the date this report went to press the hearing had not been held.

### E. The *Globovisión* case

451. *Globovisión* is a privately-owned Venezuelan television channel whose position tends to be critical of the Venezuelan government. In previous reports, the Office of the Special Rapporteur has recounted various episodes of harassment of the channel because of its editorial position. In the 2009 Annual Report the IACHR and the Office of the Special Rapporteur singled out at least six administrative proceedings that CONATEL had instituted against *Globovisión* for alleged 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.[618] As of the date this report went to press, the outcome of these proceedings was still unknown.

452. Between March 19 and 22, 2010, the midyear meeting of the Inter-American Press Association was held in Oranjestad, Aruba. Participating in the event was Guillermo Zuloaga, president of

---

[613] Reporters without Borders. February 23, 2010. *RCTV yields in order to resume broadcasting, but problem of "cadenas" remains.* Available at: http://en.rsf.org/venezuela-rctvi-yields-in-order-to-resume-23-02-2010,36202.html

[614] See CONATEL. Administrative order No. PASDR-1.569. March 4, 2010.

[615] Organic Law on Telecommunications. Article 32. Available at: http://www.tsj.gov.ve/legislacion/lt_ley.htm

[616] See CONATEL. Administrative order No. PASDR-1.569. March 4, 2010.

[617] See Supreme Court, Political Administrative Chamber, Examining Court. August 11, 2010. Available at: http://www.tsj.gov.ve/decisiones/jspa/Agosto/467-11810-2010-10-657.html

[618] Article 171.6 of the Organic Law on Telecommunications provides as follows: "Article 171. Without prejudice to the fines that are to be applied in accordance with the provisions in this Law, the penalty shall be cancellation of the government license or concession, as the case may be, in the case of: […] (6) Someone who utilizes or allows the use of telecommunications services for which one is licensed, as a means to aid and abet the commission of crimes." Article 172 of the Organic Law on Telecommunications states: "Article 172. Natural or legal persons whose government license or concession is revoked will be unable to obtain another, either directly or indirectly, for a period of five years. This period will be start as of the date the administrative decision becomes final. In the case of legal persons, the de-licensing will extend to administrators or other organs responsible for the management and direction of the sanctioned operator which were performing these functions at the time the offense was committed, provided they had knowledge of the situation that led to the de-licensing and did nothing to notify the National Telecommunications Commission in writing before the opening of the punitive proceedings. The violation of the de-licensing and disqualifications established in this Law will cause natural persons responsible for such an offense to be liable for a special disqualification prohibiting them from owning capital shares in or being administrators or managers of telecommunications companies, either directly or indirectly, for a period of five years." Available at: http://www.tsj.gov.ve/legislacion/lt_ley.htm

*Globovisión* of Venezuela. At the meeting, Zuloaga made a statement in which he criticized the handling of public funds to support public media outlets that serve governmental ends; he underscored the political polarization in Venezuela, which he blamed on the President of the Republic. According to Zuloaga, Venezuela's head of state "has devoted himself to being President of one group of Venezuelans and has tried to divide Venezuela for the sake of something, and that something is twenty-first century socialism." Zuloaga also denied the accusations that President Hugo Chávez Frías had made publicly against him, to the effect that he and other media entrepreneurs were somehow linked with the 2002 *coup d'état.*[619]

453. On March 23, 2010, the National Assembly approved a draft resolution in which Zuloaga's assertions were rejected. Through this resolution, the National Assembly urged "the Public Prosecutor's Office to conduct all investigations and take all measures necessary to determine what crimes citizen Guillermo Zuloaga had committed under the current legal system by uttering the statements he made before the Inter-American Press Association, in which he repeated a series of false accusations against the legitimate and democratic government of constitutional President Hugo Chávez."[620] The following day, Deputy Manuel Villalba, President of the National Assembly's Commission on the Social Media, met with Prosecutor General Luisa Ortega Díaz to file a formal complaint.[621]

454. On March 25, 2010, at Josefa Camejo Airport in Punto Fijo, Falcón state, Zuloaga was detained by virtue of an arrest warrant requested by the Public Prosecutor's Office as part of the investigation instituted against him. The Public Prosecutor reported that "the evidence is sufficient to presume that the businessman constitutes a flight risk in an attempt to avoid the criminal proceedings brought after the complaint filed concerning his remarks at a meeting of the Inter-American Press Association."[622] Villalba emphasized the fact that Zuloaga's statements constituted the crime of "contempt of and offending" the President of the Republic.[623] The following day, Caracas' 40th Examining Court decided to grant Zuloaga conditional release, although in lieu of incarceration, it ordered him not to leave the country.[624] As of the date this report went to press, the case against Zuloaga was still ongoing.

455. On June 3, 2010, President Hugo Chávez Frías allegedly publicly criticized the Judiciary for having allowed Guillermo Zuloaga to remain at liberty.[625]

456. On June 11, 2010, Caracas' 13th Examining Court issued a warrant for the arrest of Guillermo Zuloaga and his son Guillermo Zuloaga Siso. Both were accused of the crimes of usury and hoarding for having kept 24 vehicles in storage on a property they owned in the countryside.[626] According to the information received, Zuloaga is the owner of a car dealership.[627]

---

[619] Guillermo Zuloaga's statements, available at: http://www.youtube.com/watch?v=1KpM4g1uwa4

[620] National Assembly. *National Assembly asks Public Prosecutor's Office to investigate Guillermo Zuloaga*. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_content&task=view&id=24416&Itemid=27

[621] Reporte 360. March 24, 2010. *Manuel Villalba asked Public Prosecutor's Office to investigate Zuloaga*. Available at: http://www.reporte360.com/detalle.php?id=29756&c=1

[622] IPYS. March 25, 2010. *Globovisión Owner Taken into Custody*. Available at: http://www.ipys.org/alertas/atentado.php?id=2231. Noticias 24. March 25, 2010. *Prosecutor General explains reasons for Zuloaga's arrest*. Available at: http://www.noticias24.com/actualidad/noticia/149235/video-fiscal-general-cuenta-razones-de-la-detencion-de-zuloaga/

[623] El Universal. March 25, 2010. *Zuloaga to be charged with crime of contempt and offending the President*. Available at: http://www.eluniversal.com/2010/03/25/pol_ava_imputaran-a-zuloaga_25A3646055.shtml

[624] El Universal. March 26, 2010. *Zuloaga will not be jailed during his trial for "contempt of and offending the President"*. Available at: http://politica.eluniversal.com/2010/03/26/pol_art_enjuiciaran-en-liber_1810121.shtml

[625] El Universal. June 12, 2010. *Arrest warrant issued for Zuloaga and his son*. Available at: http://www.eluniversal.com/2010/06/12/pol_art_dictan-orden-de-apre_1936129.shtml. Tal Cual. June 12, 2010. *Chávez gives the orders and the judge acts*. Available at: http://www.talcualdigital.com/Avances/Viewer.aspx?id=36344&secid=28. Notitarde. June 11, 2010. *13th Examining Court ordered arrest of Guillermo Zuloaga*. Available at: http://www.notitarde.com/notitarde/plantillas/nota.aspx?idart=1051140&idcat=9841&tipo=2

[626] El Universal. June 11, 2010. *Zuloaga ordered arrested for usury and hoarding*. Available at: http://www.eluniversal.com/2010/06/11/pol_ava_ordenan-arrestar-a-z_11A4006611.shtml. *El Nacional*. June 29, 2010. *Public*

Continued…

457. Reacting to this turn of events, the Office of the Special Rapporteur for Freedom of Expression sent a letter to the Venezuelan government expressing concern over various issues related to freedom of expression, one of which was the order issued for the arrest of Guillermo Zuloaga and his son. The Office of the Special Rapporteur for Freedom of Expression expressed its concern regarding the arrest warrant, "noting the constant threats and harassment of *Globovisión* in general and Zuloaga in particular". It also pointed out that, "according to information received, on June 3, 2010 (…) the President of the Republic had criticized the Judicial Branch because Zuloaga was still free. It observed that it seems no coincidence that just eight days after the President's rebuke, the Judicial Branch issued a warrant for Zuloaga's arrest".[628]

458. The Office of the Special Rapporteur underscored the fact that "freedom of expression is a right that can be violated by direct and indirect means. Article 13, subsection 3 of the American Convention states that 'the right of expression may not be restricted by indirect methods or means, such as 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.' From this point of view, criminal prosecution for supposed crimes unrelated to the exercise of freedom of expression may constitute an illegitimate infringement of that right if it is established that prosecution is exclusively because of the accused's political position or the exercise of his fundamental rights, such as freedom of expression in this case."[629]

459. According to the information received, Zuloaga left the country, whereupon proceedings for his extradition were instituted, at the request of the Public Prosecutor's Office.[630] In mid-August 2010, the Supreme Court cleared the way for the extradition request to proceed.[631]

460. Nelson Mezerhane Gozen is one of *Globovisión*'s co-founders and serves as its Principal Director. He is also president of the Federal Bank. On December 19, 2009, in one of his nationwide broadcasts, the President of the Republic questioned statements made by Mezerhane and ordered an investigation of him for the statements Mezerhane had made to the daily newspaper *El Mundo Economía y Negocios*. President Chávez said the following: "I'm going to call the Prosecutor General later and ask that she have those statements investigated, as I consider them to be very serious and irresponsible,

---

…continuation
*Prosecutor's Office accuses Zuloaga of usury and hoarding*. Available at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/143323/Nacional/Ministerio-P%C3%BAblico-acusa-a-los-Zuloaga-de-usura-y-agavillamiento

[627] Telesur. June 11, 2010. *Venezuelan Public Prosecutor's Office orders businessman's arrest for the crime of usury*. Available at: http://www.telesurtv.net/secciones/noticias/73447-NN/ministerio-publico-venezolano-ordena-captura-de-empresario-por-delito-de-usura/

[628] Office of the Special Rapporteur for Freedom of Expression of the IACHR. Letter sent to the Bolivarian Republic of Venezuela on June 14, 2010, in connection with the Situation of Freedom of Expression in the Bolivarian Republic of Venezuela (on file with the Office of the Special Rapporteur). See in this regard, IACHR Commissioner for Venezuelan Matters and the Special Rapporteur for Freedom of Expression Send Communication to the Venezuelan State Expressing Deep Concern over the Serious Situation of Freedom of Expression. Press Release No. R61/10, July 14, 2010. Available at: http://www.IACHR.org/Relatoria/showarticle.asp?artID=800&lID=1

[629] Office of the Special Rapporteur for Freedom of Expression of the IACHR. Letter sent to the Bolivarian Republic of Venezuela on June 14, 2010, in connection with the Situation of Freedom of Expression in the Bolivarian Republic of Venezuela (on file with the Office of the Special Rapporteur).

[630] El Universal. June 29, 2010. *Public Prosecutor's Office seeks extradition of Guillermo Zuloaga*. Available at: http://www.eluniversal.com/2010/06/29/pol_ava_ministerio-publico-p_29A4106093.shtml. Ministry of the People's Power for Communications and Information. June 29, 2010. *Public Prosecutor's Office asks for Zuloaga's extradition*. Available at: http://minci.gob.ve/nacionales/1/200778/ministerio_publico_solicita.html

[631] El Universal. August 17, 2010. *Supreme Court authorizes Zuloaga's extradition*. Available at: http://www.eluniversal.com/2010/08/17/pol_ava_tsj-autoriza-extradi_17A4349131.shtml. Agencia Venezolana de Noticias. August 17, 2010. *Supreme Court allows request to extradite Guillermo Zuloaga*. Available at: http://www.avn.info.ve/node/11919

especially coming from the mouth of the president of a bank, which has had serious problems, for sure."[632]

461. On December 21, 2009, a criminal investigation was instituted against Mezerhane, by order of the Prosecutor General of the Republic, Luisa Ortega Díaz.[633]

462. On June 14, 2010, the Minister of State for Public Banking, Humberto Ortega Días, decided to take over the Federal Bank.[634] On June 16, 2010, in one of his nationwide broadcasts, President Chávez said the following: "While it is true that Mr. Banker, who left and said he wasn't coming back [Mezerhane] has shares in *Globovisión*, Zuloaga is going to have to show up for us to come to some understanding over that channel."[635] He also said that if the court cases demonstrate that both Zuloaga and Mezerhane have shares in *Globovisión*, "both will have to straighten up and come my way; I have a flower to offer."[636]

463. The statements made by the President of the Republic suggest that the State wants to take over *Globovisión* by intervening in the Federal Bank, whose president, Nelson Mezerhane, is also a shareholder in *Globovisión*:

> "Mezerhane has a business that was taken over, and that business has a 20% stake in *Globovisión.* He owns another business that has a 5.8% stake in *Globovisión*. Adding the two together, that's a 25.8% stake. Well, come to see me, I have a flower. In the days ahead, the Board that intervened in the Federal Bank is required (…) to appoint a representative to sit on *Globovisión*'s Board of Directors, because the 25.8% stake we now have gives us the right to name a representative to the Board of Directors. And I was thinking who should I nominate? (…) Well, it's not my function to appoint the Board member, but I would recommend someone to be appointed to the Board. (…) We hear names, someone to defend the shareholders' interests (…) This is pure capitalism, my friend, pure capitalism by the shareholders (…) We're joining the business (…) And oh, by the way, another 20% of the shares in *Globovisión* are up in the air. They're up in the air because when the State awarded the concession, 20% of the shares went to a gentleman by the name of (…) Tenorio; he got 20 percent (…). Regrettably, the gentleman is now deceased. By law, these concessions are not inherited; in other words, what one leaves to one's children, one's heirs is one's own property, but radio frequencies are the property of the State. If anyone receives a concession it is for use of the radio frequency; when that person dies, the concession goes back to the State. We'll see to whom it goes now. So, adding all this together, 28.5% plus 20%, well, my friends that's a 48.5% stake in *Globovisión*."[637]

---

[632] Public statements by the President of the Bolivarian Republic of Venezuela, Hugo Chávez Frías. Available at: http://www.youtube.com/watch?v=3NzzmVGtqIs

[633] El Universal. December 21, 2010. *Prosecutor's Office launches investigation into alleged bank-related "rumor mills"*. Available at: http://www.eluniversal.com/2009/12/21/pol_ava_fiscalia-abre-invest_21A3220251.shtml. Noticias RTV. December 22, 2010. *Chávez again says that Mezerhane's claims will be investigated*. Available at: http://noticiasrtv.com/noticiasrtv/2009/12/22/chavez-reitero-que-declaraciones-de-mezerhane-seran-investigadas/

[634] Venezolana de Televisión. June 14, 2010. *Sudeban announces closed-door takeover of Federal Bank*. Available at: http://www.vtv.gov.ve/noticias-econ%C3%B3micas/37501. El Universal. June 14, 2010. *Closed-door takeover of Federal Bank ordered*. Available at: http://www.eluniversal.com/2010/06/14/eco_ava_ordenan-intervencion_14A4020011.shtml

[635] Código ADN. June 16, 2010. *Chávez: 'Zuloaga and the Banker: Come to me, I have a flower*'. Available at: http://www.codigovenezuela.com/2010/06/noticias/pais/chavez-zuloaga-y-el-banquero-vengan-a-mi-que-tengo-flor/. *Venezolana de Televisión*. June 16, 2010. Revelan que Banco Federal posee acciones de Globovisión [Revealed: Federal Bank has shares in Globovisión]. Available [in Spanish] at: http://www.vtv.gob.ve/noticias-econ%C3%B3micas/37707

[636] *Código ADN*. June 16, 2010. "Chávez: 'Zuloaga y 'El Banquero': Vengan a mí, que tengo flor" Chávez: 'Zuloaga and the Banker: Come to me, I have a flower']. Available [in Spanish] at: http://www.codigovenezuela.com/2010/06/noticias/pais/chavez-zuloaga-y-el-banquero-vengan-a-mi-que-tengo-flor/. *Venezolana de Televisión*. June 16, 2010. Revelan que Banco Federal posee acciones de Globovisión [Revealed: Federal Bank has shares in Globovisión]. Available [in Spanish] at: http://www.vtv.gob.ve/noticias-econ%C3%B3micas/37707

[637] Statements made by President Hugo Chávez, available at: http://www.youtube.com/watch?v=PWp2PQ6iKUQ

464. The same day the President made these statements, PSUV deputy Carlos Escarrá said the following on the *La Hojilla* television program:

> "Mr. Zuloaga is being criminally prosecuted for a number of crimes that are violations of the Defense of the People Law, which makes hoarding and speculation criminal offenses. That law gives the State the authority to adopt precautionary measures, because the crime of which Mr. Zuloaga is accused affects all people (…). The State is fully within its rights to take over, as a precautionary measure, Mr. Zuloaga's shares in *Globovisión*, which would make the State the majority shareholder in *Globovisión*. Being a majority shareholder means having 55% of the shares; but taking over Mr. Zuloaga's shares would mean that the State would have roughly a 77% stake (…). This is far more than a 55% stake in that phantom business."[638]

465. Subsequently, in a blanket presidential radio and television broadcast delivered on July 2, 2010, the President again made reference to *Globovisión* and stated "Let's see who holds out longer: crazy *Globovisión* or Venezuela." He went on to say the following: "So some thought will have to be given to the question of what happens to that television channel; so, what's going to happen? The owners are out there, fugitives from justice. And I'm calling upon those who run that channel -who are not the owners- and especially those on the front lines, who are acting on the instructions from the owners –who are in hiding, as fugitives from justice-: you are undermining the country's stability on the owners' orders…; it's very dangerous to allow a television channel to incite a country. That's something we just can't allow."[639]

466. The facts recounted in the preceding paragraphs are troubling. According to the statements made by public officials, the State intends to seize control of the *Globovisión* channel. As previously mentioned, Article 13(3) of the American Convention prohibits any indirect methods or means intended to restrict freedom of thought and expression.

467. On November 20, 2010, the President gave *Venezolana de Televisión* an interview, in which he said the following about Guillermo Zuloaga:

> "And he's not just a fugitive from justice; just yesterday he was at the United States Congress casting aspersions on his own country, his own government, this president; and he's the owner of that channel. As Head of State, I am calling upon Vice President Elías Jaua, the Prosecutor General, and the Supreme Court to do something. Because this is something very odd: here we have the owner of a television channel who is a criminal and a fugitive from justice. He appears at the United States Congress and says whatever he pleases against this government, and conspires against it. They're raising money to pay someone to kill me. I'm telling you this. Yes, Yes. They're paying someone; (…) I have it from very reliable sources that they have 100 million dollars for the person who kills me. And he's one of them; the owner of a television channel that is at this very moment broadcasting in Venezuela. Do you realize what's happening? I'm asking the appropriate organs to investigate this, because something has to be done. Either the owner comes to defend his assets -show his face, as he should- or something will have to be done about that channel…"[640]

468. In an address to university students on November 21, 2010, the President said the following:

> "Just three or four days ago representatives of the ultra right gathered in Washington. And the *Globovisión* owner was there at that meeting, one of them for sure. This is inexplicable; I still don't understand it, and hope to understand it better… In other words, here we have a Venezuelan who is a fugitive from justice. He is the owner of, among other things, a television channel that is on the

---

[638] Venezolana de Televisión. Programa La Hojilla. July 20, 2010. On file with the Office of the Special Rapporteur for Freedom of Expression and available at: http://www.ojopelao.com/opinion/la-hojilla/18065-la-hojilla-del-dia-martes-20-de-julio-de-2010-video.html

[639] *Debate socialista*. Address by President Chávez. Available at: http://www.debatesocialistadigital.com/Discursos/discursos_2010/julio/acto_ahorrista_banco_federal.html

[640] President's interview with *Venezolana de Televisión* on November 20, 2010. Video available at: http://www.youtube.com/watch?v=zpR-V-MQnEw

> air every day. Broadcasting from here! Right here in Caracas! And he's out there, a fugitive from justice. Oh, he also goes to Washington to say… well to say whatever he wants; to brand this soldier a tyrant; to say that Venezuela is a dictatorship and Venezuela is foundering; he is practically asking the Yankee imperialists to intervene in Venezuela. And he's the owner of a television channel that remains on the air. I've called upon the branches of government (…) the Office of the Prosecutor General, the Judicial Branch, the Vice President –our dear friend Elías Jaua- to see what we can do. Right? Because that gentleman fled the country, a fugitive from justice; he is a criminal and yet he has a television channel criticizing the government every day, misrepresenting the truth. This government and the Venezuelan State have to do something about this! Let's see what happens… But this situation cannot go on; it is a violation of the Constitution and the law. That gentleman should come here and show his face … Face the Venezuelan courts. But no, he's there in Washington, asking the empire to intervene in his own country, which is very likely treason (…). I know that this matter is already under review, to see what we can do. Either this man shows up here or some action will have to be taken against his businesses, one of which is a television channel…"[641]

469. Because of these statements, in which the President asked State authorities to take measures against *Globovisión*, on November 22, 2010 the Office of the Special Rapporteur requested information from the Bolivarian Republic of Venezuela, asking that it report any measures taken with respect to *Globovisión* since the statements made by President Hugo Chávez; information concerning the status of the administrative proceedings that CONATEL previously instituted with respect to *Globovisión*; information about whether Venezuela's legal system allows administrative or judicial proceedings against media outlets because of their editorial stance or the political alignment of their shareholders; information about whether Venezuela's legal system allows intervention or measures against a media outlet because one of its shareholders is being prosecuted for reasons unrelated to the ownership of shares in that outlet; and, finally, the reasons that would explain why the President of the Republic would accuse the *Globovisión* shareholder Guillermo Zuloaga of the crimes of plotting to assassinate him and treason.

470. On November 24, 2010, the Bolivarian Republic of Venezuela responded to request for information made by the Office of the Special Rapporteur and observed the following: "Thus far, no measures of any kind have been taken against *Globovisión* television, inasmuch as each of the constitutionally established branches of government are independent of each other; hence, simple statements made by the President do not constitute an order that the other branches of government are bound to follow." The State also noted that "just as Citizen Guillermo Zuloaga turned to the United States Congress to exercise his right to freedom of expression, Citizen President Hugo Chávez has the same right to answer the accusations made against his Government." Lastly, it wrote that "the investigations instituted against citizen Guillermo Zuloaga have to do with alleged criminal offenses, and not with *Globovisión*'s editorial stance; the fact that he is a shareholder in that television channel does not make him immune to investigation or to any criminal, civil or administrative penalties that may be in order after an impartial investigation and a trial with all the guarantees of due process established in the Constitution and the law."[642]

471. It is important to point out that, as the Office of the Special Rapporteur for Freedom of Expression observed in its 2009 Annual Report, "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."[643] That case law has held that public authorities' right of freedom

---

[641] Address delivered by the President of the Republic before a gathering of students. Video available at: http://www.youtube.com/watch?v=EuSspn04hEg. See also: Bloomberg. November 21, 2010. *Venezuela's Chavez Threatens 'Actions' Against Globovisión*. Available at: http://www.bloomberg.com/news/2010-11-21/venezuela-s-chavez-threatens-actions-against-globovision.html. El Universal. November 22, 2010. *Chávez gives orders to go after Zuloaga*. Available at: http://www.eluniversal.com.mx/internacional/70630.html

[642] Response received from the Bolivarian Republic of Venezuela on November 24, 2010. AGEV. 000485 (on file with the Office of the Special Rapporteur).

[643] IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression), para. 200.

of expression has certain strict limits that are the product of the particular obligations and responsibilities vested in officials who serve in public office. In effect, when public officials exercise their freedom of expression, either in compliance with their obligation under the law or as a simple exercise of their 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."[644]

472. Furthermore, given the State's obligations to ensure, respect and promote human rights, public officials have a duty to ensure that when exercising their right to freedom of expression, they are not disregarding fundamental rights. As the Inter-American Court wrote: "[T]hey 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."[645] Therefore, public officials may not, for example, "violate the presumption of innocence by accusing media outlets or journalists of crimes that have not been investigated and judicially determined."[646]

473. In making statements, public officials must also be certain not to infringe upon the rights of those who contribute to the public discourse by expressing and publishing their thoughts, such as journalists and media outlets. Here, the Inter-American Court has indicated that public officials must bear in mind the context in which they express themselves, so that their utterances do not 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 dissemination of their thoughts." This duty of special care becomes all the more important in situations of heightened "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."[647]

474. Public officials have a duty to ensure that their exercise of the right to freedom of expression does not interfere with or encumber the functions that other public officials are called upon to perform and in a manner detrimental to the rights of individuals, particularly in the case of the autonomy and independence of the courts. As the Inter-American Court has found: "public officials, particularly the top [g]overnment 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," as that would adversely affect the citizens' right to an independent judiciary.[648]

---

[644] I/A Court H.R., *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela,* Preliminary Objections, Merits, Reparations and Costs, Judgment of August 5, 2008, Series C No. 182, para. 131. See also: 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; 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

[645] I/A Court H.R., *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela,* Preliminary Objections, Merits, Reparations and Costs, Judgment of August 5, 2008, Series C No. 182, para. 131.

[646] IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression), para. 204.

[647] 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; 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.

[648] I/A Court H.R., *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela,* Preliminary Objections, Merits, Reparations and Costs, Judgment of August 5, 2008, Series C No. 182, para. 131.

475. As the Inter-American Court held in the *Ríos* and *Perozo* cases, in contexts and periods of "very high political and social polarization and conflict"[649] it is especially imperative that public officials exercise prudence, so as not to create dangerous situations or further inflame the dangers already present.

476. Finally, the Office of the Special Rapporteur recalls that criminal prosecution for crimes unrelated to exercise of freedom of expression may constitute a violation of that right if it is shown that the investigation was motivated exclusively by the accused's political stance or his or her exercise of the right to freedom of expression.

### F. Legal actions instituted against organizations that defend human rights and freedom of expression

477. The IACHR and its Special Rapporteurship received information concerning accusations brought in Venezuela against Venezuelan organizations that defend human rights and, particularly, against organizations that defend the right to freedom of expression. The accusations concern the international funding they have received. The IACHR was informed that on July 12, the Minister of Public Works and Housing and director of CONATEL, Diosdado Cabello, publicly criticized the funding received by some nongovernmental organizations devoted to defending the right to freedom of expression. Minister Cabello based his criticism on an article written by Eva Golinger that appeared on a number of sites on the internet and was titled "United States finances Venezuelan media and journalists."[650] According to the article, United States government agencies or agencies that receive funding from the US government were reportedly funneling monies to nongovernmental organizations in Venezuela. One day later, the Venezuelan group "*Periodismo Necesario*" filed a complaint with the Office of the Prosecutor General asking it to investigate the organizations that are receiving funds.[651] Both President Chávez and the Venezuelan National Assembly asked for in-depth investigations into the financing of the organizations.[652] On August 16, Eva Golinger supplied documents to the Office of the Prosecutor General that allegedly showed the international funding that a number of Venezuelan organizations had allegedly received.[653] However, as of the date this report went to press, the organizations under investigation had not been notified of what crime one commits by accepting funds from foreign agencies or governments to be used to promote and guarantee human rights. Nor have they been notified that an investigation is being conducted into their affairs.

---

[649] 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. 121; 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. 132.

[650] United Socialist Party of Venezuela. July 12, 2010. *Cabello: Counter-revolutionary journalists receiving funding from abroad*. Available at: http://www.psuv.org.ve/temas/noticias/cabello-periodistas-contrarrevolucionarios-reciben-financiamiento-externo/

[651] Venezolana de Televisión. July 13, 2010. *Movimiento Periodismo Necesario asked that alleged U.S. funding of NGOs and the media be investigated.* Available at: http://www.vtv.gov.ve/noticias-econ%C3%B3micas/39519; El Universal. July 13, 2010. *Investigations of IPYS and Espacio Público sought.* Available at: http://www.vtv.gov.ve/noticias-econ%C3%B3micas/39519

[652] On July 14, in a publicly televised event, President Hugo Chávez asked for an "in-depth" investigation of the complaint filed with the Office of the Prosecutor General concerning the funding of nongovernmental organizations. *Programa Venezolano de Educación-Acción en Derechos Humanos*. July 14, 2010. President Chávez asked for "in-depth" probe of U.S. funding of Venezuelan NGOs. Available at: http://www.derechos.org.ve/proveaweb/?p=5140. Similarly, on July 20, the Permanent Parliamentary Commission on Science, Technology and Social Communication presented a report on foreign funding of journalists and political parties in Venezuela, based on "declassified U.S. State Department documents." The Chair of the Commission, Manuel Villalba, recommended that the investigation delve further "to ascertain whether activities that could be classified as crimes under the Constitution and other laws, are being carried out." El Nacional. July 20, 2010. *National Assembly approves report on international funding of Venezuelan journalists*. Available at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/145966/Nacional/AN-aprueba-informe-contra-financiamiento-internacional-a-periodistas-venezolanos

[653] Venezolana de Televisión. August 16, 2010. *Golinger files complaint with Prosecutor General concerning U.S. funding of opposition NGOs*. Available at: http://www.vtv.gob.ve/noticias-nacionales/42054

478. The IACHR also received information on a series of televised messages and programs shown repeatedly by official media outlets that attempt to discredit and stigmatize the aforementioned nongovernmental organizations that are critical of the government.[654] Both *Espacio Público* and the *Instituto de Prensa y Sociedad,* two of the organizations in question, have publicly reiterated that the international funding they receive comes from multiple sources and that they are operating within the law.[655] On December 16, 2010, as mentioned previously, the Executive Director of *Espacio Público,* Carlos Correa, was in front of the National Congress when he was physically assaulted and threatened with death. With no police control, persons hurled an object at him and seriously injured him in the head.[656] Correa had gone to the National Assembly to submit a petition with objections to some of the laws that the deputies were discussing at the time (see *infra).* The attack against Correa, following the campaign to smear and discredit him driven by the government via the public airwaves, demonstrates just how serious government campaigns of this kind can become. The Inter-American Court had already warned Venezuela about this possibility and pointed out that while these official addresses may not directly instigate violence, they nonetheless place the individuals attacked in the speeches in a situation of greater vulnerability vis-à-vis the State and certain sectors of society.[657] In the case of employees of a television channel harassed by Venezuelan authorities and labeled as the "opposition" and branded as "rebel", "uninformed" or "destabilizing," primarily in the presidential addresses, the Court held that this alone meant that this group of persons ran the risk of having their rights violated by private persons, not because of their personal qualities or condition but merely because of their status as employees of that channel.[658]

479. On July 23, the IACHR asked the Venezuelan State to supply information on the criminal investigations requested against the aforementioned persons and nongovernmental organizations, the grounds for requesting such inquiries, the status of the investigations and the laws that prohibited NGOs from receiving international funding. In its request for information, the IACHR reminded the Venezuelan State of the recommendation made to States that they "[r]efrain from restricting the means of financing of human rights organizations"[659]; of the leading role that human rights defenders play in the full achievement of the rule of law and in strengthening democracy, and that freedom of expression is incompatible with direct or indirect pressure brought to silence the work done by social communicators to report and inform.[660]

480. On February 22, 2011, the IACHR received the observations of the State of Venezuela on the IACHR's Annual Report for 2010. There, in relation to this issue, the State observed: "It is true that the Venezuelan State has questioned NGOs that receive funding from foreign governments. For this

---

[654] International Coalition of Organizations for Human Rights in the Americas [*Coalición Internacional de Organizaciones por los Derechos Humanos en las Américas*]. August 12, 2010. *International Coalition condemns harassment of organizations and persons who defend human rights in Venezuela.* Available at: http://www.derechos.org.ve/proveaweb/?p=5871

[655] Instituto Prensa y Sociedad. July 2010. *Concerning our funding and the smear campaign against PIYS Venezuela*. Available at: http://www.ipys.org.ve/documentos/En%20Venezuela.pdf

[656] El Nacional. December 16, 2010. *Carlos Correa struck on the head during NGO demonstration en route to the National Assembly*. Available at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/172370/Naci%C3%B3n/Carlos-Correa-result%C3%B3-agredido-en-manifestaci%C3%B3n-de-ONG-hacia-la-AN. El Universal. December 17, 2010. *Reporters without Borders condemns attack on Carlos Correa*. Available at: http://tiempolibre.eluniversal.com/2010/12/17/pol_ava_reporteros-sin-front_17A4868573.shtml

[657] 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. 145; 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. 157.

[658] 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. 146; 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. 158.

[659] IACHR. Report on the situation of human rights defenders in the Americas, para. 342, recommendation 19. OEA/Ser.L/V/II.124. Doc. 5 rev.1. March 7, 2006.

[660] IACHR. Request to the Bolivarian Republic of Venezuela seeking information. Ref: Investigation launched against nongovernmental organizations. July 23, 2010.

reason, a law was passed that forbids this kind of financing. The Venezuelan State has corroborated that the NGOs from Venezuela supported the coup d'etat of April 11, 2002 [and] none of them presented a request for precautionary measures to the Commission to guarantee the life of President Chávez." [661]

### G. The use of blanket presidential broadcasts [*cadenas presidenciales*]

481. The IACHR and the Office of the Special Rapporteur have acknowledged the authority that the President and high-ranking State officials have to use the media to inform the public on issues of vital public interest and those that urgently need to be reported by way of the 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."[662]

482. Exercise of this authority, however, is not absolute. The information that the head of state conveys to the citizenry in the blanket presidential broadcasts must be that strictly necessary to address urgent needs for information in matters that are clearly and genuinely of public interest, and during the time strictly necessary to relay the information. Applying international standards, both the IACHR and its Special Rapporteurship,[663] as well as certain domestic agencies of States parties to the American Convention, have indicated that "it is not just any information that gives the President of the Republic the authority to interrupt regular programming; rather, it is information that the general public wants or needs to know about issues that may be of importance to the public and really essential for citizens to be truly able to participate in collective life." Principle 5 of the Declaration of Principles of Freedom of Expression explicitly provides 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."

483. In 2009, the IACHR received information from civil society organizations and the academic sector indicating 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 41 minutes, in other words 52 days of uninterrupted broadcasting of presidential messages.[664] The trend held in 2010. On February 2, 2010, President Hugo Chávez went on the airwaves with his 2000th blanket presidential broadcast.[665]

484. On December 22, 2009, the Bureau of Social Responsibility of the Bolivarian Republic of Venezuela issued an Administrative Order establishing the Technical Standard on Domestic Audiovisual Production Services, according to which cable television channels that have less than 70% international programming would be regarded as Domestic Audiovisual Production Services and would be required to carry government messages or addresses free of charge, in keeping with the provisions of the Law on Social Responsibility in Radio and Television (*Ley Resorte*).[666]

---

[661] Observations by the State of Venezuela to the draft of the General Report on the Situation of Human Rights in Venezuela, 2010. Communication of February 22, 2011, observations on the section on Freedom of Thought and Expression.

[662] I/A Court H.R. *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela,* Preliminary Objections, Merits, Reparations and Costs, Judgment of August 5, 2008, Series C No. 182, para. 131; IACHR. *2008 Annual Report.* Volume II: 2008 Annual 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.IACHR.oas.org/annualrep/2008eng/ INFORME%20ANUAL%20RELE%202008.pdf

[663] CIDH. *Democracy and Human Rights in Venezuela.* December 30, 2009, Chapter IV, para. 411. Available at: http://www.cidh.oas.org/countryrep/Venezuela2009eng/VE09CHAPIVENG.htm

[664] IACHR. 2009 Annual Report of the Inter-American Commission on Human Rights. *Report of the Special Rapporteur for Freedom of Expression.* Chapter II, Para. 572. OEA/Ser.L/V/II. Doc.51, December 30, 2009. Available at: http://www.cidh.oas.org/pdf%20files/Annual%20Report%202009.pdf

[665] Reporters without Borders. February 3, 2010. *Presidential speeches should have to be broadcast by just one station.* Available at: http://en.rsf.org/venezuela-presidential-speeches-should-have-03-02-2010,36299

[666] CONATEL. Administrative Order 01/09 of December 22, 2009. Technical Standard on Domestic Audiovisual Production Services. Available at: http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf

485. On June 17, 2010, one of the five electoral rectors on the National Electoral Council, Vicente Díaz, questioned the increase in the frequency and duration of the presidential broadcasts, as the September 26 parliamentary elections approached. According to the information received, Mr. Díaz publicly stated that the blanket presidential broadcasts would serve to promote the party in power and the intent might be to influence the electorate.[667]

486. The Office of the Special Rapporteur recalls that any obligation requiring a media outlet to broadcast content that it has not itself selected must be applied in strict accordance with the requirements set forth in Article 13 of the American Convention, in order for a limitation on the right to freedom of expression to be deemed acceptable.

487. Based on the foregoing considerations, the Office of the Special Rapporteur again urges the State to adapt its legislation on presidential broadcasts so that it conforms to the standards herein described.

488. On February 22, 2011, the IACHR received the observations of the State of Venezuela to the IACHR's 2010 Annual Report. There, the State of Venezuela indicated that presidential broadcasts have a legal basis in article 58 of the Constitution[668] of the Bolivarian Republic of Venezuela. [669]

---

[667] El Nacional. June 17, 2010. *Vicente Díaz complains that presidential broadcasts are being increased to help the government party's campaign*. Available at: http://el-nacional.com/www/site/p_contenido.php/comentar/p_contenido.php?q=nodo/141940/Nacional/Vicente-D%C3%ADaz-denuncia-incremento-de-cadenas-para-favorecer-campa%C3%B1a-oficial; Venevisión. *National Electoral Council Dean Vicente Díaz complains of notable increase in blanket presidential broadcasts*. Available at: http://www.youtube.com/watch?v=4RRchK90aOQ; Informe21.com. June 17, 2010. *Electoral Dean Vicente Díaz asks for an investigation of the increase in blanket presidential broadcasts.* Available [at: http://informe21.com/politica/rector-vicente-diaz-pide-investigar-incremento-las-cadenas-presidenciales

[668] Article 58 of the Constitution states: "Communication is free and plural, according to the duties and responsibilities established by law. Every person is entitled to timely, truthful and impartial information, with no censorship, in accordance with the principles established in this Constitution, as well as to reply and rectify whenever [the person] is harmed by inaccurate or harmful information. Boys, girls and teenagers have a right to receive appropriate information for their holistic development."

[669] Observations by the State of Venezuela to the draft of the General Report on the Situation of Human Rights in Venezuela, 2010. Communication of February 22, 2011, observations on the section on Freedom of Thought and Expression.

### H. The of right of access to information

#### i) The National Situational Study Center

489. On June 1, 2010, the President of the Republic created the National Situational Study Center [Centro de Estudio Situacional de la Nación] (hereinafter, "CESNA") by Decree 7,454 (Official Gazette 39,436 of June 1, 2010).[670] CESNA was created as a decentralized organ of the Ministry of the People's Power for Domestic Relations and Justice. The Center will have administrative and financial autonomy and will be headed by a president who shall be an appointee of the Minister of the People's Power for Domestic Relations and Justice, with the President's authorization.[671]

490. The purpose of this agency, created invoking national security arguments,[672] is "to constantly compile, process and analyze information from the various situation rooms or similar bodies belonging to institutions of the State and of society, on any issue of national interest. The goal is to provide analytical and informational support to the Office of the Presidency, keeping it supplied with the up-to-date information needed to facilitate strategic decision-making and thus protect the Nation's vital interests and objectives, and to facilitate execution of public policy and fulfillment of the State's essential functions."[673]

491. Article 9 of the Decree gives CESNA the authority to classify as "confidential, classified or for limited distribution, any piece of information, fact or circumstance that the National Situational Study Center learns of or processes in discharging its functions…"[674] A number of Venezuelan civil society organizations challenged this provision, arguing that it could "lead to abuses on the part of CESNA officials" and that it implies "serious restrictions [on the exercise of the right to freedom of thought and expression] with multiple adverse consequences."[675]

492. National security objectives are most certainly legitimate, as expressly stated in Article 13(2)(b) of the American Convention. However, the concept of "national security" used in regulations that restrict access to public information and authorize that information to be classified as confidential, must be compatible with the standards of openness and transparency essential in a democratic society.[676] In effect, in order for a restriction on access to information to be valid, the State must show that disclosing certain information in the State's possession would do certain, objective, serious and immediate harm to a democratic state's national security.[677] In this specific case, the provision speaks of generic national

---

[670] Decree 7,454 from the Office of the President of the Republic. Official Gazette 39,434 of June 1, 2010. Available [in Spanish] at: http://www.tsj.gov.ve/gaceta/Junio/162010/162010-2863.pdf#page=2

[671] Decree 7,454 from the Office of the President of the Republic. Official Gazette 39,434 of June 1, 2010. Articles 1 and 4. Available [in Spanish] at: http://www.tsj.gov.ve/gaceta/Junio/162010/162010-2863.pdf#page=2

[672] See in this regard the *consideranda* to Decree 7,454 from the Office of the President of the Republic. Official Gazette 39,434 of June 1, 2010. Available at: http://www.tsj.gov.ve/gaceta/Junio/162010/162010-2863.pdf#page=2 (where it is asserted that national security "is an essential authority and responsibility of the State" and that the National Executive has exclusive authority over "the collection, classification and dissemination of those matters that have a direct bearing on the planning and executions of operations that concern the security of the Nation.")

[673] Decree 7,454 from the Office of the President of the Republic. Official Gazette 39,434 of June 1, 2010. Article 3. Available at: http://www.tsj.gov.ve/gaceta/Junio/162010/162010-2863.pdf#page=2

[674] Decree 7,454 from the Office of the President of the Republic. Official Gazette 39,434 of June 1, 2010. Article 9. Available at: http://www.tsj.gov.ve/gaceta/Junio/162010/162010-2863.pdf#page=2

[675] Espacio Público. July 15, 2010. *Espacio Público, CNP and SNTP demand repeal of CESNA decree*. Available at: http://www.espaciopublico.org/index.php/noticias/1-libertad-de-expresi/825-espacio-publico-cnp-y-sntp-exigen-derogatoria-del-decreto-del-cesna-

[676] IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter IV (The right of access to information), paras. 52, 57, 59. See also, IACHR, *Final written pleadings to the Inter-American Court in the Case of Julia Gomes Lund et al* (*Guemilha do Araguaia).*

[677] See in this regard, IACHR, *Final written pleadings to the Inter-American Court in the Case of Julia Gomes Lund et al* (*Guemilha do Araguaia).*

security purposes, without specifying the circumstances and conditions under which a piece of information that in principle should be public, is legitimately withheld from the public. Nor does the regulation make any reference to or cite a law that spells out those circumstances and conditions.

493. Furthermore, Article 9 of Decree 7,454 authorizes the president of CESNA to classify as confidential any type of "information, fact or circumstance of which he/she learns in the course of performing his/her functions or that is processed at the National Situational Study Center …"[678] The authorities given to CESNA are a source of concern, because it has broad discretionary powers to establish exceptions to the exercise of freedom of information and access to information, exceptions that, as the case law of the inter-American system has held, may only be established by law, both in the formal and material sense, written in precise and unambiguous language. The relevant definition in this regard is the one that the Inter-American Court established in Advisory Opinion OC-6/86, where it wrote that "the word 'law' is not just any legal norm, but rather a general provision enacted for the general welfare by a legislative body provided for in the Constitution and democratically elected according to procedures set forth in the Constitution."[679] If the State cannot determine by decree the conditions under which certain information can be classified, it can hardly delegate that function to an administrative official, as it appears to do in article 9 of decree 7,454.

494. It must be recalled that under Principle 4 of the IACHR's Declaration of Principles on Freedom of Expression, "[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."

**ii) Judgment 745 of the Constitutional Chamber of the Supreme Court**

495. On July 15, 2010, the Constitutional Chamber of the Supreme Court decided an action seeking constitutional *amparo.* The action was brought by the Public Arena Civil Association [*Asociación Civil Espacio Público*] to challenge the refusal of the Office of the Comptroller General of the Bolivarian Republic of Venezuela to turn over information concerning the "base salary and other benefits that the Comptroller General of the Republic receives and the remunerations received by the rest of the staff at the Office of the Comptroller General of the Republic…"[680] By a majority vote, the Constitutional Chamber of the Supreme Court decided to deny the petition seeking *amparo* relief on the grounds that the request to have access to that information violated the right to privacy of the public officials.

496. As there was no specific law governing this matter, the Constitutional Chamber of the Supreme Court established binding jurisprudence to the effect that anyone requesting information of this type must "expressly state the reasons why the information is needed or purposes to which it will be used" and must prove that "the amount of information being requested is commensurate with the use to which the requested information will be put."[681]

497. The jurisprudence established by the Constitutional Chamber of the Supreme Court in its ruling of July 15, 2010, disregards the principle of "maximum disclosure" which must govern access to information in the possession of the State. In effect, in its case law the Inter-American Court has established that "in a democratic society, it is essential that the State authorities are governed by the principle of maximum disclosure."[682] The IACHR has also held that under Article 13 of the American

---

[678] Decree 7,454 from the Office of the President of the Republic, Article 9. Official Gazette 39,434 of June 1, 2010. Available at: http://www.tsj.gov.ve/gaceta/Junio/162010/162010-2863.pdf#page=2

[679] I/A Court H.R., *Case of Claude Reyes et al.* Judgment of September 19, 2006. Series C No. 151, para. 89.

[680] Constitutional Chamber of the Supreme Court of Justice. Judgment 745 of July 15, 2010. Available [in Spanish] at: http://www.tsj.gov.ve/decisiones/scon/Julio/745-15710-2010-09-1003.html

[681] Constitutional Chamber of the Supreme Court of Justice. Judgment 745 of July 15, 2010, Section V. Operative paragraph two. Available [in Spanish] at: http://www.tsj.gov.ve/decisiones/scon/Julio/745-15710-2010-09-1003.html

[682] I/A Court H.R., *Case of Claude Reyes et al.* Judgment of September 19, 2006. Series C No. 151, para. 92.

Convention, the right of access to information must be governed by the principle of maximum disclosure.[683]

498. The Inter-American Court established that the principle of maximum disclosure "establishes the presumption that all information is accessible, subject to a limited system of exceptions."[684] That limited system of exceptions must be set forth by law; in the event of any doubt or gap in the law, then access to information should be allowed. The Court also wrote that, living in a state, every person has a legitimate interest in knowing how public resources are being used. Therefore, persons interested in knowing how much a civil servant earns need not show and demonstrate what their specific interest in the information is.

499. Principle 4 of the IACHR's Declaration of Principles on Freedom of Expression provides 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."

### I. Criminalization of offenses against honor and the *Case of Usón Ramírez v. Venezuela*

#### i) The Penal Code

500. In its 2009 Annual Report, the Office of the Special Rapporteur made reference to the March 2005 changes in the Penal Code, which expanded the scope of the provisions on protection of state officials' honor and reputation against criticisms aired publicly that may be deemed offensive to them.[685] Prior to the 2005 reform, the President of the Republic, the Executive Vice President, the ministers of government, the governors, the Mayor of the Caracas Metropolitan District, the justices of the Supreme Court, the chairpersons of the Legislative Councils and the superior court judges had the authority to institute criminal proceedings for the crime of *desacato* [disrespect]. The amendment of the law added the following to the list: the members of the National Assembly, officials on the National Electoral Council, the Prosecutor General, the Attorney General, the Ombudsperson, the Comptroller General and the members of the Military High Command.[686] The March 2005 reform retained the article

---

[683] IACHR. Arguments made to the Inter-American Court of Human Rights in the case of *Claude Reyes et al.* Transcribed in: I/A Court H.R., *Case of Claude Reyes et al.* Judgment of September 19, 2006. Series C No. 151, para. 58 c).

[684] I/A Court H.R., *Case of Claude Reyes et al.* Judgment of September 19, 2006. Series C No. 151, para. 92. See also, the 2004 Joint Declaration of the UN Rapporteur for Freedom of Expression, the OAS Rapporteur for Freedom of Expression and the OSCE Representative on Freedom of the Media, where they explained that the principle of maximum disclosure establishes "a presumption that all information is accessible subject only to a narrow system of exceptions."

[685] In its 2005 Annual Report, the IACHR observed that: "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. It 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. *2005 Annual Report.* Chapter IV, para. 357. Available at: http://www.IACHR.oas.org/annualrep/2005eng/chap.4d.htm. See also: IACHR. *2005 Annual Report: Volume II: Annual Report of the Special Rapporteur for Freedom of Expression.* Chapter II, para. 227. Available at: http://www.IACHR.oas.org/relatoria/showarticle.asp?artID=662&lID=1; Office of the Special Rapporteur – IACHR, March 28, 2005. *Press Release No. 118/05*. Available at: http://www.IACHR.org/relatoria/showarticle.asp?artID=402&lID=1; IACHR. *Report on the Situation of Human Rights in Venezuela*, paragraphs 451-466. OEA/Ser.L/V/II.118. Doc. 4 rev. 1. October 24, 2003. Available at: http://www.IACHR.oas.org/countryrep/Venezuela2003eng/chapter6.htm

[686] "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 that period 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 dean 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

Continued…

criminalizing the offense known as "*vilipendio*" (contempt or scorn), which is a kind of offense against the institutions of the State.[687]

501. The 2009 Annual Report criticized the fact that these laws were still on the books. The Commission and the Special Rapporteur pointed out that, as the Inter-American Court has stated, "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. In addition, the doctrine and jurisprudence have been 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."[688]

502. Indeed, the IACHR and the Office of the Special Rapporteur have repeatedly voiced their objections to the existence of laws criminalizing *desacato* [disrespect], such as those just described. The Commission has echoed the conviction that *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'."[689] In this regard, *desacato* laws are an unlawful restriction on freedom of expression, because (a) they do not serve a legitimate end under the American Convention, and (b) are not necessary in a democratic society.

503. Therefore, as the IACHR did in its 2003 *Report on the Situation of Human Rights in Venezuela,* the Office of the Special Rapporteur once again concludes that Venezuela's criminal laws contain provisions that are incompatible with Article 13 of the American Convention[690] and therefore urges the Venezuelan State to take urgent action to bring its criminal laws into compliance with the aforementioned standards on *desacato* and *vilipendio*.

**ii) The Organic Code of Military Justice**

504. Article 505 of the Organic Code of Military Justice provides that: "Whosoever in any way defames, insults or disparages the National Armed Forces or any of its units, shall face a term of three to eight years imprisonment."[691] Establishing criminal penalties for someone who expresses views that can "offend" or "disparage" institutions is contrary to international standards on freedom of expression, because it is a needless restriction in a democratic society.

---

…continuation
Command, the penalty indicated in that article will be reduced to one half, and to one third in the case of municipalities". Penal Code of Venezuela. Official Gazette No. 5768E of August 13, 2005. Available at: http://www.ministeriopublico.gob.ve/web/guest/codigo-penal

[687] "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 for a period of fifteen days to ten months.

The penalty will be half that period in the case of 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". Penal Code of Venezuela. Official Gazette No. 5768E of August 13, 2005. Available [in Spanish] at: http://www.ministeriopublico.gob.ve/web/guest/codigo-penal

[688] IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur on Freedom of Expression, Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere), para. 550.

[689] IACHR. *1994 Annual Report. Chapter V: Report on the Compatibility of the Desacato Laws with the American Convention on Human Rights.* OEA/Ser. Doc. 9 rev., February 17, 1995, Title I: Introduction. L/V/II.88. doc. 9 rev. February 17, 1995. Available at: http://www.IACHR.oas.org/annualrep/94eng/chap.5.htm

[690] IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 452. OEA/Ser.L/V/II.118. Doc. 4 rev. 1. October 24, 2003. Available at: http://www.IACHR.oas.org/countryrep/Venezuela2003eng/chapter6.htm

[691] It is important to point out that this was the article under which Francisco Usón Ramírez was convicted and sentenced to six years and five months in prison. 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. 38.

505. As happens in the case of laws criminalizing disrespect, contempt, defamation, and slander, the language of Article 505 is so imprecise as to make it impossible to foresee with any degree of certainty precisely what behaviors can be punishable offenses. The text of the provision blurs the line between the permissible exercise of freedom of expression with respect to the armed forces and the realm in which the legal prohibition applies. Since there can be no certainty as to what behavior or conduct is deemed to be unlawful, any statement that someone can interpret as criticism of the Armed Forces could be covered in the description of the offense in the article in question.

506. The Inter-American Court of Human Rights addressed this specific provision in the case of *Usón Ramírez v. Venezuela*, decided in late 2009. In that case, the Court was called upon to examine the case of a retired military officer, Francisco Usón Ramírez, who, while appearing on a television program, had expressed opinions critical of the Armed Forces in a case involving a group of soldiers who had been severely injured in a military institution. Analyzing Article 505 of the Organic Code of Military Justice, the Inter-American Court held that the provision in question "does not establish the elements that may offend, slander, or disparage, and it does not specify whether it is important that the active subject attribute 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."[692] The Court therefore considered that Article 505 "is vague and ambiguous and it does not specify clearly the typical context of a given criminal behavior, which could lead to broad interpretations, allowing the behaviors in question to be penalized incorrectly using the criminalized offense of slander."[693] It therefore found that the article was incompatible with the American Convention. The Court also found that in this particular case, the use of criminal sanction was unsuitable, unnecessary and disproportionate in a democratic society.[694]

507. In its ruling the Court ordered, *inter alia,* that within the space of one year, the State was to vacate the entire military criminal trial instituted against the victim and, within a reasonable period of time, amend Article 505 of the Organic Code of Military Justice. However, as of the date this report went to press, the legal provision remains in effect.

508. Telecommunications in Venezuela are regulated, fundamentally, by the Organic Law on Telecommunications and the Law on Social Responsibility in Radio, Television and Electronic Media. These provisions, which were discussed in previous reports, remain in force and in 2010 CONATEL expanded their application to new subjects, such as cable television and Internet providers and users that utilize the internet for content distribution.

### J. Amendments and bills in the National Assembly

#### i) Regulation of Telecommunications

509. The original law gave CONATEL and the Bureau of Social Responsibility the authority to regulate the telecommunications sector and impose sanctions.[695] In August 2010, CONATEL was placed under the Office of the Executive Vice President of the Republic.[696] In the 2009 Annual Report, the

---

[692] 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.

[693] 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.

[694] 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, paras. 59 *et seq.*

[695] The relevant laws and regulations are explained in greater detail in the 2009 Annual Report of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere), paragraphs 505 et seq.

[696] National Assembly of the Bolivarian Republic of Venezuela. *Decree 7,588 from the Office of the President of the Republic* (Official Gazette No. 39,479 of August 3, 2010). Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_download&gid=2500&Itemid=250&lang=es

IACHR and the Office of the Special Rapporteur reiterated their concern over the laws in force, writing 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 communications processes, and the exchange and publication of information and ideas of all kinds. 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."[697]

510. Again in its 2009 Annual Report, the IACHR urged the state to modify the text of Article 29 of the Law on Social Responsibility,[698] to subject the interpretation of the provisions on sanctions to the regional standards mentioned there, and to establish institutional, organic and functional guarantees to ensure the independence of the authorities enforcing 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. To date, however, Article 29 is still in effect and, as will be described below, CONATEL has expanded the scope of its authorities.

511. In early December 2010, the National Assembly began discussion of a series of bills that have the potential to seriously impact the observance and exercise of human rights. As of the date this report went to press, some of those bills had been passed, while others were on the way to being passed. Of particular concern where freedom of expression is concerned is a law, written in vague language, that gives broad legislative authority to the Executive Branch. Others of concern are those that unduly restrict the right to freedom of thought and expression and another aimed at limiting the activities of social organizations that defend and promote human rights. The National Assembly took less than a week to discuss and vote on these legislative initiatives, since the President let it be known that he wanted them passed before the end of 2010, in other words, before the end of the legislative term, which is December 15, 2010.[699] In effect, President Hugo Chávez Frías said that "there is a set of laws that I need and want to have enacted quickly, by Christmas; these are decrees, emergency laws for housing, urban and rural land. They are special laws."[700]

512. One of the laws that the National Assembly passed was the "Enabling Law" that vests the Executive Branch with the authority to exercise legislative functions for a period of twelve months. That

---

[697] IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the state of freedom of expression in the hemisphere), paragraphs 535 *et seq.*

[698] IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the state of freedom of expression in the hemisphere), para. 538. Under Article 29 of the Law on Social Responsibility, providers of radio and television services that "promote, justify or incite to war; that promote, defend or incite disruption of law and order; promote, defend or encourage crime; are discriminatory; promote religious intolerance; [or] are inimical to the Nation's security" may face a penalty of suspension for a period of 72 hours or have their operating license revoked for up to five years in the case of repeat offenders. Heretofore, the Commission has commented on the dangers that provisions like Article 29 pose [which] "set very punitive sanctions for violating restrictions that are defined in vague or generic language." Cf. IACHR. *2008 Annual Report.* Chapter IV. Human Rights Developments in the Region, para. 381. Available at: http://www.IACHR.oas.org/annualrep/2008eng/Chap4eng.htm

[699] Article 219 of the Constitution of the Bolivarian Republic of Venezuela reads as follows: "Article 219. The first regular legislative session of the National Assembly shall begin, without advance notice, on January fifth of each year or as soon thereafter as possible, and will last until August 15.// The second session shall begin on September 15 or as soon thereafter as possible and will end on December 15." Available at: http://www.tsj.gov.ve/legislacion/enmienda2009.pdf

[700] *El Nacional*. December 10, 2010. Chávez solicitará Habilitante a la AN para aprobar leyes extraordinarias en navidad [Chávez will ask NA for Enabling Law in order to approve special laws at Christmas]. Available at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/171254/Naci%C3%B3n/Ch%C3%A1vez-solicitar%C3%A1-Habilitante-a-la-AN-para-aprobar-leyes-extraordinarias-en-navidad. *Noticiero Digital*. December 10, 2010. Chávez solicitará una Ley Habilitante y pide "celeridad" a la AN [Chávez will seek an Enabling Law and is asking the NA to work quickly]. Available at: http://www.noticierodigital.com/2010/12/chavez-solicitara-ley-habilitante-a-la-an/

law, enacted on December 18, 2010, is written in sweeping and ambiguous language, which implies a delegation of authority that is incompatible with the American Convention. In effect, as the Commission and its Special Rapporteurship for Freedom of Expression stated: "[t]he principle of legality, which must be respected when imposing restrictions on human rights, is jeopardized by permitting the delegation of legislative authority in terms that are overly broad and that could extend to criminal matters. The frequent concentration of executive and legislative functions in a single branch of government, in the absence of appropriate controls and constraints set by the Constitution and the Enabling Law, allows interference in the realm of rights and freedoms."[701]

513. From the standpoint of freedom of expression, it is troubling that Article 1(2)(b) of the law gives the President the authority to "enact and amend regulatory provisions in the telecommunications and information technology sector, [and with regard to] the public mechanisms of informatics, electronic and telematic communications."[702] This provision gives the Executive Branch the authority to modify any telecommunications regime without having to go through the National Assembly, thereby preventing a complex system of laws and regulations –such as the one governing broadcasting- from being discussed and debated in the legislative branch. This type of broad, generic delegation of authority allows the executive branch to act suddenly, without the time necessary to reach a reasonable consensus, and modify a provision on the subject from one moment to the next, even those related to control of content, bans, sanctions and procedures that affect the communications media subject to the State's control. The mere existence of this possibility could have a chilling effect on freedom of expression incompatible with the American Convention.

514. That same week, the National Assembly passed an amendment to the *Law on Social Responsibility in Radio and Television,* now called the *Law on Social Responsibility in Radio, Television and Electronic Media*. The Chair of the National Assembly's Commission on Science, Technology and Social Communications, Manuel Villalba, said that the law does not regulate the Internet and observed that it must be interpreted according to the Constitution, which guarantees freedom of expression and free and pluralistic communications, bans prior censorship, and provides for subsequent imposition of liability. According to Deputy Villalba, "[t]he idea is to be able to put this informative medium to good use, while protecting the integrity of the most vulnerable among us, namely children and adolescents."[703]

515. As will be briefly examined later in this report, the new law increases the likelihood of interference in Internet content and applications;[704] it adds more conditions to be able to operate as a domestic cable television channel and regulates cable and noncable content;[705] and it adds to the list of

---

[701] IACHR. Press Release 122/10. December 15, 2010. IACHR Concerned about Law Initiatives in Venezuela that Could Undermine the Effective Exercise of Human Rights. Available at: http://www.IACHR.oas.org/Comunicados/English/2010/122-10eng.htm

[702] Law authorizing the President of the Republic to issue decrees with the rank, value and force of law on the subjects delegated to him. Approved by the National Assembly on December 16, 2010. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2783&tmpl=component&format=raw&Itemid=185&lang=es

[703] El Universal. December 21, 2010. *New Ley Resorte said to limit internet violence*. Available at: http://internacional.eluniversal.com/2010/12/21/eco_ava_afirman-que-nueva-le_21A4883573.shtml. Telesur. December 22, 2010. *Venezuela's Media Law enacted*. Available at: http://www.telesurtv.net/secciones/noticias/86202-NN/promulgada-ley-de-medios-en-venezuela/

[704] See Law on Social Responsibility in Radio, Television, and Electronic Media. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es. Article 1 reads as follows: The provisions of the present law shall apply to any text, image or sound that is disseminated and received within the territory of the Bolivarian Republic of Venezuela, whether it be by way of: (…) 4. Electronic media."

[705] See Law on Social Responsibility in Radio, Television, and Electronic Media. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es. Article 6 establishes four content types for rating programs: language, health, sex and violence. The regulation defines various types of content whose broadcasting by the communications media, mainly the audiovisual media, is subject to prohibitions and restrictions that confine that content to certain times of the day, which are spelled out in Article 7.

prohibitions by introducing a number of extremely broad, far-reaching and ambiguous restrictions.[706] The new law also makes the penalties for violating the bans or prohibitions much stiffer.[707] The amendment does not incorporate any of the recommendations the Commission has made in its various reports, as it offers no new guarantees in proceedings in which penalties are imposed, it does not make the administrative bodies charged with imposing those penalties any more autonomous, and it does not limit the scope of the pre-existing prohibitions, which were already sweeping and ambiguous.[708]

516. As for the added content restrictions, the bill introduces new prohibitions on conduct using vague and ambiguous language. For example, it prohibits any media outlet, even those on the Internet, regardless of the format, from circulating statements or information that "incite or promote hatred or intolerance", "cause anxiety and fear in the citizenry", "ignore the legally constituted authorities," or "incite or encourage disobedience of the established legal system."[709] These behaviors are extremely difficult to define, leaving the persons (the broadcasters or carriers of these messages) uncertain as to just how far their right to freedom of expression goes and what ideas or information cannot be broadcast by a cable or noncable communications medium or even over the Internet. For these reasons, and as the Commission has explained, laws and regulations of this type give the authorities charged with enforcing them enormous latitude and discretion to a degree that is incompatible with full observance of the right to freedom of thought and expression.[710]

517. As previously observed, the new law authorizes the State to restrict access to Internet content or web sites that, in its judgment, violate the ambiguous provisions of the law.[711] Specifically, the law authorizes CONATEL to order electronic media "to refrain from circulating the kinds of messages that the law prohibits".[712] The law also requires Internet service providers to create mechanisms "that enable them to restrict (…) the dissemination" of messages of this kind and holds a service provider liable for messages circulated by third parties when the service provider fails to take the necessary measures to restrict those messages when so requested by CONATEL which, as previously observed, is an agency of

---

[706] See Law on Social Responsibility in Radio, Television, and Electronic Media. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es. Article 27 provides that: "The radio, television and electronic media services are not permitted to broadcast messages that: // 1. Incite or promote hatred and intolerance on grounds of religion, politics, gender, racism or xenophobia. // 2. Incite or promote and/or justify or defend crime. // 3. Constitute war propaganda. // 4. Cause public fear or unrest. // 5. Ignore the legally constituted authorities. // 6. Induce killing. // 7. Incite or encourage disobedience of the established legal system."

[707] See Law on Social Responsibility in Radio, Television, and Electronic Media. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es. Indeed, Article 29 of the law establishes a fine for violations whereas under the previous version of the law, the penalty was simply to make airtime available for public interest announcements and the like.

[708] See in this regard, IACHR. Democracy and Human Rights in Venezuela (2009). Available at: http://www.cidh.oas.org/countryrep/Venezuela2009eng/VE09.TOC.eng.htm. See the recommendations in Chapter IV at paragraphs 555 *et* seq, especially paragraph 555(1).

[709] See Law on Social Responsibility in Radio, Television, and Electronic Media. Article 28. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es

[710] This has been the Commission's finding when similar provisions were examined. In effect, the Office of the Special Rapporteur for Freedom of Expression wrote 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" (IACHR, 2008 Annual Report. Volume II. Chapter III, paragraphs 65-66. Available at: http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf).

[711] See Law on Social Responsibility in Radio, Television, and Electronic Media. Article 28. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es

[712] See Law on Social Responsibility in Radio, Television, and Electronic Media. Article 33. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es. See, in particular, Article 33 of the law, which reads as follows: "In the course of the penalty phase of the proceedings, or even when the case is opened, the National Telecommunications Commission may, either *ex officio* or at a party's request, order the following precautionary measures: 1.- Order the providers of radio, television, cable or electronic media services to refrain from circulating messages that violate the provisions of this law. (…)".

the executive branch.[713] This means that a service provider, like for example a business that provides data hosting or storage services, would have to take immediate steps to eliminate content that CONATEL deems to be prohibited whenever CONATEL simply issues an administrative order to that effect. The digital media that violate these regulations could face fines of up to 13 thousand bolivars (three thousand United States dollars). Furthermore, those that do not comply with CONATEL's orders regarding prohibited content could be fined as much as four percent of the gross profits earned in the year prior to the one in which the violation was committed.[714] Service providers that do not respond to the government's requests could face fines based on "10 percent of the previous year's gross earnings" as well as "suspension of service for 72 uninterrupted hours."[715]

518. The possibility of the government excluding any electronic media content when, in its judgment, the ideas or information stored might cause anxiety and fear in the public, promote intolerance, ignore the authorities, or promote noncompliance with the legal system, without any guarantee of due process, appears to constitute a restriction on the right to freedom of expression on those who transmit that content and those who receive it, as well as a violation of due process and of freedom of expression in the case of those who originated the banned message, whose views are silenced and excluded from the Internet without understanding clearly what the prohibited content is and without ever having had the opportunity to defend themselves before an impartial authority separate from the executive branch. In order to avoid the possible abuses that can be committed via the Internet, there are general standards that apply in cases in which a message has done unwarranted harm. These provisions should apply only to the authors of Internet content, i.e., those who are directly responsible for the offending content. Only in very rare cases can an independent judicial authority order certain network content removed, and then only in strict and complete conformity with international human rights norms. To do so, the provisions applied must conform to international law and must be fully respectful of the guarantees of due process; adequate and effective control and oversight must be in place.[716]

519. For these reasons, the IACHR and its Office of the Special Rapporteur for Freedom of Expression questioned the reform. They expressed that "[b]y holding service providers responsible and extending the application of vague and ambiguous norms that have been questioned by the IACHR and the Office of the Special Rapporteur in their 2009 report *Democracy and Human Rights in Venezuela*, the draft law targets freedom of expression on the Internet in an unprecedented fashion. The initiative includes ambiguous norms that sanction intermediaries for speech produced by third parties, based on assumptions that the law does not define, and without guaranteeing basic elements of due process. This

---

[713] See Law on Social Responsibility in Radio, Television, and Electronic Media. Article 28. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es. The pertinent part of Article 28 reads as follows: "Electronic media providers shall be liable for any prohibited information and content to which the present article refers, in those cases in which they were the originators of the transmission, altered the data, selected the receivers or neglected to limit access to them, when so requested by the organs with competence in this matter."

[714] See Law on Social Responsibility in Radio, Television, and Electronic Media. Article 27. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es. The pertinent part of Article 27 provides as follows: "Paragraph One. The owners of the electronic media shall face a fine of from 50 to 200 tax units when they violate any of the bans contained in this article. Paragraph Two: Electronic media providers that fail to heed requests from the competent authorities to comply with the provisions of this law, shall face a fine of up to 4% of the gross earnings in the year immediately preceding the year in which the violation was committed."

[715] See Law on Social Responsibility in Radio, Television, and Electronic Media. Article 29. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es. The pertinent part of Article 29 reads as follows: "The subjects to whom this law shall, whenever warranted, face the following penalties in the circumstances indicated: 1. A fine of up to 10% of the gross earnings in the year immediately preceding the year in which the violation was committed, and/or suspension for up to seventy-two uninterrupted hours of broadcasting, when they disseminate messages that: a) promote, justify or incite disruptions of public law and order; b) promote, justify or incite crime; c) incite or promote hatred or intolerance based on religion, politics, gender difference, racism or xenophobia; d) encourage discrimination; e) use anonymity; f) constitute propaganda for war; g) cause public anxiety or unrest; h) ignore the legitimately constituted authorities."

[716] 2005 joint declaration of the rapporteurs for freedom of expression of the United Nations, the OSCE and the OAS. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=650&lID=1

would imply a serious restriction of the right to freedom of expression enshrined in the American Convention on Human Rights."[717]

520. The National Assembly also passed a bill amending the Organic Law on Telecommunications.[718] The bill declares "telecommunications, radio, television and domestic audiovisual production services" to be public interest services, which means that "they may be subject to the limitations and restrictions that the Constitution and law establishes for the sake of the public interest."[719] Given the broad legislative power that has been given to the President through the "Enabling Law," the Executive Branch now has the authority to institute any restriction or limitation that, in its judgment, is called for in the area of telecommunications. The amendment of the Law on Telecommunications also provides that it shall be the National Telecommunications Commission (CONATEL) that determines the "General conditions that those seeking to obtain a government license, concession or permit under the provisions of this law must meet," which means that a government agency in the executive branch (CONATEL) is being given the authority to determine the conditions under which one can engage in radio broadcasting in Venezuela.[720] The law provides that current providers of domestic audiovisual production services must re-apply to CONATEL in order to be able to remain in operation, even though they may already have valid, current operating licenses.[721] The law authorizes a government agency[722] to revoke licenses or concessions when "it deems such action to be in the Nation's interest or when public order or security so demands."[723] Finally, the provision stipulates that repeat offenders of any of the violations

---

[717] IACHR. Press Release 122/10. December 15, 2010. IACHR Concerned about Law Initiatives in Venezuela that Could Undermine the Effective Exercise of Human Rights. Available at: http://www.IACHR.oas.org/Comunicados/English/2010/122-10eng.htm

[718] AFP. December 21, 2010. *New controls established on telecommunications and the internet in Venezuela*. Available at: http://www.google.com/hostednews/afp/article/ALeqM5hVpCngs2i2MAWWTbatMQewyMMa2Q?docId=CNG.f7b316619e9b55b1cae698370b94f3cb.131. ANSA. December 21, 2010. *Law regulating telecommunications passes*. Available at: http://www.ansa.it/ansalatina/notizie/notiziari/venezuela/20101221155135194298.html. El Nacional. December 21, 2010. *Telecommunications Law passed Monday night*. Available at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/173005/Naci%C3%B3n/Aprobada-Ley-de-Telecomunicaciones-en-horas-de-la-noche-del-lunes

[719] Organic Law on Telecommunications (on file with the Office of the Special Rapporteur for Freedom of Expression). See also, Report of the Permanent Commission on Science, Technology and Social Communications, for second round of debate. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2780&tmpl=component&format=raw&Itemid=185&lang=es

[720] Organic Law on Telecommunications (on file with the Office of the Special Rapporteur for Freedom of Expression). See also, Report of the Permanent Commission on Science, Technology and Social Communications, for second round of debate. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2780&tmpl=component&format=raw&Itemid=185&lang=es. Article 20 reads as follows: "The National Telecommunications Commission shall establish, based on the distinguishing characteristics of the type of networks and services concerned, the General Conditions that those interested in obtaining a government license, concession or permit must meet under the provisions of this law."

[721] Organic Law on Telecommunications (on file with the Office of the Special Rapporteur for Freedom of Expression). See also, Report of the Permanent Commission on Science, Technology and Social Communications, for second round of debate. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2780&tmpl=component&format=raw&Itemid=185&lang=es. Transitory regulation fourth reads as follows: "Current providers of domestic audiovisual production services shall apply to the National Telecommunications Commission for the necessary permit, within the time period and under the conditions that the National Telecommunications Commission establishes for that purpose. Only those natural or legal persons that apply for and obtain the corresponding permit, under the terms prescribed in this law, may continue to provide domestic audiovisual production services." (On file with the Office of the Special Rapporteur for Freedom of Expression).

[722] The law simply states that "[a]s the appointed organ, the National Telecommunications Commission is in charge of telecommunications in the State, and as such establishes the policies, plans and general standards that are to be followed in the telecommunications sector, in accordance with this law and in keeping with the national development plans that the National Executive establishes" (Article 34).

[723] Organic Law on Telecommunications (on file with the Office of the Special Rapporteur for Freedom of Expression). See also, Report of the Permanent Commission on Science, Technology and Social Communications, for second round of debate. Available at:

Continued…

proscribed in the first section of Chapter II of the law shall face the possibility of losing their radio frequency concession if the repeat offense occurs within the space of one year from the date on which the first violation was definitively established.[724] This means that recidivism with respect to any of the offenses proscribed by the law, even those punishable by a fine, will lead to loss of the operating license. All decisions in such cases shall be taken by the Executive Branch.

521. The IACHR and its Special Rapporteurship for Freedom of Expression indicated their concern over these reforms, as the new law creates very powerful mechanisms for interfering in the communications media, but adds no guarantees to ensure that such mechanisms will not be used to prevent dissemination of information that may be unsettling for the authorities.[725] Furthermore, the law establishes very strict conditions for engaging in radio broadcasting which, when combined with enforcement by an agency in the executive branch and patently ambiguous provisions, renders broadcasters highly vulnerable to possible pressure or abuses on the part of State authorities.

**ii) Other laws passed in December 2010 that restrict freedom of expression**

522. The bill bill passed by the National Assembly, called Law on Defense of the Nation's Political Sovereignty and Self-Determination is also troubling.[726] This law makes it illegal for organizations charged with promoting citizen participation, overseeing the exercise of public power or defending the full exercise of political rights, to receive funds in the form of international cooperation. It also establishes severe penalties for the organizations and their members if such funding is received. Those penalties include political disqualification for periods ranging from five to eight years.[727] This bill is of great concern, because "of the possibility that non-governmental human rights organizations whose purpose is to monitor the exercise of public power (which is true of the vast majority of these organizations) will see their capacity to perform their important functions seriously compromised".[728] In Latin America, most non-governmental organizations dedicated to defending and promoting human rights and monitoring the government rely on the funding they receive through international cooperation in order to be able to function effectively, since there are few or no opportunities for financial independence at the local level. By prohibiting funding of this kind, the law proposed in the National Assembly would have the effect of shutting down all independent organizations, which in recent years have done important work in all

---

…continuation http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2780&tmpl=component&format=raw&Itemid=185&lang=es. The pertinent part of Article 22 reads as follows: "The lead agency may, when it deems such action to be in the national interest or when public order or security so demand, revoke or suspend the government licenses or concessions." (On file with the Office of the Special Rapporteur for Freedom of Expression).

[724] Organic Law on Telecommunications (on file with the Office of the Special Rapporteur for Freedom of Expression). See also, Report of the Permanent Commission on Science, Technology and Social Communications, for second round of debate. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2780&tmpl=component&format=raw&Itemid=185&lang=es. Article 170(10) provides that: "A repeat of any of the offenses to which this section refers and that occurs within the space of one year from the date when the previous violation was definitively established." (On file with the Office of the Special Rapporteur for Freedom of Expression).

[725] IACHR. Press Release 122/10. December 15, 2010. IACHR Concerned about Law Initiatives in Venezuela that Could Undermine the Effective Exercise of Human Rights. Available at: http://www.IACHR.oas.org/Comunicados/English/2010/122-10eng.htm

[726] *Radio Nacional de Venezuela*. December 22, 2010. *Head of State enacts laws on Parties and Defense of Sovereignty*. Available at: http://www.rnv.gob.ve/noticias/index.php?act=ST&f=2&t=145270. La Crónica de Hoy. December 23, 2010. *National Assembly approves law that prevents parties and NGOs from receiving foreign support*. Available at: http://www.cronica.com.mx/nota.php?id_nota=551474

[727] Bill on Defense of the Political Sovereignty and Self-Determination of the Nation. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2769&tmpl=component&format=raw&Itemid=185&lang=es

[728] IACHR. Press Release 122/10. December 15, 2010. IACHR Concerned about Law Initiatives in Venezuela that Could Undermine the Effective Exercise of Human Rights. Available at: http://www.IACHR.oas.org/Comunicados/English/2010/122-10eng.htm

countries in the region to defend and promote human rights, often by bringing cases to the inter-American system for the protection of human rights.

523. That same bill makes it illegal for any Venezuelan citizen to invite to the country any foreign person or organization that expresses views that may "[offend] the institutions of the State, its high-ranking officials or attack its exercise of sovereignty."[729] It also stipulates that aliens who participate in such activities will be expelled from Venezuelan territory; sanctions will be imposed on the citizens who invited them to Venezuela.

524. Finally, the National Assembly passed a bill on University Education which, at the time this report went to press, had generated a broad national debate.[730] This bill provides that university education is not just a universal human right, but also "an irrevocably public good that serves to transform society, (…) in the context of building a socialist society"[731] and "to build cultural hegemony to definitively do away with capitalist society."[732] The State's establishment of public policies in the area of university education is a legitimate State objective. However, that objective must be pursued within the boundaries that respect for human rights imposes. In the area of university education, those rights include, *inter alia,* the right to freedom of thought and expression, which is the very basis of academic freedom. Although the law establishes strong mechanisms for intervention in university affairs and in the content of instruction, the law does refer to the autonomy of universities and provides that their autonomy shall be exercised "through academic freedom, in order to debate the current trends in thinking."[733] From that standpoint, the bill poses a serious contradiction since freedom of thought and expression, which is the basis of academic freedom, is to be strictly observed in the academic and university environment, and can in no way be limited by subordinating it to the ideological, religious or moral principles that the State imposes as an obligation.

### 28. Mexico: 2010 Special Report on Freedom of Expression in Mexico

### I. INTRODUCTION

525. Between August 9 and 24, 2010, in fulfillment of its mandate to promote and monitor the right to freedom of expression in the countries of the Americas, a delegation from the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (hereinafter "Office of the Special Rapporteur") undertook an on-site visit to the United Mexican States at the invitation of the country's government. The delegation was led by the Special Rapporteur for Freedom of

---

[729] Bill on Defense of the Political Sovereignty and Self-Determination of the Nation. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2769&tmpl=component&format=raw&Itemid=185&lang=es. Article 8. Representatives of political organizations, representatives of organizations for the defense of political or private individuals that invite, under their sponsorship, foreign citizens or organizations to express views that offend the institutions of the State, its high-ranking officials or attack their exercise of sovereignty, shall face a fine of between five and ten thousand tax units, apart from any penalties established in other laws. // Foreign citizens who participate in the activities described in this article shall be expelled from the territory of the Republic, in accordance with the provisions of the laws that regulate this subject.

[730] According to the information received, at the time this reoprt went to press, the President had vetoed the legislation. For original articles, see AFP. December 23, 2010. *Venezuela approves law that promotes socialism in universities*. Available at: http://www.google.com/hostednews/afp/article/ALeqM5jMroNmzm-jj5jP0E72U9hdDBeoBQ?docId=CNG.50e279c89752000e7527bb02f044cce8.331. La Nación. December 23, 2010. *Polémica ley sobre socialismo en Venezuela*. Available at: http://www.nacion.com/2010-12-24/Mundo/NotasSecundarias/Mundo2631604.aspx

[731] University Education Bill. Article 3.2. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2788&tmpl=component&format=raw&Itemid=185&lang=es

[732] University Education Bill. Article 3.6. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2788&tmpl=component&format=raw&Itemid=185&lang=es

[733] University Education Bill. Article 17. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2788&tmpl=component&format=raw&Itemid=185&lang=es

Expression, Catalina Botero Marino, and included lawyers Michael Camilleri and Alejandra Negrete Morayta from the Office of the Special Rapporteur. The visit was carried out in conjunction with the United Nations Rapporteurship on Freedom of Opinion and Expression, led by Rapporteur Frank La Rue. The objective of the visit was to observe the situation of freedom of expression in the country.

526. In the course of the official visit, the Office of the Special Rapporteur spent time in the Federal District and in the states of Chihuahua, Guerrero and Sinaloa. The delegation met with officials from over forty federal and state public institutions belonging to the executive, judicial and legislative branches, as well as with representatives from autonomous bodies. Further, it held meetings with over one hundred journalists, representatives of civil society organizations, family members of murdered and disappeared journalists and members of the international community based in Mexico.

527. The Office of the Special Rapporteur wishes to emphasize the invitation extended by the Mexican State and its openness in facilitating all the necessary conditions for the visit to be carried out. Likewise, it recognizes the efforts of the officials from the Foreign Ministry who supported the visit and thanks all the authorities, civil society organizations and journalists it met during the course of its visit.

528. Upon completing its visit on August 24, 2010, the Special Rapporteurs of the Inter-American Commission on Human Rights (hereinafter "IACHR" or "Commission") and the United Nations presented a preliminary report to the Mexican State and subsequently to the public.[734] The Mexican State took the opportunity to issue a press release regarding the visit in which it stated:

> In the working session held today at the SRE (Foreign Ministry), attended by several institutions that participated in the visit, the Office of the Special Rapporteurs presented a preliminary report setting out some of their conclusions and recommendations.
>
> The Office of the Special Rapporteurs thanked the Mexican Government for its broad cooperation in engaging in dialogue and providing information about each of the issues in which they expressed an interest.
>
> The visit of the Special Rapporteurs has been of particular use for gaining a deeper understanding of some of the emerging challenges to freedom of expression in the context currently confronting the country.
>
> […] In thanking them for their visit, the Federal Government expressed to both Special Rapporteurs that it will examine their reports, and particularly their recommendations, in detail and will establish the most appropriate follow-up and implementation mechanisms.
>
> The Government of the Republic expresses its satisfaction with the visit of the Special Rapporteurs and reiterates its commitment to confronting the challenges to freedom of expression in order to fully guarantee this right, which is an essential component of our democratic system.[735]

529. The present report reiterates and explores in greater depth the issues mentioned in the preliminary observations presented at the end of the on-site visit. The Office of the Special Rapporteur has gathered a great deal of information before, during, and after its visit to Mexico. In drawing up this report the Office of the Special Rapporteur has made use of a wide spectrum of sources. In particular, it has utilized information received from the federal and state governments, the legislature and judiciary, autonomous bodies such as the National Human Rights Commission (*Comisión Nacional de Derechos Humanos*, hereinafter CNDH) and its counterparts at the state level, as well as from non-governmental organizations (hereinafter NGOs), journalists and media heads. Likewise, the Office of the Special Rapporteur has taken note of information that has appeared in the press, as well as studies,

[734] Office of the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights and United Nations Rapporteurship on Freedom of Opinion and Expression, "Official Joint Visit to Mexico, Preliminary Observations", August 24, 2010, Available at: http://www.cidh.oas.org/relatoria/ShowDocument.asp?DocumentID=216

[735] Mexican Foreign Ministry, communication #259, August 24, 2010, Available at: http://www.sre.gob.mx/csocial/contenido/comunicados/2010/ago/cp_259.html

investigations and reports prepared by national and international human rights and freedom of expression organizations. Finally, in the framework of its on-site visit, the Office of the Special Rapporteur requested detailed information from the Mexican State regarding the criminal investigations carried out into a considerable number of murders, disappearances and attacks suffered by journalists in Mexico.[736] The information provided by the State in response to this request,[737] originating in a number of different bodies of the federal executive and some state bodies, has been incorporated into this report.

530. On December 28, 2010 the Office of the Special Rapporteur sent the preliminary version of the present report to the Mexican State in order to allow it the opportunity to formulate the observations it considers pertinent, in conformity with article 59 of the IACHR's Rules of Procedure. On February 3, 2011,[738] and February 11, 2011,[739] the Mexican State submitted observations on this preliminary version. In these observations, it stated:

> The Federal Government thanks the Office of the Special Rapporteur for Freedom of Expression for the report it prepared in fulfillment of its mandate. The Federal Government welcomes its thoughtful observations and recommendations.
>
> Without a doubt, the joint visit carried out by the OAS and UN mechanisms in August 2010 stems from a policy of dialogue, cooperation, and complete openness that the Government of Mexico maintains toward international human rights mechanisms.
>
> The visit by both Rapporteurs has been especially useful for developing a deeper understanding of some of the emerging challenges for freedom of expression at this moment in our country's history, and in implementing mechanisms and strategies that guarantee the full exercise of this fundamental right in our country.
>
> Just as the Federal Government committed to the Special Rapporteurs that it would do, it has carefully examined the preliminary version of the report sent by the Inter-American Commission on Human Rights. It appreciates that the document reflects the vast amount of information received during and after the visit from the authorities of the three branches of government, both federal and in the states of Chihuahua, Guerrero, Sinaloa, and the Federal District.
>
> It is noted that, in general terms, the report maintains a balance between positive steps or progress and the challenges the country is facing. However, and with a view to strengthening the content of the document, the following observations are passed along from the various authorities involved in the visit.[740]
>
> After considering the observations made by the State and incorporating the changes it considered pertinent, the IACHR approved the incorporation of the final text of this report into its Annual Report.

531. Based on the information received and analyzed in the framework of its on-site visit to Mexico, the Office of the Special Rapporteur observes that articles 6 and 7 of the Political Constitution of the United Mexican States explicitly protects the rights to freedom of expression and access to

---

[736] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[737] See Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[738] Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

[739] Communication OEA-00262 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received on February 11, 2011.

[740] Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

information. Likewise, Mexico has made notable legal advances such as the Federal Law on Transparency and Access to Public Governmental Information and equivalent laws at the local level; the decriminalization of offenses against honor at the federal level and in several states; the protection of confidentiality of sources in the Federal Code of Criminal Procedure; and article 134 of the Mexican Constitution with regard to government advertising. Likewise, the Office of the Special Rapporteur applauds the proposed modifications to article 1 of the Constitution approved by the Senate that grant constitutional standing to international human rights treaties; the reform awaits approval by the Chamber of Deputies.[741] Finally, the Office of the Special Rapporteur welcomes the measures adopted by the Mexican State in response to the situation of violence against media workers in the country, including the creation of a special prosecutor to investigate these crimes and, recently, the establishment of a committee for the protection of journalists.

532. Nonetheless, the full enjoyment of freedom of expression in Mexico faces grave obstacles of various kinds, among them the murders of journalists and other extremely serious acts of violence against those who disseminate information, ideas and opinions, and the widespread impunity that holds sway in such cases. It is also of concern to the Office of the Special Rapporteur that legislation still exists that allows the application of criminal sanctions to the exercise of freedom of expression both at the federal level and in a significant number of states. Likewise, the Office of the Special Rapporteur considers that the vigor, diversity and pluralism of the democratic debate is seriously limited by, among other reasons, the high concentration of ownership and control of the communications media to which radio and television frequencies have been assigned; the absence of a clear, precise and equitable legal framework for the assignation of such frequencies; the absence of mechanisms allowing access to alternative communications media; and the lack of regulation of government advertising. Finally, the Office of the Special Rapporteur observes with concern an emerging tendency to restrict the right to access public information. It is precisely the need to recognize this crisis and to join in efforts to find solutions, together with the State and society, that prompted the Office of the Special Rapporteur to carry out the on-site visit to Mexico and to prepare this report.

533. The situation confronting freedom of expression in Mexico is set out below with respect to the following issues: violence, impunity and self-censorship; freedom, pluralism and diversity in the democratic debate; legal actions related to the exercise of freedom of expression; and access to information. Conclusions and recommendations are also formulated, which in general coincide with those issued at the conclusion of the on-site visit. The report also presents concrete cases to illustrate the situations observed by the Office of the Special Rapporteur. The cases discussed were chosen essentially on the basis of their illustrative nature and in view of the availability of relevant information from a number of sources. The Office of the Special Rapporteur once again thanks all the entities, organizations and individuals who shared information, particularly journalists who have been victims of violence and their families. It is our hope that the observations, conclusions and recommendations set out in this report contribute to the strengthening of freedom of expression for all Mexicans.

## II. VIOLENCE, IMPUNITY AND SELF-CENSORSHIP

### A. Violations of the right to life and personal integrity based on the victims' exercise of freedom of expression

#### 1. General Overview: violence on the rise

534. During the course of the on-site visit, the Office of the Special Rapporteur paid particular attention to violence carried out against journalists and media outlets in the country. The ninth principle of the Declaration of Principles on Freedom of Expression of the IACHR establishes 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

[741] See Foreign Ministry (SRE) Newsletter No. 173, April 9, 2010, available at: http://portal.sre.gob.mx/montreal/pdf/Bolderhum.pdf

expression. It is the duty of the States to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation." The Office of the Special Rapporteur recalls in this regard that, in accordance with international human rights standards, the Mexican State is not only obliged to guarantee that its agents do not commit acts of violence against journalists, but also to take reasonable steps to prevent acts of aggression by third parties. The State is also obliged to investigate, prosecute and, where applicable, punish the perpetrators of such violence, even when those responsible are not state agents. As such, the fact that the Office of the Special Rapporteur makes reference to an act of violence does not necessarily imply that the act is directly attributable to the State. However, such acts do make clear the State's obligation to prevent, protect and, where applicable, punish these kinds of acts.

535. The various sources consulted by the Office of the Special Rapporteur confirm that—without ignoring the fact that the problem of violence affects all segments of Mexican society—violence against journalists in Mexico is alarming and on the rise, due to factors such as the growth of organized crime in certain regions of the country. The Office of the Special Rapporteur was struck by the fact that the National Human Rights Commission (hereinafter "CNDH") is the only state institution that maintains a public, documented register of crimes against journalists. As the table below shows, the CNDH reports that 64 journalists were murdered in Mexico between 2000 and July 2010, and 11 have been disappeared between 2006 and July 2010.[742] Of these cases, 29 murders and 5 disappearances occurred since 2008 alone.[743]

**CNDH: Violence against journalists in Mexico 2000-2010**[744]

| Year | Homicides | Disappearances |
|---|---|---|
| 2000 | 4 | |
| 2001 | 4 | |
| 2002 | 3 | |
| 2003 | 1 | |
| 2004 | 5 | |
| 2005 | 4 | 1 |
| 2006 | 10 | 2 |
| 2007 | 4 | 3 |
| 2008 | 10 | 1 |
| 2009 | 12 | 1 |
| 2010 (to 27/7/2010) | 7 | 3 |
| **TOTAL** | 64 | 11 |

536. To these figures may be added the kidnappings of journalists and attacks with explosives against media outlets that have occurred in recent years. In addition, the Office of the Special Rapporteur observed through its encounters with journalists during the on-site visit, that threats and harassment are a regular feature of the practice of journalism, particularly local journalism that covers issues of corruption, organized crime, drug trafficking, and public security, among other issues. According to the information received, many attacks on local journalists are not formally reported due to a lack of confidence in the respective authorities. The statistics reported as well as the additional information received confirms that since 2000 Mexico has been the most dangerous country in the Americas in which to practice journalism.

537. The Office of the Special Rapporteur notes that the compilation of detailed, disaggregated criminal statistics is an essential prerequisite for designing, implementing, and evaluating

[742] CNDH, Press release CGCP/206/10, July 27, 2010.

[743] CNDH, Press release CGCP/206/10, July 27, 2010.

[744] CNDH, Press release CGCP/206/10, July 27, 2010.

effective public policies for prevention, protection, and criminal prosecution of human rights violations.[745] In this regard, public security and law enforcement authorities should urgently assume the task of compiling quantitative and qualitative information on violence against journalists and the investigation of such crimes, which is essential to the design and implementation of effective public policies of prevention, protection and criminal prosecution. While the figures compiled by the CNDH are a useful tool for understanding the grave and deteriorating situation faced by journalists, the Office of the Special Rapporteur observes with concern the absence of an institution charged with collecting and maintaining up-to-date documented records of violence against journalists in Mexico, and on the legal and administrative proceedings carried out in these cases. In its observations on the preliminary version of this report, the Mexican State reported that "the Special Prosecutor's Office [for Crimes against Freedom of Expression] has set about building an electronic database of murders and disappearances of persons reported by various governmental and nongovernmental organizations."[746] It also reported that the Chamber of Deputies' Special Commission for Monitoring Attacks on Journalists and Media Outlets plans during 2011 to promote the creation of "a national database, called the National Register of Attacks, in order to have reliable statistics, broken down by crime committed and by state."[747]

538. Notwithstanding the limitations generated by the lack of comprehensive statistics on violence against journalists, the Office of the Special Rapporteur was able to verify that the majority of murders, disappearances and kidnappings of journalists are concentrated in states that suffer from a strong presence of organized crime, including, among others, the states of Chihuahua, Guerrero and Sinaloa, visited by the Office of the Special Rapporteur. Though the absence of completed investigations in the great majority of cases makes it impossible to determine the exact motives and parties responsible for these crimes, the information received by the Office of the Special Rapporteur confirms that in these regions organized crime represents the greatest threat to the life and physical integrity of journalists, especially those who report on local issues of corruption, drug trafficking, organized crime, public security and related matters.

539. In addition, according to the information received, in some regions, violence and intimidation against journalists appears to be carried out by armed groups with presumed links to political factions. Such is the case, for example, of the journalists who were attacked in April 2010 when they were traveling to San Juan Copala, in the state of Oaxaca, as part of a humanitarian convoy, with the aim of carrying reporting on the 2008 murder of community radio journalists Teresa Bautista Merino and Felicitas Martínez Sánchez. During the attack, presumably carried out by an illegal armed group operating in Oaxaca, two activists were killed, while two journalists, one of them with a bullet wound, remained trapped in the area for two days before they could be rescued.

540. The Office of the Special Rapporteur also received numerous allegations of harassment and attacks carried out by members of both the armed forces and the police, against journalists who, in legitimate practice of their profession, try to cover public security issues.

541. Given the gravity of the situation faced by freedom of expression and those who dedicate themselves to journalism in the country, it is a matter of urgency for the Mexican State to adopt a comprehensive policy of prevention, protection and prosecution with the objective of ensuring a free, robust and uninhibited democratic debate.

### 2. Violence against journalists in 2010

[745] See, for example, IACHR. Press Release 59/08, "IACHR Issues Preliminary Observations on Visit to Jamaica," December 5, 2008, "Conclusions," available at: http://www.cidh.oas.org/Comunicados/English/2008/59.08eng.htm

[746] Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

[747] Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

542. In fulfillment of the Office of the Special Rapporteur's mandate to produce an annual report, this section summarizes the principal acts of violence committed against media workers of which the Office of the Special Rapporteur was informed in 2010. These acts took place in a context, as indicated above, of acute violence against Mexican journalists. In particular, it is important to note that the 13 murders of journalists documented below follow the 57 murders that took place, according to the CNDH, between 2000 and 2009.[748]

**a. Murders**

543. On January 11, 2010 the journalist **Valentín Valdés Espinosa**, of the newspaper *Zócalo Saltillo*, was assassinated in the city of Saltillo, state of Coahuila, Mexico.[749]

544. According to the information received, on Thursday January 7, 2010, at around 11 pm, a journalist for the local news section of the newspaper *Zócalo Saltillo,* Valentín Valdés Espinosa, was driving together with two fellow reporters along the Boulevard Venustiano Carranza in the city of Saltillo, state of Coahuila. Unknown assailants traveling in two pickups intercepted them and forced them to get out of their car. Valdés Espinosa and another reporter were then kidnapped. The latter was freed several hours later after being beaten. Early the next morning, the lifeless body of Valdés Espinosa was found on the Boulevard Fundadores, in front of the Motel Marbella, with a message.[750]

545. Valdés was tortured and shot a number of times, and was found with a placard reading: "This is what will happen to those who don't understand the message is for everyone." According to the State Public Prosecutor's office, it is assumed that the crime was carried out by persons involved in organized crime.[751] Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.[752] In a reply received on November 12, 2010, the State indicated that a criminal investigation was begun by the Office of Prosecutor General's of the Republic (*Procuraduría General de la República,* hereinafter "PGR") on January 8, 2010. This investigation was sent to the PGR's Special Prosecutor's Office for Crimes against Freedom of Expression (hereinafter, "FEADLE") on May 14, 2010 and is still being processed.[753]

546. In January, 2010, information was received about the murder of the journalist **José Luis Romero** from the radio news program *Línea Directa, Radio Sistema del Noroeste* from the state of Sinaloa. According to information from the CNDH, Romero's disappearance was reported on December 30, 2009, in Los Mochis, Sinaloa.[754] According to the information received by the Office of the Special Rapporteur, the lifeless body of Romero, who covered police matters, was found on January 16, 2010, at the side of a highway that leads to the city of Los Mochis, in the state of Sinaloa. The autopsy indicated that Romero had been dead for over 15 days when his remains were found. Suspicion falls on the

[748] CNDH, Press release CGCP/206/10, July 27, 2010.

[749] Office of the Special Rapporteur for Freedom of Expression – IACHR. January 11, 2010. Press release No. R03/10. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=779&lID=1

[750] Office of the Special Rapporteur for Freedom of Expression – IACHR. January 11, 2010. Press release No. R03/10. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=779&lID=1

[751] Committee for the Protection of Journalists (CPJ). January 8, 2010. *Mexico: Periodista secuestrado fue hallado muerto.* Available at: http://cpj.org/es/2010/01/mexico-periodista-secuestrado-fue-hallado-muerto.php.

[752] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[753] PGR, Memo No. SJAI/CAIA/DGCI/2816/2010 of July 20, 2010 and Memo 0000144/FEADLE/2010, Annexes to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[754] CNDH. Press release CGCP/011/10, January 11, 2010.

criminal organizations that control drug trafficking along Mexico's northern border.[755] Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.[756] In a reply received on November 12, 2010, the State provided information about the investigations undertaken after the death of the journalist, including information requests to various public and private bodies.[757] According to the State, the investigation is still being processed by the Public Prosecutor's Office of the state of Sinaloa.[758]

547. On January 29, 2010, the body of the journalist **Jorge Ochoa Martínez** was found in the municipality of Ayutla de los Libres, in the state of Guerrero. According to the information received the body of the editor of the weeklies *El Sol de la Costa* and *El Oportuno* was found in a private automobile with a gunshot wound to the head.[759]

548. On March 11, 2010, the Public Prosecutor's Office of the state of Guerrero presented to the public the supposed masterminds of the homicide of Jorge Ochoa Martínez. The Mixtec indigenous men Honorio Herrera Villanueva and David Bravo Jerónimo supposedly planned the homicide of the journalist because he was driving the wrong way down a street and refused to reverse to allow the young men's vehicle to pass. According to the authorities, they were "annoyed" and hired a taxi driver to kill the journalist. In the words of the Public Prosecutor's Office of the state of Guerrero, "it was a chance, fortuitous event."[760]

549. On March 16, 2010, Alberto Bravo Jerónimo was arrested, accused by the Public Prosecutor's Office of the state of Guerrero of being the direct perpetrator of the murder of the journalist Jorge Ochoa. According to the Ministerial authority, the motive for the homicide was a traffic incident. The detainee confirmed the Public Prosecutor's Office's allegations in front of the media.[761] However, the family of Jorge Ochoa suspect a professional motive, and major NGOs such as Reporters Without Borders (hereinafter, "RSF") have indicated that the motive given by the Mexican justice system is not credible.[762] In a meeting held during the official visit, the Office of the Special Rapporteur asked the authorities in Guerrero to review the criminal hypothesis and not to discard the hypothesis that the homicide may be linked to the journalist's professional activity until it is exhausted. Similarly, within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the

---

[755] Office of the Special Rapporteur for Freedom of Expression – IACHR. January 23, 2010. Press release No. R07/10. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=780&lID=1; CNDH. Press release of January 11, 2010. CGCP/011/10. Available at: http://www.cndh.org.mx/comsoc/compre/2010/011.pdf

[756] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[757] PGR, Memo 0627/2010 of February 5, 2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[758] PGR, Memo 0000144/FEADLE/2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[759] Office of the Special Rapporteur for Freedom of Expression – IACHR. February 1, 2010. Press release No. R16/10. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=783&lID=1; Committee to Protect Jounalists (CPJ). February 1, 2010. *Propietario de periodicos mexicano abatido a disparos en Guerrero*. Available at: http://cpj.org/es/2010/02/propietario-de-periodicos-Mexican-abatido-a-dispa.php

[760] Reporters without Borders. March 15, 2010. *Arrestan a dos sospechosos por el asesinato de un periodista, el móvil señalado es poco creíble.* Available at: http://es.rsf.org/mexico-un-cuarto-periodista-asesinado-a-15-03-2010,36265. La Jornada newspaper. March 12, 2010. *Acusan a dos indígenas de provocar asesinato de periodista en Guerrero.* Available at: http://www.jornada.unam.mx/2010/03/12/index.php?section=estados&article=031n2est

[761] Committee to Protect Journalists (CPJ). *Journalists killed: Jorge Ochoa Martínez.* Available at: http://cpj.org/killed/2010/jorge-ochoa-martinez.php. Centro Nacional de Communication Social (CENCOS). March 18, 2010. *Seguimiento hemerográfico No. 867*. Available at: http://www.cencos.org/es/node/23039. La Jornada. March 18, 2010. *Presentan a presunto homicida de periodista*. Available at: http://www.jornada.unam.mx/2010/03/18/index.php?section=states&article=035n7est

[762] Reporters without Borders. March 15, 2010. *Un cuarto periodista asesinado a tiros, no hay reacción efectiva de las autoridades frente a la hecatombe.* Available at: http://es.rsf.org/mexico-un-cuarto-periodista-asesinado-a-15-03-2010,36265. La Jornada. March 12, 2010. *Acusan a dos indígenas de provocar asesinato de periodista en Guerrero.* Available at: http://www.jornada.unam.mx/2010/03/12/index.php?section=states&article=031n2est

Mexican State about the case of Jorge Ochoa Martínez.[763] In a reply received on November 12, 2010, the State indicated that a criminal investigation was opened by the PGR on January 30, 2010, but that lack of jurisdiction was declared and the case was transferred to the Public Prosecutor's Office of Guerrero.[764] It also indicated that the case was being processed in the Court of Combined Jurisdiction of First Instance in the city of Ayutla de los Libres, Guerrero.[765] In its observations on the preliminary version of this report, the Mexican State reported that "on December 10, 2010, the judge assigned to the case declared the matter to be ready for judgment, and he is at the point of issuing the final decision."[766]

550. On March 2, 2010, the reporter **Jorge Rábago Váldez** died in a hospital in the state of Tamaulipas. According to the information available, the journalist Jorge Rábago Váldez was one of eight reporters kidnapped in the months of February and March in the city of Reynosa, state of Tamaulipas. The reporter for the radio group *Radio Rey*, *Reporteros en Red* and for the newspaper *La Prensa* was kidnapped on February 19 as he left a party, and on February 20 was brought to the hospital in a state of coma. In this regard, while some local authorities indicated that his death was the natural result of a diabetic coma, several sources on the ground have indicated to major NGOs, such as the Committee to Protect Journalists (hereinafter "CPJ") and the Inter-American Press Association (hereinafter "IAPA") that the media worker was found with signs of torture and in a state of coma, a few days before his death.

551. Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case of Jorge Rábago Váldez.[767] In a reply received on November 12, 2010, the State indicated that the journalist entered the General Hospital of Reynosa as an unknown person on February 22, and was transferred to the Christus Muguerza Hospital on February 26. He died in this latter hospital on March 2; the autopsy undertaken revealed "multiple blunt trauma injuries with hematoma" and established the cause of death as "hypovolaemic shock due to intracranial and thoracic injury."[768] The State also informed that on March 11, 2010, the PGR opened a criminal investigation for the crime of kidnapping, while the Public Prosecutor's Office of Tamaulipas opened a criminal investigation for the crime of illegal privation of liberty and other rights, as well as another criminal investigation for the crime of homicide.[769] Finally, the State also provided information about the progress made in the investigation carried out by the Public Prosecutor's Office of the state of Tamaulipas up until June 25, 2010.[770] The forensic medical analysis concluded that the death of the journalist was the consequence of "diffuse cerebral edema secondary to hemorrhaging cerebral contusions, intraparenchymatous hematoma of the left frontal region, subarachnoid hemorrhaging in the interhemispheric fissure and the upper left occipital region, acute subdural hematoma in the right occipital region, as a consequence of craneoencephalic trauma."[771]

---

[763] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[764] PGR, Memo No. SJAI/CAIA/DGCI/2816/2010 del 20 de July, 2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[765] PGR, Memo 0000144/FEADLE/2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[766] Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

[767] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[768] State Public Prosecutor's Office of Tamaulipas, answer to memo UPDDH/911/3793/2010 of June 25, 2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[769] PGR, Memo No. SJAI/CAIA/DGCI/2817/2010 of July 20, 2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[770] State Public Prosecutor's Office of Tamaulipas, answer to memo UPDDH/911/3793/2010 of June 25, 2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[771] State Public Prosecutor's Office of Tamaulipas, answer to memo UPDDH/911/3793/2010 of June 25, 2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

552. On March 12, 2010, the lifeless body of journalist **Evaristo Pacheco Solís** was found in the city of Chilpancingo, capital of the state of Guerrero. According to the information received the reporter for the local weekly *Visión Informativa* received five gunshots from a low-caliber firearm, one of them in the head. His body was abandoned on a rural road.[772] Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.[773] In a reply received on November 12, 2010, the State indicated that the investigation is being processed by the Public Prosecutor's Office of the state of Guerrero, and provided information about the procedures undertaken by this entity up until May 31, 2010, which include the removal of the body, the collection of witness statements, forensic analysis and ministerial attestation of cell phone calls and SMS messages.[774]

553. On April 10, 2010, **Enrique Villicaña Palomares**, a columnist for the newspaper *La Voz de Michoacán* and a university professor, was found dead in Morelia, state of Michoacán. According to the information received, weeks before his disappearance Villicaña Palomares, who reported on attacks by armed groups against local indigenous groups, had reported the threats he had received to the Public Prosecutor's Office of the state of Michoacán.[775] Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.[776] In a reply received on November 12, 2010, the State indicated that the investigation is being processed by the Public Prosecutor's Office of the state of Michoacán.[777]

554. On June 28, 2010, **Juan Francisco Rodríguez Ríos**, correspondent for the newspaper *El Sol de Acapulco*, and **Elvira Hernández Galeana**, editor of the weekly *Nueva Línea*, were shot to death in Coyuca de Benítez, state of Guerrero, when two armed individuals entered the Internet café owned by the murdered reporters. Rodríguez Ríos was also a local leader of the National Press Workers' Syndicate. A few hours before his murder, Rodríguez Ríos had covered the 15th anniversary of the Aguas Blancas Massacre of 1995 in which 17 farm workers died in events that implicated the Guerrero state police force. The Public Prosecutor's Office of the state of Guerrero opened a criminal investigation into the case of the journalist Juan Francisco Rodríguez Ríos.[778] During the on-site visit the judicial

---

[772] Committee to Protect Journalists (CPJ). March 15, 2010. *Mexican Reporter shot to death in Guerrero.* Available at: http://cpj.org/2010/03/mexican-reporter-shot-to-death-in-guerrero.php. UNESCO. March 24, 2010. *UNESCO Director-General condemns murder of another journalist in Mexico.* Available at: http://www.unesco.org/new/en/media-services/single-view/news/unesco_director_general_condemns_murder_of_another_journalist_in_mexico/back/18256/. International Freedom of Speech Exchange (IFEX). March 16, 2010. *Journalist shot to death in Guerrero*. Available at: http://www.ifex.org/mexico/2010/03/16/pacheco_solis_killed/. El Universal. March 15, 2010. *Reportan Cuarto Periodista Asesinado en 2010*. Available at: http://www.eluniversal.com.mx/notas/666158.html

[773] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[774] PGR, Memo 0000144/FEADLE/2010 and State Public Prosecutor's Office of Guerrero, Memo No. PGJE/FRZC/668/2010 of May 31, 2010, Annexes to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[775] Reporters without Borders. April 11, 2010. *Cuestionada de nuevo la pasividad de las autoridades tras el asesinato de un periodista en Michoacán.* Available at: http://es.rsf.org/mexico-cuestionada-de-nuevo-la-pasividad-11-04-2010,36977.html. Inter-American Press Association (IAPA). April 15, 2010. *SIP pide indagar recientes asesinatos en Colombia, Honduras y México*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_Communications&seccion=detalles&id=4361&idioma=sp. International Freedom of Expression Exchange (IFEX). April 14, 2010. *More journalists abducted and murdered.* Available at: http://www.ifex.org/mexico/2010/04/14/abducted_killed/

[776] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[777] PGR, Memo 0000144/FEADLE/2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[778] Office of the Special Rapporteur for Freedom of Expression – IACHR. July 2, 2010. Press release No. R66/10. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=803&lID=1; See also CNDH. Press release CGCP/178/10, June 29, 2010. Available at: http://www.cndh.org.mx/comsoc/compre/2010/COM_2010_0178.pdf. Committee to Protect Journalists (CPJ). *Journalists Killed: Juan Francisco Rodríguez Ríos.* Available at: http://cpj.org/killed/2010/juan-francisco-rodriguez-rios.php. Article 19. June 30, 2010. *Mexico: Matan a otro periodista en el estado de Guerrero.* Available at: http://www.articulo19.org/articulo/node/89

authorities of the state of Guerrero confirmed that the investigation is pursuing a course unrelated to the reporters' profession.[779] Once again, the Office of the Special Rapporteur insisted on the importance of there being special protocols for investigations that oblige the authorities not to discard, until exhausted, the hypothesis that the homicide is connected with the professional activities of the journalist. Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.[780] In a reply received on November 12, 2010, the State indicated that the investigation is currently being processed by a state criminal judge in Guerrero.[781]

555. On July 6, 2010, the journalist **Hugo Alfredo Olivera Cartas** was found dead near the city of Apatzingán, in the state of Michoacán. According to the information received, the police found the journalist's body inside his vehicle at 3 a.m., with gunshot wounds to his head. Olivera had gone out to cover a story, but never returned home. The journalist was editor of the newspaper *El Día de Michoacán* and director of the regional news agency *ADN*; he was also a correspondent and contributor to various regional and national news outlets. Olivera wrote about policing and political issues. According to information from Mexican and international press organizations, in the early morning of July 6, 2010, unidentified persons entered the offices of *El Día de Michoacán* and stole computers and memory devices.[782]

556. Olivera had presented an allegation to the CNDH on February 18, 2010, alleging physical assault by officers of the Federal Preventive Police when he was on his way to cover an armed confrontation between alledged members of criminal organizations and the police in the community of Chiquihuitillo, state of Michoacán.[783] Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.[784] In a reply received on November 12, 2010, the State indicated that the investigation is currently being processed by the FEADLE.[785]

557. On July 10, 2010, journalist **Marco Aurelio Martínez Tijerina**, from the radio station XEDD *Radio La Tremenda*, in Montemorelos, state of Nuevo León, was found dead with a gunshot to the head. According to the information received by the Office of the Special Rapporteur, Martínez Tijerina was kidnapped in this city on the night of Friday July 9, 2010. Martínez covered political stories and also worked as a correspondent for national news outlets.[786] In the framework of its visit, the Office of the

---

[779] Information provided to the Office of the Special Rapporteur by authorities of the Guerrero State executive branch, August 22, 2010.

[780] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[781] PGR, Memo 0000144/FEADLE/2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[782] Office of the Special Rapporteur for Freedom of Expression – IACHR. July 8, 2010. Press release No. R67/10. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=804&lID=1 CNDH. Press release CGCP/185/10, July 6, 2010. Available at: http://www.cndh.org.mx/comsoc/compre/2010/COM_2010_0185.pdf. *RSF*. July 7, 2010. *Otro periodista es asesinado en el estado de Michoacán*. Available at: http://es.rsf.org/mexico-otro-_periodista-es-asesinado-en-el-07-07-2010,37891.html. Committee to Protect Journalists (CPJ). July 6, 2010. *Mexican Reporter shot to death in Michoacán state*. Available at: http://cpj.org/2010/07/mexican-reporter-shot-to-death-in-michoacan-state.php.

[783] Reporters without Borders. July 7, 2010. *Otro periodista es asesinado en el estado de Michoacán*. Available at: http://es.rsf.org/mexico-otro-periodista-es-asesinado-en-el-07-07-2010,37891.html. *CPJ*. July 6, 2010. *Mexican Reporter shot to death in Michoacán state.* Available at: http://cpj.org/2010/07/mexican-reporter-shot-to-death-in-michoacan-state.php; Committee to Protect Journalists (CPJ). June 7, 2010. *Federal forces in Mexico increasingly harass journalists.* Available at: http://cpj.org/2010/06/federal-forces-in-mexico-increasingly-harass-journ.php

[784] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[785] PGR, Memo 0000144/FEADLE/2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[786] Office of the Special Rapporteur for Freedom of Expression – IACHR. July 5, 2010. Press release No. R70/10. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=805&lID=1; See also CNDH. Press release CGCP/192/10, July 12, 2010. Available at: http://www.cndh.org.mx/comsoc/compre/2010/COM_2010_0192.PDF. UNESCO. July 22, 2010. *Director-General condemns murder of two Mexican journalists.* Available at: http://portal.unesco.org/ci/en/ev.php-URL_ID=30675&URL_DO=DO_TOPIC&URL_SECTION=201.html. Committee to Protect Journalists (CPJ). *Journalists Killed:*

Continued…

Special Rapporteur requested detailed information from the Mexican State about the case.[787] In a reply received on November 12, 2010, the State indicated that the investigation is currently being processed by the FEADLE.[788]

558. On July 10, 2010, the audiovisual producer and cameraman, **Guillermo Alcaraz Trejo**, was assassinated by masked individuals as he left the offices of the newspaper *Omnia*, in Chihuahua city, state of Chihuahua, where he was visiting former colleagues. Alcaraz was responsible for the production of educational programs at the Chihuahua State Human Rights Commission.[789] In the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.[790] In a reply received on November 12, 2010, the State indicated that the investigation is currently being processed by the FEADLE.[791]

559. On September 16, 2010, two photographers at *El Diario* newspaper were attacked in Ciudad Juárez, Chihuahua. The attack led to the death of **Luis Carlos Santiago** and injured his colleague **Carlos Sánchez Colunga**. According to the information received, unknown individuals opened fire on the two press photographers for *El Diario* when they were in a public parking lot in Ciudad Juárez. Luis Carlos Santiago died at the scene while his wounded colleague was transferred to a hospital.[792] On the occasion of the murder of Luis Carlos Santiago the Office of the Special Rapporteur reminded the Mexican State of its obligation to prevent and to investigate such acts, punish those responsible and guarantee the victims receive suitable reparations.[793]

560. On November 5, 2010, the journalist **Carlos Guajardo Romero** died in the city of Matamoros, Tamaulipas, during a major military operation against drugs traffickers. According to the information received, Carlos Guajardo worked as a reporter on public security issues for the newspaper *Expreso Matamoros*. Around midday on Friday, November 5, the reporter was covering an armed confrontation between the army and criminal organizations in the center of the city, in the course of which a leader of the Gulf Cartel, Antonio Ezequiel Cárdenas Guillén, was killed. After gathering information at the site of the confrontation, the media worker was found dead with bullet wounds.[794] On the occasion of

---

…continuation
*Marco Aurelio Martínez Tijerina.* Available at: http://cpj.org/killed/2010/marco-aurelio-martinez-tijerina.php. International Freedom of Expression Exchange (IFEX). July 12, 2010. *Radio journalist found dead in Nuevo León; cameraman killed in Chihuahua*. Available at: http://www.ifex.org/mexico/2010/07/12/two_journalists_killed/; La Jornada. July 12, 2010. *Asesinan a periodista en Monterrey.* Available at: http://www.jornada.unam.mx/2010/07/12/index.php?section=politica&article=012n2pol

[787] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[788] PGR, Memo 0000144/FEADLE/2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[789] Office of the Special Rapporteur for Freedom of Expression – IACHR. July 5, 2010. Press release No. R70/10. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=805&lID=1; UNESCO. July 22, 2010. *Director-General condemns murder of two Mexican journalists.* Available at: http://portal.unesco.org/ci/en/ev.php-URL_ID=30675&URL_DO=DO_TOPIC&URL_SECTION=201.html; International Freedom of Expression Exchange (IFEX). July 12, 2010. *Radio journalist found dead in Nuevo León; cameraman killed in Chihuahua.* Available at: http://www.ifex.org/mexico/2010/07/12/two_journalists_killed/

[790] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[791] PGR, Memo 0000144/FEADLE/2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[792] Office of the Special Rapporteur for Freedom of Expression- IACHR. September 17, 2010. Press release No. R95/10. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=819&lID=1. Reporters without Borders. 17 de September, 2010. *Violencia contra periodistas no tiene fin.* Available at: http://es.rsf.org/mexique-la-violencia-contra-los-17-09-2010,38401.html

[793] Office of the Special Rapporteur for Freedom of Expression – IACHR. September 17, 2010. Press release No. R95/10. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=819&lID=1

[794] Office of the Special Rapporteur for Freedom of Expression – IACHR. November 9, 2010. Press release No. R111/10. Available at: http://www.cidh.org/relatoria/showarticle.asp?artID=825&lID=1. Committee to Protect Journalists (CPJ). November 8, 2010. *Reportero mexicano muere en fuego cruzado en Matamoros.* Available at: http://cpj.org/es/2010/11/reportero-mexicano-muere-en-fuego-cruzado-en-matam.php. La Jornada. November 7, 2010. *Repudia El Expreso el asesinato de su reportero y demanda investigación eficaz.* Available at: http://www.jornada.unam.mx/2010/11/07/index.php?section=politica&article=006n1pol.

Continued…

the death of Carlos Guajardo Romero the Office of the Special Rapporteur requested the Mexican State carry out a diligent, rigorous, independent and transparent investigation that clarifies the circumstances in which the journalist died.[795]

**b. Disappearances and Kidnappings**

561. In March 2010 it was learned that eight journalists had been kidnapped in different events over the previous two weeks in the city of Reynosa, state of Tamaulipas. By the time the kidnappings were learned of, five journalists were still missing, two had been freed after being beaten and forced to return to Mexico City, and the reporter Jorge Rábago Váldez had been killed (see *supra*).[796]

562. Of the kidnapped journalists, on March 9, 2010, the Tamaulipas State Public Prosecutor's Office had confirmed the disappearance of **Miguel Ángel Domínguez Zamora**, reporter for the Reynosa newspaper *El Mañana*. According to the investigating authorities, the family of Domínguez had reported his disappearance. Meanwhile, two journalists from the *Multimedios Milenio* channel who had been sent to cover the violent events occurring in the city of Reynosa had been kidnapped on March 3, 2010, and freed the following day on the condition they left the city. The other journalists remain missing.[797] Two of them are the reporters **Pedro Arguello Reyna** and **David Silva**, both from the newspapers *El Mañana* and *La Tarde*.[798] Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State on the cases of Domínguez, Arguello and Silva.[799] In a reply received on November 12, 2010, the State indicated that these cases were "awaiting documentation by the FEADLE."[800]

563. On April 12, 2010, the disappearance was reported of journalist **Ramón Ángeles Zalpa**, correspondent in the city of Paracho for the newspaper *Cambio de Michoacán*, state of Michoacán. According to the information received, Ramón Ángeles Zalpa was seen for the last time on April 6, 2010, when he was traveling in his car to the Universidad Pedagógica Nacional, in the city of Paracho, where he was a lecturer. According to the sources consulted, before his disappearance, the journalist was in charge of covering issues relating to organized crime. He had recently written about an armed assault suffered by an indigenous family near the municipalities of San Juan Nuevo and Angahuan, allegedly at the hands of a criminal gang. According to the information received, Ángeles Zalpa had received strange phone calls at his house shortly before his disappearance.[801] In the framework of its visit, the Office of the

…continuation
El Universal. November 5, 2010. *Muere reportero en enfrentamiento en Matamoros.* Available at: http://www.eluniversal.com.mx/notas/721490.html. El Universal. November 6, 2010. *CNDH abre expediente por muerte de periodista.* Available at: http://www.eluniversal.com.mx/notas/721671.html

[795] Office of the Special Rapporteur for Freedom of Expression – IACHR. November 9, 2010. Press release No. R111/10. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=825&lID=1

[796] Office of the Special Rapporteur for Freedom of Expression – IACHR. March 11, 2010. Press release No. R28/10. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=786&lID=1

[797] Committee to Protect Journalists (CPJ). March 11, 2010. *Violencia del Narcotráfico pone en peligro prensa en Reynosa.* Available at: http://cpj.org/es/2010/03/violencia-del-narcotrafico-pone-en-peligro-a-la-pr.php. Reporters without Borders. March 10, 2010. *Ola de violencia en el estado de Tamaulipas: un periodista desaparecido entre otros casos.* Available at: http://es.rsf.org/mexico-ola-de-violencia-en-el-estado-de-10-03-2010,36683. International Freedom of Expression Exchange (IFEX). March 17, 2010. *Eight journalists abducted, two killed.* Available at: http://www.ifex.org/mexico/2010/03/17/abductions_eight/. Zócalo magazine. May 3, 2010. *Los periodistas desaparecidos en Reynosa.* Available at: http://www.revistazocalo.com.mx/index.php?option=com_content&view=article&id=553&Itemid=2

[798] Committee to Protect Journalists (CPJ). *Silence or Death in Mexico's Press* (New York: CPJ, 2010), appendix 2. Available at: http://cpj.org/reports/cpj_mexico_english.pdf

[799] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[800] PGR, Memo 0000144/FEADLE/2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[801] Office of the Special Rapporteur for Freedom of Expression – IACHR. April 12, 2010. Press release No. R41/10. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=793&lID=1. See CNDH. Press release CGCP/095/10, April 9, 2010. Available at: http://www.cndh.org.mx/comsoc/compre/2010/095.pdf

Special Rapporteur requested detailed information from the Mexican State about the case.[802] In a reply received on November 12, 2010, the State indicated that the investigation is currently being processed by the Public Prosecutor's Office of Michoacán.[803]

564. On April 20, 2010, **Evaristo Ortega Zárate**, director of the weekly *Espacio*, from Colipa, Veracruz, disappeared in the city of Jalapa, state of Veracruz. According to the information received by the Office of the Special Rapporteur, Irene Ortega Zárate, the sister of the weekly's director, received messages on her cell phone in which her brother alerted that he had been detained by police in Jalapa, Veracruz. The messages read: "Tell everybody", "they've arrested us", "they're taking us in a patrol car towards Veracruz." At the time of his disappearance Evaristo Ortega Zárate was a prospective candidate for mayor of Colipa for the National Action Party (PAN).[804] On April 22, 2010, the Veracruz State Secretary for Public Security ruled out the possibility that agents working for the entity had participated in the disappearance of the journalist. According to information from NGOs such as IFEX the president of the Veracruz State Human Rights Commission made a declaration on April 22, 2010, about the disappearance of Ortega Zárate, as follows:

> I don't even know his name, and I don't think you do either. I didn't know that he was a journalist or had any involvement with journalism, but I would have thought that for an act of repression of this kind to occur he would have to be a very important figure, and I don't think that's the case. He's not someone we know about here in this state. He's the (aspirant) to a post in a village in a tiny little municipality, that's how I'd view the matter.[805]
>
> In the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case[806]. In a reply received on November 12, 2010, the State indicated that the investigation was currently being processed by the Public Prosecutor's Office of the state of Veracruz.[807]

565. On June 29, 2010, the journalist **Ulises González García**, director of the weekly *La opinión,* from the city of Jerez, Zacatecas, was kidnapped. According to the information received, the kidnappers demanded a large ransom.[808] On August 9 the reporter was freed and immediately taken to hospital, showing signs of torture.[809]

---

[802] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[803] PGR, Memo 0000144/FEADLE/2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[804] Reporters without Borders. April 23, 2010. *Un periodista avisa a través de un mensaje de su secuestro por parte de la policía de Veracruz.* Available at: http://es.rsf.org/mexico-un-periodista-avisa-a-traves-de-un-23-04-2010,37137.html; Arcano Político. May 3, 2010. *Afianzan mordaza de sangre.* Available at: http://www.arcanopolitico.com/index.php?option=com_content&view=article&id=3154:afianzan-mordaza-de-sangre&catid=89:analisis-arcano-politico&Itemid=85

[805] International Freedom of Expression Exchange (IFEX). April 23, 2010. *Another journalist missing; police may be implicated in his disappearance.* Available at: http://www.ifex.org/mexico/2010/04/23/ortega_missing/. La Jornada. April 23, 2010. *La SSP-Veracruz niega relación con secuestro de periodista y precandidato*. Available at: http://www.jornada.unam.mx/2010/04/23/index.php?section=states&article=037n2est

[806] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[807] PGR, Memo 0000144/FEADLE/2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[808] Reporters without Borders. August 3, 2010. *Una desaparición y un exilio después de cuatro liberaciones al final de un trágico mes de julio.* Available at: http://es.rsf.org/mexico-una-desaparicion-y-un-exilio-03-08-2010,38088.html. *La Jornada*. July 29, 2010. *Levantan en Zacatecas al director del diario regional La Opinion.* Available at: http://www.jornada.unam.mx/2010/07/29/index.php?section=politica&article=016n2pol

[809] Reporters without Borders. August 11, 2010. *Reaparece vivo Ulises González.* Available at: http://www.rsf-es.org/news/mexico-reaparece-vivo-ulises-gonzalez/. Agencia EFE de America. August 11, 2010. *Reporteros Sin Fronteras celebra la liberación del director del Semanario Mexicano "La Opinión"*. Available at: http://www.efeamerica.com/286_mexico/802610_rsf-celebra-la-liberacion-del-director-del-semanario-Mexican-la-opinion-.html

566. On July 26, 2010, Televisa cameraman **Alejandro Hernández** and reporter **Héctor Gordoa**, together with cameraman **Jaime Canales** from *Multimedios Laguna*, and reporter **Óscar Solís** of the newspaper *El Vespertino* were kidnapped in the lagoon region that includes part of the state of Durango and the neighboring state of Coahuila. According to the information received Alejandro Hernández, Jaime Canales and Héctor Gordoa were kidnapped on the afternoon of July 26, 2010, while they were making a news report about a prison in Gómez Palacio, state of Durango. The reporter from *El Vespertino*, Oscar Solís, was kidnapped separately, also on July 26, 2010 and was held captive together with the other reporters.[810] Two media workers were set free by their captors: the reporter Oscar Solís of *El Vespertino* was freed on July 27, 2010, and Héctor Gordoa was liberated on July 29, 2010. Subsequently, the two journalists still held captive, Javier Canales and Alejandro Hernández, were found on July 31, 2010, by the Federal Police.[811] At the time of the events the Office of the Special Rapporteur requested information from the Mexican State and called upon it to do everything in its power to save the lives of these four individuals, and later urged the State to identify and try those responsible for these crimes.[812]

567. According to the information received, the reporters were covering the protests by prisoners and their families at the Social Readaptation Center No. 2 in Gómez Palacio, Durango, who were demanding the reinstatement of its director.[813] Around six in the evening, the media workers appear to have telephoned their editors to alert them that they were being held by a criminal group that objected to the news coverage that had been given to the dispute up to that point.[814] The cameraman from *Multimedios* indicated in his call that the condition set by their captors for freeing them was for three so-called *narco-blog* videos to be broadcast during the midday news of the local channel belonging to *Grupo Milenio*.[815] To save the lives of the kidnapped media workers, the media were at first obliged to accept impositions on their editorial content and to censor themselves in order to avoid any possibility of worsening the situation of the victims.[816] However, faced with a refusal to free all the captured journalists, the media refused to disseminate the material imposed on them.

568. According to information from the Public Security Ministry, on August 5, 2010, in Gómez Palacio, Durango, Federal Police agents detained **Jesús Antonio Villa Nevarez**, 25, **Gilberto Cervantes Pinto**, 33, and **Óscar Manuel Gutiérrez Gómez**, 23, on suspicion of involvement in the kidnapping of the reporters on July 26, 2010. Those detained had in their possession a suitcase with a video camera and microphone, as well as a number of documents belonging to the kidnapped reporters. According to the investigations the detainees belonged to the drug trafficking organization known as the

---

[810] Office of the Special Rapporteur for Freedom of Expression – IACHR. August 4, 2010. Press release No. R78/10. Available at: http://cidh.org/relatoria/showarticle.asp?artID=806&lID=2; Committee to Protect Journalists (CPJ). August 2, 2010. *Liberan en Mexico a periodistas secuestrados.* Available at: http://cpj.org/es/2010/08/liberan-en-mexico-a-reporteros-secuestrados.php

[811] BBC Mundo. Mexico: July 31, 2010. *México: Rescatan a periodistas secuestrados en Durango.* Available at: http://www.bbc.co.uk/mundo/america_latina/2010/07/100731_2244_rescatan__periodistas_secuestrados_mexico_televisa_fp.shtml. Milenio. July 30, 2010. *Exige Segob liberación de periodistas secuestrados*. Available at: http://www.milenio.com/node/498691

[812] Office of the Special Rapporteur for Freedom of Expression – IACHR. August 4, 2010. Press release No. R78/10. Available at: http://cidh.org/relatoria/showarticle.asp?artID=806&lID=2

[813] International Freedom of Expression Exchange (IFEX). August 3, 2010. *Four journalists released after being held for six days by criminals.* Available at: http://www.ifex.org/mexico/2010/08/03/journalists_released/. Milenio. July 28, 2010. *Levantan a 4 reporteros y camarógrafos en Durango.* Available at: http://www.milenio.com/node/496609

[814] Milenio. July 28, 2010. *Levantan a 4 reporteros y camarógrafos en Durango.* Available at: http://www.milenio.com/node/496609. New York Times. July 29, 2010. *Mexican Journalists' Captors demand Broadcast of Videos.* Available at: http://www.nytimes.com/2010/07/29/world/americas/29mexico.html?_r=2&ref=global-home

[815] Milenio. July 28, 2010. *Levantan a 4 reporteros y camarógrafos en Durango.* Available at: http://www.milenio.com/node/496609

[816] Office of the Special Rapporteur for Freedom of Expression – IACHR. August 4, 2010. Press release No. R78/10. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=806&lID=1. International Freedom of Expression Exchange (IFEX). August 3, 2010. *Four journalists released after being held for six days by criminals.* Available at: http://www.ifex.org/mexico/2010/08/03/journalists_released/. Milenio. July 28, 2010. *Levantan a 4 reporteros y camarógrafos en Durango.* Available at: http://www.milenio.com/node/496609

"Pacific Cartel" or the "Sinaloa Cartel." The detainees made a declaration to the authorities that the motive for the kidnapping was to send out a message denouncing alleged corruption among the local authorities in favor of opposing criminal groups.[817]

569. Meanwhile, the Office of the Special Rapporteur received information indicating that one of the kidnapped journalists, *Televisa* cameraman Alejandro Hernández, has had to seek refuge in the United States after he was freed. According to information reported in the press and a letter written by the reporter himself, he sought refuge "because the government displayed us like hunting trophies at a press conference and we received threatening calls at our house for having contradicted [Public Security Secretary, Genaro] García Luna about the fact that it wasn't the Federal Police who freed us, and that he lied when he said they would protect us."[818]

### c. Attacks and Harassment

570. According to the information received, on January 21, 2010, **Juan Aparicio Sebastián** received a death threat from the Deputy Inspector of the State Border Patrol (hereinafter, "PEF") in Tapachula, Chiapas. According to the information received by the Office of the Special Rapporteur, while reporting on a search being carried out by the PEF, the reporter met with the Deputy Inspector of the PEF, who insulted and threatened him. The magazine *El Observador*, edited by Aparicio Sebastián, had published allegations of extortions, thefts, kidnapping, and illegal detentions committed by a number of PEF agents. According to the information received, the then-Office of the Special Prosecutor for Crimes against Journalists assumed the investigation.[819]

571. According to the information received, on January 21, 2010, **Armando Suárez Martínez**, editor of the magazine *Puerto Viejo*, was subject to illegal detention and threats by Yuan Yee Cunningham, Municipal President of Loreto, state of Baja California Sur, and various members of his administration. According to the information received, Suárez Martínez was in the Press Department of Loreto's Municipal Offices when the municipal president and other officials arrived and began to insult and beat him. He was then forced to get into a vehicle of the Department of Public Security and Transit and taken somewhere else where the beatings and death threats continued. According to the information received, the officials forced Suárez Martínez to offer apologies and promise not to criticize the municipal authorities before later being freed, after four and a half hours.[820] The State informed the Office of the Special Rapporteur that on January 28, 2010, the PGR launched a criminal investigation for the crime of illegal detention and other possible crimes, and on March 26, 2010, a criminal investigation was filed for the crimes of making threats and physical assault.[821]

---

[817] Mexican President's Office. Communication 449, August 5, 2010. Available at: http://presidencia.gob.mx/?DNA=85&page=1&Prensa=15137&Contenido=59152. La Jornada. August 6, 2010. *Presenta la PF a tres presuntos plagiarios de cuatro periodistas.* Available at: http://www.jornada.unam.mx/2010/08/06/index.php?section=politica&article=005n1pol

[818] Proceso. December 15, 2010. *Periodistas en el olvido*. Available at: http://www.proceso.com.mx/rv/modHome/detalleExclusiva/86410. La Jornada. September 17, 2010. *"Montaje" de la SSP, el "rescate" de un camarógrafo de Durango, acusan.* Available at: http://www.jornada.unam.mx/2010/09/17/index.php?section=politica&article=018n2pol. El Paso Times. September 15, 2010. '*I'm scared for my life': Televisa cameraman seeks asylum in US.* Available at: http://www.elpasotimes.com/news/ci_16077238. Periodistas de a Pie. December 15, 2010. *Colecta navideña para apoyar a nuestros colegas en el exilio*. Available at: http://periodistasdeapie.wordpress.com/2010/12/15/colecta-navidena-para-apoyar-a-nuestros-colegas-en-exilio/

[819] International Freedom of Expression Exchange (IFEX). January 29, 2010. *Police commander threatens magazine editor in Chiapas.* Available at: http://www.ifex.org/mexico/2010/01/29/aparicio_sebastian_death_threat/

[820] Centro de Journalism and Ética Pública (CEPET)/IFEX. February 2, 2010. *Magazine editor abducted, beaten and threatened by mayor and municipal employees.* Available at: http://ifex.org/mexico/2010/02/02/suarez_martinez_death_threat/. La Jornada. January 27, 2010. *Edil de Loreto agrede y amenaza a periodista*. Available at: http://www.jornada.unam.mx/2010/01/28/index.php?section=states&article=031n2est

[821] PGR, Doc. No. SJAI/CAIA/DGCI/2816/2010 of July 20, 2010, Annex to Communication OEA-02567 from Mexico's Permanent Representation to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

572. According to the information received, on January 27, 2010, **journalists from the radio broadcasting group Organización Impulsora de Radio** (hereinafter OIR) were threatened via a message left beside an OIR vehicle which was set on fire in Los Mochis, Sinaloa. On arriving at the burnt-out vehicle, the police saw a message written on a piece of cloth that said: "The same thing will happen to all reporters. We'll burn you. Signed: La Mochomera." Directors of the OIR filed a report with Sinaloa's Public Prosecutor's Office.[822]

573. On February 4, 2010, an attack was carried out on the home of journalist **Rafael Martínez de Escobar**, director of the newspaper *Tabasco al Día,* in Villahermosa, Tabasco. According to the information received by the Office of the Special Rapporteur, unknown assailants threw three Molotov cocktails which landed where the reporter had set up a billboard accusing officials of the state oil company PEMEX of corruption. Only one of the bombs exploded.[823] The State informed the Office of the Special Rapporteur that on February 10, 2010, the PGR opened a criminal investigation for the crime of damaging private property.[824]

574. On February 10, 2010, the Office of the Special Rapporteur obtained information from the CNDH, according to which journalists **Carlos Dueñas** and **Guillermo González**, correspondent and cameraman, respectively, at Televisa Tijuana were allegedly assaulted by police in Veracruz.[825]

575. According to the information received, on February 16, 2010, the photographers for the newspaper *AZ* **Víctor Hugo Yáñez Ramos** and **Estaban Rodríguez Rodríguez** were beaten and had their camera equipment taken from them by various police officers of the state of Veracruz Public Security Secretariat while they reported on a concert. According to the information received, the damage to the cameras was compensated by the state government, after intervention by the State Commission for the Defense of Journalists. However, the journalists have received no response following their report filed with the Public Prosecutor's Office.[826] Within the framework of its visit, the Office of the Special Rapporteur requested the State provide complete information about the case.[827]

576. According to the information received, on February 17, 2010, the reporters **Daniel Domínguez** and **Óscar Amaya** of *Radio 860*; **Carlos Moreno** of the online media site *La Polaka*; **Miguel Lozano** of *Radio Net 1490*; and **David Fuentes** of local channel *Canal 5*, also a correspondent for the Notimex agency, were assaulted by Federal Police and members of the Presidential Guard. According to information from the CNDH office in Ciudad Juárez, the media workers were beaten and had their camera equipment seized, allegedly by federal officials, while covering protests by youths in Ciudad Juárez, in the state of Chihuahua, in response to a visit by President Calderón and a business delegation, who were

---

[822] International Freedom of Expression Exchange (IFEX). February 1, 2010. *Broadcasting corporation's vehicle set on fire, journalists threatened.* Available at: http://www.ifex.org/mexico/2010/02/01/oir_fire/. La Jornada. January 28, 2010. *Edil de Loreto agrede y amenaza a periodista.* Available at: http://www.jornada.unam.mx/2010/01/28/index.php?section=states&article=031n2est. Milenio. January 28, 2010. *Sinaloa: queman vehículo a dueña de radiodifusora.* Available at: http://impreso.milenio.com/node/8710602

[823] International Freedom of Expression Exchange (IFEX). February 8, 2010. *Bombs thrown at journalist's home in Tabasco.* Available at: http://www.ifex.org/mexico/2010/02/08/martinez_de_escobar_attack/. Proceso. February 4, 2010. *Atacan con bombas molotov la casa del director de Tabasco al Día.* Available at: http://www.proceso.com.mx/rv/modHome/pdfExclusiva/76203. La Jornada. February 5, 2010. *Atacan casa del director de Tabasco al Día.* Available at: http://www.jornada.unam.mx/2010/02/05/index.php?section=states&article=031n4est

[824] PGR, Doc. No. SJAI/CAIA/DGCI/2816/2010 of July 20, 2010, Annex to Communication OEA-02567 from Mexico's Permanent Representation to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[825] CNDH. Press release CGCP/037/10, February 10, 2010. Available at: http://www.cndh.org.mx/comsoc/compre/2010/037.pdf

[826] Centro de Periodismo y Etica Pública (CEPET)/IFEX. April 12, 2010. *Elementos de Seguridad Pública de Veracruz golpean y roban a fotógrafos.* Available at: http://www.ifex.org/mexico/2010/04/15/veracruz_periodistas/es/. CEPET. April 12, 2010. *Elementos de Seguridad Pública de Veracruz agreden y despojan a fotógrafos*. Available at: http://libexmexico.wordpress.com/2010/04/page/2/

[827] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

meeting with local authorities to define the security strategy to be implemented in the city.[828] Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.[829]

577. The CNDH reported that on February 18, 2010, **eight journalists** were victims of defamatory texts posted on the Internet, and three others received threats.[830] The CNDH began an investigation into the reporters' claims.[831]

578. According to the information received, on February 18, 2010, federal police officers assaulted reporter **Hugo Alfredo Olivera Cartas** from the newspaper *La Voz de Michoacán* when he was on his way to cover an armed confrontation in Chiquihuitillo, in the state of Michoacán. Olivera reported the incident to the CNDH.[832] The reporter Hugo Alfredo Olivera Cartas was later murdered on July 6, 2010 (see *supra*). Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State on the physical assault on Olivera Cartas on February 18.[833] In a reply received on November 12, 2010, the State reported that the Public Security Ministry, through its Human Rights Department and the Federal Police's Internal Affairs Department, requested a report on the events from the operational departments and carried out a number of inquiries.[834] The Ministry also indicated that the Federal Police's operational departments denied the journalist's accusations and that both the CNDH and the investigation departments of the Ministry and the Federal Police were continuing their investigations.[835]

579. According to the information received, on February 19, 2010, **Irma Nelly Vázquez Colorado**, newspaper reporter for *La Opinión de Poza Rica*, was assaulted and threatened by staff allegedly from the local penitentiary in Misantla, Veracruz. According to the information available, the reporter, accompanied by other colleagues, was reporting on a supposed distribution of supplies among the inmates of Misantla by the alleged guards of the local prison, the wife of the former Prison Service Director of the state of Veracruz government and candidate for the municipal presidency in Misantla. According to the information received, when the official's wife realized that the reporter was taking photographs, she seized the camera from her while the guards assaulted her. The other journalists present intervened to stop the attack.[836]

---

[828] CNDH. Press release of February 18, 2010. CGCP/044/10. Available at: http://www.cndh.org.mx/comsoc/compre/2010/044.pdf. International Freedom of Expression Exchange (IFEX). February 26, 2010. *Journalists assaulted by members of Presidential Guard.* Available at: http://www.ifex.org/mexico/2010/02/26/juarez_journalists_assaulted/. *La Jornada*. February 18, 2010. *Con violencia impiden a activistas participar en el foro de Ciudad Juárez.* Available at: http://www.jornada.unam.mx/2010/02/18/index.php?section=politica&article=005n1pol

[829] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[830] Inter-American Press Association. 19-22 March, 2010. *Country Report: Mexico.* Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=26&infoid=785&idioma=us. El Universal. February 19, 2010. *CNDH indaga detenciones a periodistas.* Available at: http://www.eluniversal.com.mx/nacion/175763.html

[831] CNDH, Press release CGCP/044/10, February 18, 2010. Available at: http://www.cndh.org.mx/comsoc/compre/2010/044.pdf

[832] Committee to Protect Journalists (CPJ). June 7, 2010. *Crece hostigamiento de fuerzas federales a la prensa en Mexico.* Available at: http://cpj.org/es/2010/06/crece-hostigamiento-de-fuerzas-federales-a-la-pren.php

[833] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[834] Mexican State,"Reply to the Information Request made by the Special Rapporteurs for Freedom of Expression of the OAS and the UN, in Follow-up to their Official Visit to Mexico between August 9-24, 2010" Annex to Communication OEA-02567 from Mexico's Permanent Representation to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[835] Mexican State, "Reply to the Information Request made by the Special Rapporteurs for Freedom of Expression of the OAS and the UN, in Follow-up to their Official Visit to Mexico between August 9-24, 2010", Annex to Communication OEA-02567 from Mexico's Permanent Representation to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[836] International Freedom of Expression Exchange (IFEX). April 21, 2010. *Custodios de la Dirección de Reclusorios de Veracruz golpean y amenazan a reportera*. Available at: http://www.ifex.org/mexico/2010/04/21/vazquez_death_threat/es/; Proceso. February 19, 2010. *En 2009, 13 periodistas fueron asesinados y 189 agredidos: CEPET*. Available at: http://www.proceso.com.mx/rv/modHome/detalleExclusiva/76740

580. According to the information received, on March 9, 2010, **reporters from various media outlets from the city of Saltillo** in the state of Coahuila were assaulted by the governor's security staff at the Escuela Normal Básica just moments before a press conference which they were prevented from attending to carry out their reporting work.[837]

581. According to the information received, on March 9, 2010, reporter **José Rosas** Cano of *SBC Canal 53*, in Zacapoaxtla, Puebla was assaulted by members of an alleged civil organization. According to the information received by the Office of the Special Rapporteur, Rosas Cano was investigating the *modus operandi* of a supposed single-mother support program being run by an alleged civil organization in the Zacapoaxtla convention center. While he was taking some photographs, one of the accused approached him, refused to speak to the reporter and asked him to leave. Meanwhile, another person began pushing him to eject him from the premises, striking the journalist's equipment and face, which was recorded on camera. The assault was reported to the Public Prosecutor's Office.[838]

582. According to the information received, on March 26, 2010, a **photographer for *El Heraldo de Chihuahua***, whose name was not given, was assaulted by an unknown person in the city of Chihuahua, state of Chihuahua. According to the information received by the Office of the Special Rapporteur, the journalist was reporting on a murder story. On arriving at the scene of the crime, a group of people were preventing journalists representing various media outlets from taking photographs. One member of the group approached the photographer from *El Heraldo* and assaulted him before disappearing into the crowd. At the scene various police officers were present who did nothing to prevent the attack. The journalist filed a police report with the state of Chihuahua's Public Prosecutor's Office.[839]

583. According to the information received, on March 26, 2010, **Miguel Ángel Cervantes Gómez**, correspondent for the newspaper *Novedades Acapulco* in Ometepec, state of Guerrero, received death threats after accusing the municipal authorities of removing stone from the Quetzalpa river.[840]

584. At the end of March 2010, according to the information received by the Office of the Special Rapporteur, military personnel assaulted and threatened **a cameraman, whose name was withheld, from the *Canal 44*** television station in Ciudad Juárez. According to the information available, while the journalist was reporting on the arrest of alleged criminals, the military personnel tried to seize his camera and detain him without giving a reason, all of which was recorded on camera. *Canal 44* filed a report on the incident with the Ministry of National Defense (hereinafter "Sedena"), who said they would investigate the matter.[841] Within the framework of its visit, the Office of the Special Rapporteur requested

---

[837] CNDH. Press release CGCP/064/10, March 9, 2010. Available at: http://www.cndh.org.mx/comsoc/compre/2010/064.pdf. CEPET. March 10, 2010. *Escoltas de gobernador agreden y amagan con arma de fuego a reporteros* Available at: http://libexmexico.wordpress.com/2010/03/10/escoltas-de-gobernador-agreden-y-amagan-con-arma-de-fuego-a-reporteros/

[838] CEPET. March 12, 2010. *Supuestos promotores de programas sociales golpean a reporter de TV.* Available at: http://libexmexico.wordpress.com/2010/03/10/escoltas-de-gobernador-agreden-y-amagan-con-arma-de-fuego-a-reporteros/; Síntesis. *Agreden a reporteros*. March 10, 2010. Available at: http://www.periodicosintesis.com.mx/noticias/58285/Agreden-a-reporteros. "Zacapoaxtla SBC 53 Agreden a Reportero de Canal 53", *Canal SBC 53,* March 9, 2010. Available at: http://www.youtube.com/watch?v=LA_Fr0u0KkQ

[839] CEPET. March 29, 2010. *Agreden a reportero gráfico ante la inacción de agentes policíacos.* Available at: http://libexmexico.wordpress.com/2010/03/10/escoltas-de-gobernador-agreden-y-amagan-con-arma-de-fuego-a-reporteros/. Colegio de Periodistas del Estado de Chihuahua. March 26, 2010. *Civiles golpearon a fotoreportero de El Heraldo*. Available at: http://www.colpechi.org/Civiles-golpearon-a-fotoreportero.html

[840] IRZA news agency. March 28, 2010. *Cuñado del alcalde de Ometepec amenazó de muerte a periodista.* Available at: http://www.agenciairza.com/2010/03/cunado-del-alcalde-de-ometepec-amenazo-de-muerte-a-periodista/. El Diario de Guerrero. *Un periodista teme por su vida.* Available at: *http://www.diariodeguerrero.com.mx/CGI-BIN/diariodegro/notipales/shownotipal.php?idnote=20069*

[841] Committee to Protect Journalists (CPJ)/IFEX. June 7, 2010. *Federal forces increasingly harass journalists*. Available at: http://www.ifex.org/mexico/2010/06/08/calderon_federal_forces/. CEPET. March 25, 2010. *Elementos del Ejército cometen abusos contra camarógrafo.* Available at: http://libexmexico.wordpress.com/2010/03/10/escoltas-de-gobernador-agreden-y-amagan-con-arma-de-fuego-a-reporteros/; El Estatal. March 25, 2010. *Agreden militares a reportero del canal 44.* Available at:

Continued…

detailed information from the Mexican State about the case.[842] In a reply received on November 12, 2010, the State reported that the information provided by Sedena indicated that there was an unresolved complaint filed with the CNDH and that Sedena's Internal Affairs Unit had begun investigation proceedings that had not yet reached a conclusion.[843] In its observations on the preliminary version of this report, the Mexican State reported that "the Ministry of National Defense confirmed that on November 30, 2010, the National Human Rights Commission (CNDH) informed them that the matter had been closed... due to lack of grounds for continuing to investigate."[844]

585. According to the information received on April 1, 2010, **a reporter and photographer from *El Heraldo de Chihuahua*** were prevented from carrying out their work by members of the Mexican Armed Forces who deleted the photographs they had taken. According to the information received, while the reporters were in San Francisco de Conchos, state of Chihuahua, reporting on events surrounding the Easter festivities and on the police operation, they appear to have observed and photographed members of the military abusing local citizens. On noticing this, the soldiers approached the journalists, seized their photographic equipment, and deleted all their images at gun point.[845] Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.[846] In a reply received on November 12, 2010, the State reported that the Ministry of National Defense had no record of the case.[847]

586. According to the information received, on April 2 2010, two members of the military tried to seize a camera from **a photographer from the newspaper *El Mexicano*** while he was taking photos of a vessel which was being towed in Villa Ahumada, in the state of Chihuahua.[848] Non-governmental organizations such as the CPJ reported that the reporter kept his identity secret for his own safety and reported the incident to the state of Chihuahua's Human Rights Commission.[849] Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about

…continuation
http://www.elestatal.com/index.php?option=com_content&view=article&id=5865:agreden-militares-a-reportero-del-canal-44&catid=3:la-. Canal 44 Noticias, *Elementos del Ejército cometen abusos contra camarógrafo de esta misma empresa,* 2010. Available at: http://www.youtube.com/watch?v=cH1__vfs7Wo

[842] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[843] Mexican State,"Reply to the Information Request made by the Special Rapporteurs for Freedom of Expression of the OAS and the UN, in Follow-up to their Official Visit to Mexico between August 9-24, 2010" , Annex to Communication OEA-02567 from Mexico's Permanent Representation to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[844] Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

[845] International Freedom of Expression Exchange (IFEX). April 20, 2010. *Militares obstaculizan a reporteros y los obligan a borrar material fotográfico.* Available at: http://www.ifex.org/mexico/2010/04/23/periodistas_chihuahua/es/. Committee to Protect Journalists (CPJ). June 7, 2010. *Crece hostigamiento de fuerzas federales a la prensa en Mexico*. Available at: http://cpj.org/es/2010/06/crece-hostigamiento-de-fuerzas-federales-a-la-pren.php. *El Mexicano*. April 3, 2010. *Militares amenazan a reportero de la OEM*. Available at: http://www.oem.com.mx/elmexicano/notas/n1582188.htm

[846] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[847] Mexican State,"Reply to the Information Request made by the Special Rapporteurs for Freedom of Expression of the OAS and the UN, in Follow-up to their Official Visit to Mexico between August 9-24, 2010", Annex to Communication OEA-02567 from Mexico's Permanent Representation to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[848] Committee to Protect Journalists (CPJ). June 7, 2010. *Crece hostigamiento de fuerzas federales a la prensa en Mexico.* Available at: http://cpj.org/es/2010/06/crece-hostigamiento-de-fuerzas-federales-a-la-pren.php

[849] Committee to Protect Journalists (CPJ). June 7, 2010. *Crece hostigamiento de fuerzas federales a la prensa en Mexico.* Available at: http://cpj.org/es/2010/06/crece-hostigamiento-de-fuerzas-federales-a-la-pren.php

the case.[850] In a reply received on November 12, 2010, the State reported that the Ministry of National Defense had no record of the case.[851]

587. According to the information received, on April 14, 2010, **Jade Ramírez Cuevas**, reporter and broadcast reporter for *Radio Universidad de Guadalajara*, received threats via email as follows: "YOU LOOKED REAL GOOD SATURDAY … AND YOU SOUND HOT ON THE RADIO … CARRY ON INVESTIGATING LITTLE REPORTER BITCH … I TOLD YOUR IDIOT BROTHER EL GRINGO AND NOW YOU'VE GONE AND FUCKED YOURSELF." This threat was in addition to others made to the journalist while she was reporting on the social and community protest against the construction of *El Zapotillo* hydroelectric dam in the state of Jalisco. During previous days and for three consecutive nights, Jade Ramírez received phone calls at home at three in the morning without anyone speaking on the other end of the line. The threat was reported to Jalisco's Public Prosecutor's Office.[852]

588. According to the information received, on April 14, 2010, **Sugeyry Gándara**, a reporter for the newspaper *Tiempo*, was assaulted by a municipal police officer in Chihuahua, in the state of Chihuahua. According the information available, the journalist was reporting on arrests being made by the police at the end of a concert. On noticing that the reporter was taking photographs of the arrest, a policeman insulted her and threw her camera into her face. Chihuahua's municipal president apologized for the assault and indicated that the officer responsible would be punished.[853]

589. According to the information received, on April 14, 2010, **Valentín Hierro**, a photographer for the online newspaper *Entre Líneas,* was beaten and threatened by a state police officer in the city of Chihuahua, Chihuahua state. According to the information received by the Office of the Special Rapporteur, Hierro was trying to take a photograph of a wounded police officer being taken out of an ambulance in the Hospital Central de Chihuahua. However, one of the police officers at the scene hit him to prevent him taking photographs.[854]

590. According to the information received, on April 19, 2010, **Angelina Albarrán Morales** and **at least 25 other journalists** received death threats in the state of Morelos. According to the information received, the death threats against the journalists were made via various anonymous emails containing threats and intimidations. The fear felt by the journalist Angelina Albarrán Morales from the threats has led to her suffering from emotional, professional, and financial problems.[855]

---

[850] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[851] Mexican State,"Reply to the Information Request made by the Special Rapporteurs for Freedom of Expression of the OAS and the UN, in Follow-up to their Official Visit to Mexico between August 9-24, 2010", Annex to Communication OEA-02567 from Mexico's Permanent Representation to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[852] CENCOS. April 22, 2010. *Segunda amenaza a periodista de Jalisco en menos de un mes.* Available at: http://www.cencos.org/es/node/23328. Campaña Permanente de Protection a Periodistas. September 7, 2010. *Síguele investigando reporterita y ya te cogió la chingada*. Available at: http://www.libertad-expresion.org.mx/noticias/%e2%80%9csiguele-investigando-reporterita-y-ya-te-cogio-la-chingada%e2%80%9d/#more-5715. International Freedom of Expression Exchange (IFEX). April 19, 2010*. Reporter receives death threats.* Available at: http://ifex.org/mexico/2010/04/15/death_threats/

[853] CEPET. April 15, 2010. *Agreden policías estatales y municipales a periodistas en Chihuahua.* Available at: http://libexmexico.wordpress.com/2010/04/. Colegio de Periodistas del Estado de Chihuahua. April 15, 2010. *Agreden policías estatales y municipales a reporteros.* Available at: http://www.colpechi.org/Agreden-policias-esatatales-y.html. El Devenir de Chihuahua. April 15, 2010. *Se disculpa Álvaro Madero por agresión a reportera de Tiempo.* Available at: http://diario.devenir.com.mx/index.php?option=com_content&view=article&id=1529:vigilaran-200-federales-la-capital-de-chihuahua-alvaro-madero&catid=36:chihuahua&Itemid=56

[854] International Freedom of Expression Exchange (IFEX). April 20, 2010. *Municipal and state police assault journalists in Chihuahua.* Available at: http://www.ifex.org/mexico/2010/04/20/hierro_assaulted/ Colegio de Periodistas del Estado de Chihuahua. April 15, 2010. *Agreden policías estatales y municipales a reporteros.* Available at: http://www.colpechi.org/Agreden-policias-esatatales-y.html

[855] State of Morelos Independent Human Rights Commission. October 28, 2010. Libertad de Expresión bajo ataque pone en riesgo derechos democráticos. Available at: http://cidhmorelos.wordpress.com/2010/10/28/libertad-de-expresion-bajo-ataque-pone-en-riesgo-derechos-democraticos-2/

591. According to the information received, on April 27, 2010, an attack was made on a humanitarian convoy in which the journalists **Érika Ramírez** and **David Cilia** from the magazine *Contralínea* were traveling as it headed toward the community of San Juan Copala, in the state of Oaxaca. According to the information received, the journalists, who had gone to San Juan Copala to report on the murder of female broadcasters from the community radio station *La Voz que Rompe el Silencio*, Felícitas Martínez and Teresa Bautista, committed on April 7, 2008, were trapped for two days in the area where the events took place. On the night of April 29, 2010, an operation was carried out in which the reporters were rescued and taken to the city of Santiago Juxtlahuaca, Oaxaca. David Cilia received two bullet wounds in the left leg and another in the hip area. The PGR exercised its authority to assert jurisdiction to investigate the case.[856]

592. According to the information received, on April 27, 2010, in Monterrey, state of Nuevo León, **Ximena Peredo**, a columnist for the newspaper *El Norte* and the biologist **Antonio Hernández Ramírez**, both members of the Colectivo Ciudadano in Defensa de la Pastora [a collective to defend an area of natural parkland from development], received an email containing threats. According to the information received, the email contained the following text: "now it's time you quit fucking around […] we've got tabs on your little butterfly- and bird-loving homo biologist, he's the first one who should quit, we're watching him and if he didn't stop his bullshit with the first course, let's just say he can't complain he wasn't told […] the little biologist and the journalist [should] stop screwing around and they're going to fuck up the stadium the stupid fucks […] you know, your little biologist friend knows that we're not fucking around, now you know and if you don't stop then we're moving in […] that means right now […] get it?" The collective is known for its actions in favor of environmental protection and Peredo has written on these topics in her column.[857]

593. According to the information received, on May 6, 2010, **Luz del Carmen Sosa**, a reporter for *El Diario* of Ciudad Juárez, and photographer **Mario Bañuelos**, were harassed by soldiers while reporting on the disappearance of three state employees in the municipality of El Porvenir, in the state of Chihuahua. According to the information received, the soldiers prevented the journalists from carrying out their work, pointing guns at Bañuelos, trying to seize her camera and threatening to arrest both journalists. The reporters filed a report on the incident with the CNDH.[858] Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.[859] In a reply received on November 12, 2010, the State reported that the information provided by the Ministry of National Defense indicated that a complaint was being processed with the CNDH.[860]

594. On 10 May, 2010, unidentified persons entered the apartment of **Laura Castellanos**, a freelance journalist working for *Gatopardo* magazine, while the journalist was traveling abroad promoting her book *Mexico Armado*. The unidentified persons who entered the apartment rummaged through her personal items, taking away journalistic information. The journalist reported the theft to the then-Office of

---

[856] Office of the Special Rapporteur for Freedom of Expression – CIDH. April 30, 2010. Press Release No. R48/10. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=799&lID=1; *Contralínea*. May 9, 2010. *El rescate.* Available at: http://contralinea.info/archivo-revista/index.php/2010/05/09/el-rescate/. Committee to Protect Journalists (CPJ). April 30, 2010 *Periodistas desaparecidos son rescatados en Mexico; uno esta herido*. Available at: http://cpj.org/es/2010/04/periodistas-desaparecidos-son-rescatados-en-mexico.php. Comisión Nacional para el Desarrollo de los Pueblos Indígenas. April 30, 2010. *Apuran investigación de emboscada*. Available at: http://www.cdi.gob.mx/index.php?option=com_content&view=article&id=951:30-de-April-de-2010&catid=17&Itemid=200008

[857] CENCOS. April 30, 2010. *Amenazas contra miembros del Colectivo Ciudadano en Defensa de la Pastora.* Available at: http://www.cencos.org/es/node/23422. Vanguardia. April 30, 2010. *Agreden en mensaje cibernético a defensores de La Pastora.* Available at: http://www.vanguardia.com.mx/agreden_en_mensaje_cibernetico_a_defensores_de_la_pastora-493973.html

[858] Committee to Protect Journalists (CPJ). June 7, 2010. *Crece hostigamiento de fuerzas federales a la prensa en Mexico.* Available at: http://cpj.org/es/2010/06/crece-hostigamiento-de-fuerzas-federales-a-la-pren.php

[859] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[860] Mexican State, "Respuesta a la Solicitud de Información que Hicieran los Relatores Especiales para la Libertad de Expresión de la OEA y la ONU, en Seguimiento a su Visita Oficial a México del 9 al 24 de agosto de 2010", Annex to Communication OEA-02567 from Mexico's Permanent Representation to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

the Special Prosecutor for Crimes against Journalists, as well as the accessing of her email and telephone and the constant surveillance by people of "military appearance." She also filed a complaint with the National Human Rights Commission. According to information from non-governmental organizations such as Article 19, the theft forms part of a series of acts designed to intimidate, including telephone threats, hacked email accounts and harassment.[861]

595. According to the information received, on May 19, 2010, **Marcelo López** and **Félix Nolasco** of *El Heraldo de Tabasco*, **Carlos Castro** of *Diario Olmeca*, **Jaime Ávalos** of *Novedades*, **Eric Banda** of *Tabasco Hoy* and **David Michel Estrada** of *El Independiente of the Sureste* were beaten and intimidated with gun shots by riot police belonging to the Villahermosa State Police, in the state of Tabasco, while they were reporting on a taxi driver protest against the increases in fares imposed by the Ministry for Communications and Transport (hereinafter, "SCT"). According to the information received, while the police and SCT inspectors tried dispersing the protestors and their vehicles, the reporters approached the inspectors to ask them about the incident, to which the police responded using violence. Marcelo López was hospitalized after suffering a traumatic brain injury. The state of Tabasco's Human Rights Commission filed an investigation to document and request information from the authorities involved.[862] Within the framework of its visit, the Office of the Special Rapporteur requested the State provide complete information about the case.[863]

596. According to the information received, on May 24, 2010, the correspondent for the newspaper *La Opinión Milenio* in the state of Durango, **Karla Tinoco Santillán**, received telephone threats allegedly as a result of a report on the impact of drug trafficking on the municipality of Vicente Guerrero, in the state of Durango. One week after receiving the threats, she was fired from her job. Upon becoming aware of the threats, the newspaper's director of information had requested that she come to the media outlet's offices in Torreón, in the state of Coahuila. On her return to Durango, on May 31, 2010, the journalist was notified of her dismissal. According to the information available, the dismissal had been requested because the reporter posed a risk to the safety of the other newspaper employees.[864]

597. According to the information received, on May 25, 2010, the photographer for *El Sol de Tijuana*, **José Luis Camarillo Téllez**, was intimidated by police in Tijuana, in the state of Baja California. While reporting on the police operation following a violent altercation in Tijuana, a police officer tried to run him over with his patrol car. Shortly afterwards, other police officers insulted him, threatened to arrest him, prevented him from carrying out his work, and tried to seize his camera equipment from him. The harassment was reported to the State Public Prosecutor's Office and a complaint was filed with the Special Prosecutor's Office for Human Rights and Citizen Protection of the state of Baja California.[865]

---

[861] CNDH. Press release CGCP/147/10, June 2, 2010. Available at: http://www.cndh.org.mx/comsoc/compre/2010/147.pdf. Campaña Permanente de Protección a Periodistas. 26 May, 2010. *El creciente acoso hacia reportera de investigación es causa de preocupación.* Available at: http://www.libertad-expresion.org.mx/boletines/alerta-le-el-creciente-acoso-hacia-reportera-de-investigacion-es-causa-de-preocupacion/#more-4806. La Jornada. June 2, 2010. *Levanta denuncia la periodista Laura Castellanos ante la PGR y la CNDH.* Available at: http://www.jornada.unam.mx/2010/06/02/index.php?section=politica&article=018n2pol

[862] International Freedom of Expression Exchange (IFEX). May 26, 2010. *Riot police assault journalists during protest*. Available at: http://www.ifex.org/mexico/2010/05/26/villahermosa_journalists/ Tabasco Hoy. May 26, 2010. *Va CDEH contra funcionarios por ataque a prensa*. Available at: http://www.tabascohoy.com.mx/noticia.php?id_nota=193303

[863] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[864] International Freedom of Expression Exchange (IFEX). June 23, 2010. *Reporter fired after receiving threats over article on drug-related violence.* Available at: http://www.ifex.org/mexico/2010/06/24/tinoco_santillan_dismissed/. Campaña Permanente de Protection a Periodistas. September 7, 2010. *Síguele investigando reporterita y ya te cogió la chingada.* Available at: http://www.libertad-expresion.org.mx/noticias/%E2%80%9Csiguele-investigando-reporterita-y-ya-te-cogio-la-chingada%E2%80%9D/

[865] International Freedom of Expression Exchange (IFEX). June 1, 2010. *Police officers harass, try to run over journalist.* Available at: http://www.ifex.org/mexico/2010/06/01/camarillo_assaulted/. El Sol de Tijuana. May 26, 2010. *Atiende PDH el case Camarillo.* Available at: http://www.oem.com.mx/elsoldetijuana/notas/n1648342.htm

598. In June 2010, journalists **Isaín Mandujano** and **Ángeles Mariscal**, correspondents for the magazine *Proceso* and the newspaper *La Jornada* in the state of Chiapas, reported being victims of a smear campaign by the state authorities. According to reports by the Federal District Human Rights Commission, the journalists have given a voice to various political actors and members of society in the state of Chiapas, which has led to conflicts and discriminatory acts by the state government and other influential local groups. They also suffered from defamatory accusations made through various media outlets, including those belonging to the Chiapas state government.[866]

599. According to the information received, in the early morning of June 1, 2010, in different incidents, **three distributors of the newspaper *Noroeste*** in Culiacán, in the state of Sinaloa, had motorcycles seized by unknown armed assailants. One of the deliverymen suffered bullet wounds. According to the information received by the Office of the Special Rapporteur, the first robbery took place at approximately 5:30 a.m. on June 1, 2010, when a group of armed men in an SUV intercepted a female distributor and stole her motorcycle. The second attack took place at approximately 5:50 when a group of unknown armed men in an SUV followed another newspaper distributor until they blocked his path. They forced him to stop and get into the vehicle in which they were travelling. Later they made him get out in another location where death threats were made by one of the assailants, who shot him in the abdomen and in the hand. The last robbery took place shortly afterwards when a group of unknown armed men on board a similar vehicle as those used in the other robberies stole the motorcycle used by another distributor for *Noroeste*.[867]

600. According to the information received, on June 1, 2010, **Roberto Tepepexteco**, a reporter for the newspaper *El Debate de los Calentanos*, was assaulted and threatened by the *síndico procurador* (municipal leader) of Arcelia, in the state of Guerrero. According to the information received by the Office of the Special Rapporteur, the reporter was in the offices of the municipal presidency of Arcelia, when the *síndico*, noting his presence, grabbed him by the neck and shirt and tried to hit him. The cause of the assault, according to the information available, was the publication of an article which denounced the public official's absence from his work in the local administration.[868]

601. According to information from the CNDH, on June 2, 2010, in an operation to disperse protestors who were blocking Río Churubusco Avenue in Coyoacán, Mexico City, members of the riot police assaulted a **group of journalists** who were reporting on the incident and prevented them from carrying out their work.[869] Within the framework of its visit, the Office of the Special Rapporteur requested of the State complete information about the case.[870] In its observations on the preliminary version of this report, the Mexican State reported that, according to information from the Public Security Ministry of the

---

[866] Federal District Human Rights Commission. Press Release 202/2010, July 23, 2010. Available at: http://www.cdhdf.org.mx/index.php/boletines/564-boletin-2022010. International Freedom of Expression Exchange (IFEX). July 29, 2010. *Denuncian periodistas campaña de calumnias.* Available at: http://www.ifex.org/mexico/2010/07/29/chiapas_periodistas/es/ Noticias MVS. July 23, 2010. *CDHDF manifiesta solidaridad con periodistas.* Available at: http://www.noticiasmvs.com/CDHDF-manifiesta-solidaridad-con-periodistas.html

[867] International Freedom of Expression Exchange (IFEX). June 4, 2010. *Newspaper's delivery staff harassed, one vendor shot.* Available at: http://www.ifex.org/mexico/2010/06/04/repartidores_atacados/. Noroeste newspaper. June 2, 2010. *Atacan a repartidores de Noroeste.* Available at: http://noroeste.com.mx/publicaciones.php?id=588242&id_seccion. El Economista. June 4, 2010. *Sicarios atacan a repartidores de periódico en Sinaloa.* Available at: http://eleconomista.com.mx/seguridad-publica/2010/06/04/sicarios-atacan-repartidores-periodico-sinaloa

[868] CEPET. June 2, 2010. *Funcionario público insulta y amenaza a reportero.* Available at: http://libexmexico.wordpress.com/2010/06/02/funcionario-publico-insulta-y-amenaza-a-reportero/. La Jornada Guerrero. June 19, 2010. *Denuncia reportero a síndico de Arcelia*. Available at: http://www.lajornadaguerrero.com.mx/2010/06/20/index.php?section=sociedad&article=006n3soc

[869] CNDH. Press release CGCP/147/10, June 2, 2010. Available at: http://www.cndh.org.mx/comsoc/compre/2010/147.pdf; El Universal. June 2, 2010. *CNDH rechaza agresión a periodistas.* Available at: http://www.eluniversal.com.mx/notas/685077.html

[870] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

Federal District, "the demonstrators were only dispersed and... journalists who were there covering the event were not beaten."[871]

602. According to the Federal District's Human Rights Commission and the CNDH, on June 10, 2010, the *MVS Noticias* correspondent **Ixtli Martínez** received a bullet wound while reporting on a clash between two rival groups fighting for control over the Law and Social Science Faculty of Oaxaca's Benito Juarez Autonomous University (UABJO). The CNDH filed an investigation into the case and requested the state of Oaxaca to take precautionary measures to protect Martínez and her husband Virgilio Sánchez, also a journalist, to protect them from harassment or intimidation.[872]

603. According to the information received, on June 23, 2010, the distribution manager of the magazine *Contralínea Puebla*, **Israel Maldonado Flores**, was assaulted, robbed and threatened in Izúcar de Matamoros, in the state of Puebla, allegedly by members of a political party. According to the information received by the Office of the Special Rapporteur, Maldonado Flores was delivering the magazine when around 15 armed men got out of five vehicles, said they were PAN supporters, and then beat him, seized the magazines he was delivering, cash, and a laptop, and threatened him to force him to leave. The assailants said that the front-page report affected their candidate. This report accused this candidate—who was then running for the Puebla governorship—of alleged anomalies while Secretary of the State's Finance Ministry.[873]

604. According to information from the Federal District Human Rights Commission, on July 1, 2010, 30 hooded Federal Police (hereinafter "PF") officers broke into the offices of the **Journalists and Media Workers Association of Ciudad Juarez** [*Sociedad de Periodistas y Comunicadores de Ciudad Juárez*], supposedly looking for a group of kidnappers. The reporters were held at gun point and threatened by the agents, who did not properly identify themselves, and were warned they would be shot if they put up any resistance. The uniformed officers withdrew 20 minutes later; later three trucks arrived with more Federal Police agents who tried to detain the *El Mexicano* photographer and Reuters correspondent, **Alejandro Bringas**, in retribution for having taken photographs of the earlier assault.[874] Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.[875] In a reply received on November 12, 2010, the State indicated that both the CNDH as well as the Public Security Ministry, through its Human Rights Department and the Federal Police's Internal Affairs Department, had begun the corresponding investigations, which were still awaiting conclusion.[876] The Public Security Ministry stated that "the various operational units of the

[871] Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

[872] Federal District Human Rights Commission. Press Release 153/2010, June 12, 2010. Available at: http://portaldic10.cdhdf.org.mx/index.php?id=bol15310; CNDH. Press release CGCP/158/10, June 10, 2010. Available at: http://www.cndh.org.mx/comsoc/compre/2010/158.pdf. CNDH. Press release CGCP/159/10, June 11, 2010. Available at: http://www.cndh.org.mx/comsoc/compre/2010/159.pdf. See also Office of the High Commissioner on Human Rights in Mexico (OHCHR). June 14, 2010. *La ONU-DH condena agresión contra la periodista Ixtli Martínez en Oaxaca.* Available at: http://www.hchr.org.mx/Documentos/Communications/2010/06/CDP140610.pdf

[873] International Freedom of Expression Exchange (IFEX). June 24, 2010. *Armed men attack and rob distribution manager of "Contralínea Puebla" magazine*. Available at: http://www.ifex.org/mexico/2010/06/25/maldonado_flores_assaulted/. Contralínea Puebla. June 23, 2010. *Agreden a personal de Contralínea Puebla en Izúcar.* Available at: http://contralineapuebla.blogspot.com/2010/06/agreden-personal-de-contralinea-puebla.html

[874] Campaña permanente de protection a periodistas en Mexico. July 2, 2010. *Fuerzas de seguridad allanan Casas de Periodistas en Ciudad Juárez.* Available at: http://www.libertad-expresion.org.mx/noticias/fuerzas-de-seguridad-allanan-casa-de-periodistas-en-ciudad-juarez/. Federal District Human Rights Commission. Press Release 178/2010, July 2, 2010. Available at: http://portaldic10.cdhdf.org.mx/index.php?id=bol17810. El Universal. July 2, 2010. *Irrumpen en Centro de Periodistas de Juárez.* Available at: http://www.eluniversal.com.mx/notas/692385.html

[875] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[876] Mexican State, "Respuesta a la Solicitud de Información que Hicieran los Relatores Especiales para la Libertad de Expresión de la OEA y la ONU, en Seguimiento a su Visita Oficial a México del 9 al 24 de agosto de 2010", Annex to Communication OEA-02567 from Mexico's Permanent Representation to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

Federal Police in Ciudad Juárez, in the state of Chihuahua, have stated they were not involved in this incident."[877]

605. On July 16, 2010, **Edgar Irán López Hernández**, a reporter for the newspaper *Órale* of Coatzacoalcos, state of Veracruz, was arrested, assaulted, and had a death threat made against him by municipal police officers from Oluta, Veracruz. According to the information received, the reporters learned that in the municipal police station, the municipal president was reprimanding a group of inebriated police officers. The municipal president, noticing his presence, became angry and seized the photographic equipment from one of the reporters. Edgar Irán López left the scene but was chased by the municipal police who intercepted him on the Oluta-Acayucan road, forced him to get out of the vehicle in which he was traveling and into the patrol car, where he was assaulted in various ways and had death threats made against him. He was then told to get out on a dirt road, where the police took his camera and other belongings from him, and left him there. The journalist reported the assault to the Public Prosecutor's Office of Acayucan, Veracruz.[878] Within the framework of its visit, the Office of the Special Rapporteur requested that the State provide complete information about the case.[879]

606. The CNDH opened an investigation into the case of three journalists from media outlets in Nuevo Laredo, in the state of Tamaulipas, who were allegedly assaulted by military personnel when they were taking part in a police operation in this city. According to the information provided by the journalists, during the operation **Abisaíd Rubio** and **Ricardo Ramírez**, correspondent and cameraman for *Televisión Azteca*, respectively, and **Antonio Neftalí Gómez**, of *Radio Voz*, were beaten and threatened at gun point. The radio reporter had a gun pointed at his head and his equipment was damaged.[880] Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.[881] In a reply received on November 12, 2010, the State reported that the information provided by the Ministry of National Defense indicated that the journalists "trespassed on the security exclusion zone in order to record a video of the scene despite being warned off by the military personnel, while the latter were searching a vehicle in which a grenade had been found which was in danger of exploding," and that the complaint remained pending before the CNDH.[882]

607. On July 16, 2010, according to the CNDH, the journalist **Irineo Mújica Arzate** was assaulted by officials of the National Institute of Migration (hereinafter, "INM") in Soltepec, in the state of Puebla.[883] According to the information compiled by the CNDH, the events took place in the community of San Antonio Xicotenco during an operation involving the arrest of Central American migrants. Mújica Arzate was travelling in the train, and when he realized that the operation was taking place he began filming it. This upset the INM personnel who assaulted him and took away his video camera. Mújica was taken to a clinic located in the municipality of San Salvador El Seco. After leaving the medical clinic, the

---

[877] Mexican State,"Reply to the Information Request made by the Special Rapporteurs for Freedom of Expression of the OAS and the UN, in Follow-up to their Official Visit to Mexico between August 9-24, 2010", Annex to Communication OEA-02567 from Mexico's Permanent Representation to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[878] International Freedom of Expression Exchange (IFEX). July 23, 2010. *Police officers kidnap, attempt to kill journalist in Veracruz.* Available at: http://www.ifex.org/mexico/2010/07/23/lopez_hernandez_kidnapped/. CEPET. July 20, 2010. *Policías secuestran y atenta contra la vida de periodista en Veracruz.* Available at: http://libexmexico.wordpress.com/2010/07/20/policias-secuestran-y-atentan-contra-la-vida-de-periodista-en-veracruz/

[879] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[880] CNDH. Press release CGCP/194/10, July 14, 2010. Available at: http://www.cndh.org.mx/comsoc/compre/2010/COM_2010_0194.pdf

[881] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[882] Mexican State, "Reply to the Information Request made by the Special Rapporteurs for Freedom of Expression of the OAS and the UN, in Follow-up to their Official Visit to Mexico between August 9-24, 2010" , from Mexico's Permanent Representation to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[883] CNDH. Press release CGCP/198/10, July 19, 2010. Available at: http://www.cndh.org.mx/comsoc/compre/2010/COM_2010_0198_1.pdf

journalist decided to stage a peaceful protest in front of the INM offices in the City of Puebla, to request the return of his video camera.[884] The journalist continued his hunger strike for 17 days but ended it upon the return of his belongings by the state of Puebla's INM regional director.[885] Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case.[886] In a reply received on November 12, 2010, the State reported that both the CNDH and the Public Security Ministry, through its Human Rights Office and the Federal Police's Internal Affairs Unit, had begun the corresponding investigations which were still awaiting conclusion.[887] The Public Security Ministry reported that according to its investigation, "there is no suggestion that any member of the Federal Police (PF) committed any assault on Mr. Mújica or violated his human rights."[888]

608. According to the information received, on July 27, 2010, **Martín López Castro**, a reporter for *Canal 44* in Ciudad Juárez, in the state of Chihuahua, received death threats from alleged drug traffickers and decided to seek refuge in the United States of America. The threats had been spray-painted on the façade of an electronic goods store in Ciudad Juárez, and read: "Journalist Martín López from 44 we're going to cut off you and your brother's heads for supporting *patas cortas*." According to the information available the reporter had not been threatened before. Faced with this situation, López Castro decided to leave Mexico and move to Texas, United States.[889]

609. According to the information received, on August 7, 2010, the reporter **Abenamar López** of the newspaper *Cuarto Poder* of the state of Chiapas, was assaulted and his equipment seized while he reported on the eviction of residents from unauthorized housing on the borders of the municipalities of Tuxtla Gutiérrez and Chiapa de Corzo, in the state of Chiapas. The journalist reported the incident to the Office of the Special Prosecutor for Crimes against Journalists.[890] Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case[891]. In a reply received on November 12, 2010, the State reported that the Ministry for National Defense had no record of the case.[892]

---

[884] CNDH. Press release CGCP/198/10, July 19, 2010. Available at: http://www.cndh.org.mx/comsoc/compre/2010/COM_2010_0198_1.pdf

[885] CENCOS. August 12, 2010. *Irineo Mújica presentó videos que prueban la agresión que sufrió por agentes del INM.* Available at: http://www.cencos.org/es/node/24503. Federal District Human Rights Commission, Press Release 226/2010, August 11, 2010, Available at: http://www.cdhdf.org.mx/index.php/boletines/540-boletin-2262010

[886] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[887] Mexican State, "Respuesta a la Solicitud de Información que Hicieran los Relatores Especiales para la Libertad de Expresión de la OEA y la ONU, en Seguimiento a su Visita Oficial a México del 9 al 24 de agosto de 2010", Annex to Communication OEA-02567 from Mexico's Permanent Representation to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[888] Mexican State, "Respuesta a la Solicitud de Información que Hicieran los Relatores Especiales para la Libertad de Expresión de la OEA y la ONU, en Seguimiento a su Visita Oficial a México del 9 al 24 de agosto de 2010", Annex to Communication OEA-02567 from Mexico's Permanent Representation to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[889] International Freedom of Expression Exchange (IFEX). August 3, 2010. *Journalist flees to Texas after receiving death threats.* Available at: http://www.ifex.org/mexico/2010/08/03/lopez_castro_flees/; CNN Mexico. August 3, 2010. *Desaparecido desde el jueves un periodista de un semanario de Zacatecas.* Available at: http://mexico.cnn.com/nacional/2010/08/03/desaparecido-desde-el-jueves-un-periodista-de-un-semanario-de-zacatecas

[890] Campaña Permanente de Protección a Periodistas. August 16, 2010. *Elementos Policíacos agreden y despojan a reportero de Cuarto Poder en Chiapas.* Available at: http://www.libertad-expresion.org.mx/noticias/elementos-policiacos-agreden-y-despojan-a-reportero-de-cuarto-poder-en-chiapas/. International Freedom of Expression Exchange (IFEX). August 11, 2010. *Elementos policíacos agreden y despojan a reportero de "Cuarto Poder" en Chiapas*. Available at: http://www.ifex.org/mexico/2010/08/12/lopez_agredido/es/

[891] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[892] Mexican State, "Reply to the Information Request made by the Special Rapporteurs for Freedom of Expression of the OAS and the UN, in Follow-up to their Official Visit to Mexico between August 9-24, 2010", Annex to Communication OEA-02567 from Mexico's Permanent Representation to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

610. According to the information received, on August 18, 2010, the newspapers ***La Jornada Zacatecas*** and ***Imagen*** printed threats they had received at different times from alleged members of the criminal organization "Los Zetas" in Zacatecas, in the state of Zacatecas. The newspapers had been pressured to reveal information about civil society's alleged repudiation of the Army as a result of the actions taken against organized crime in the state of Zacatecas. The directors, by refusing to print the articles, had received threats by telephone. The state of Zacatecas' Public Prosecutor's Office offered to provide protection for the newspapers' offices.[893]

611. According to the information received, on August 31, 2010, the director of the newspaper ***Puebla sin Fronteras*** of the state of Puebla was the victim of extortion and telephone threats from a man who identified himself as the new area boss of the criminal organization "Los Zetas." The director reported the case to the state of Puebla's Public Prosecutor's Office.[894]

612. On September 2, 2010, one day after an armed assault on the newspaper ***Noroeste*** that involved the use of high-powered guns (see *infra*), the same newspaper again received a threat. According to the information received, three telephone calls were made to the newspaper offices demanding two hundred thousand pesos (approx. US$16,500) to avoid their premises being blown up. Following the threat the offices were evacuated but the printing and senior management personnel remained to carry on working. According to the Public Prosecutor's Office, the call appeared to come from the same person who had extorted the newspaper hours before an attack with high-powered weapons on September 1, 2010.[895] Also, according to the information received, on the same September 2, newspaper staff were threatened by subjects traveling in a vehicle. Finally, at midday, men in a vehicle approached the delivery personnel showing them their high-powered weapons in an act of intimidation.[896]

613. According to the information received, on September 14, 2010, **Jaime Ferrera**, a reporter for the newspaper *El Mexicano*, observed a group of people eating in a restaurant in Villa Ahumada, in the state of Chihuahua, under the protection of a group of people who appeared to be federal police officers. Upon noticing this, the police in the restaurant verbally assaulted him, seized his equipment, and threatened him.[897]

614. According to the information received, on October 16, 2010, **Miguel Jaramillo**, a cameraman for the newspaper *El Pulso* of San Luis Potosí, arrived to report on a gun battle between federal police and alleged criminals. The federal agents, on noticing his presence, seized his photographic equipment, and knocked him to the ground. The assault was impeded following the

---

[893] CEPET. August 20, 2010. *Crimen organizado presiona y amenaza a periodistas de Zacatecas.* Available at: http://libexmexico.wordpress.com/2010/08/20/el-crimen-organizado-amenaza-a-periodistas-de-zacatecas/. International Freedom of Expression Exchange (IFEX). September 9, 2010. *IAPA concerned over rise in violence in Zacatecas state and its impact on the press.* Available at: http://www.ifex.org/mexico/2010/09/13/zacatecas_violence/. CNN Mexico. August 20, 2010. *El crimen organizado amenaza a periodistas de Zacatecas.* Available at: http://mexico.cnn.com/nacional/2010/08/20/el-crimen-organizado-amenaza-a-periodistas-de-zacatecas. La Jornada. 19 de agosto de 2010. *Exigen Zetas a periódicos de Zacatecas publicar carta contra Ejército Mexicano.* Disponible en: http://www.jornada.unam.mx/2010/08/19/index.php?section=politica&article=018n2pol

[894] International Freedom of Expression Exchange (IFEX). September 9, 2010. *Presuntos narcotraficantes exigen cuota de protection a diario en Puebla.* Available at: http://www.ifex.org/mexico/2010/09/09/puebla_sin_fronteras_extorsion/es. CEPET. September 2, 2010. *Presuntos narcotraficantes exigen cuota de protection a diario en Puebla.* Available at: http://libexmexico.wordpress.com/2010/09/02/presuntos-narcotraficantes-exigen-cuota-de-protección-a-diario-en-puebla/

[895] International Freedom of Expression Exchange (IFEX). September 3, 2010. *"Noroeste" newspaper threatened yet again.* Available at: http://www.ifex.org/mexico/2010/09/03/noroeste_extortion/. La Jornada. September 3, 2010. *Nuevas amenazas a directivos y trabajadores de Noroeste.* Available at: http://www.jornada.unam.mx/2010/09/03/index.php?section=politica&article=010n1pol

[896] International Freedom of Expression Exchange (IFEX). September 3, 2010. *"Noroeste" newspaper threatened yet again.* Available at: http://www.ifex.org/mexico/2010/09/03/noroeste_extortion/. El Universal. September 3, 2010. *Newspaper "Noroeste" recibe más amenazas.* Available at: http://www.eluniversal.com.mx/states/77712.html

[897] International Freedom of Expression Exchange (IFEX). September 30, 2010. *Elementos de la policía federal amenazan a reportero en Villa Ahumada, Chihuahua.* Available at: http://www.ifex.org/mexico/2010/09/30/farrera_amenazas/es/. CEPET. September 27, 2010. *Elementos federales amenazan a reportero en Villa Ahumada.* Available at: http://libexmexico.wordpress.com/2010/09/27/elementos-federales-amenazan-a-reporter-en-villa-ahumada-chihuahua/

intervention of rescue workers who were looking after those injured in the confrontation. The journalist reported the assault to the Public Prosecutor's Office and filed a complaint with the San Luis Potosí State Human Rights Commission.[898]

615. According to the information received, on October 21, 2010, journalist **Pedro Morales González** was taking photographs of a house presumably owned by Alex Ortiz Zamora, municipal president of Apizaco, as part of an investigation of alleged misappropriation of public funds, when some policemen arrested him and took him to the Public Security Offices of Apizaco. According to the complaint filed by the journalist, in these offices the municipal president hit him, threatened him, and sent him to the State Public Prosecutor's Office where he was accused of breaking and entering and robbery. The accusations were deemed groundless, but the journalist was deprived of his liberty for approximately eight hours. Morales gained his freedom by paying a fine for an alleged administrative violation. The journalist reported the case to the National and State Public Prosecutor's Offices. The state of Tlaxcala congress officially requested that the Public Prosecutor's Office and the local Human Rights Commission to investigate.[899]

616. According to the information received, on October 24, 2010, in the municipality of La Huerta, state of Jalisco, state police beat and used pepper spray on a group of journalists from various media outlets. The reporters assaulted included: **Lourdes Mireles** and **José Luis Valle**, reporter and cameraman for *TV Azteca*; **José Mendoza Navarro** and **Fabiola Rosales Calderón**, reporter and photographer for *El Occidental*; as well as **Susana Carreño** and **Analy S. Nuño,** reporters for *La Explosiva 590 AM* and *La Jornada*, respectively. According to the information received by the Office of the Special Rapporteur, the journalists were reporting on the protests of a group allegedly under the leadership of federal members of Congress. When the protestors tried to remove the road barrier that blocked the route to Tenacatita beach, the police attacked both the protestors and the journalists using pepper spray and their police batons.[900]

617. According to the information received, on October 25, 2010, **Marta Chan Dzul**, a reporter for *Grupo Megamedia,* was assaulted by a group of people while reporting on abuses allegedly committed by a local agrarian leader (*comisario ejidal* or communal land commissioner) in San Diego Tixcacal, in the state of Yucatán. According to the information received, the assailants were family members of the commissioner, and they beat and harassed her until the journalist was rescued by state police.[901]

618. According to the information received, on October 27, 2010, **Félix García**, a reporter for *Radio ORO,* was beaten and threatened, allegedly by officers of the State Investigation Agency in the city of Oaxaca, state of Oaxaca. According to the information available, Félix García was reporting on the looting carried out by a group of people at the former offices of the state of Oaxaca's Public Prosecutor's Office. Noticing the reporter's presence, three of the group approached him, and assaulted and

---

[898] International Freedom of Expression Exchange (IFEX). October 18, 2010. *Photographer assaulted by police officers.* Available at: http://www.ifex.org/mexico/2010/10/21/jaramillo_assaulted/. El Universal. October 17, 2010. *Federales golpean a fotógrafo en SLP.* Available at: http://www.eluniversal.com.mx/nacion/181229.html

[899] International Freedom of Expression Exchange (IFEX). October 29, 2010. *Alcalde golpea y ordena detener a periodista por publicar presuntos desvíos de recursos públicos.* Available at: http://www.ifex.org/mexico/2010/10/29/morales_detained/es/

[900] International Freedom of Expression Exchange (IFEX). November 12, 2010. *Elementos policíacos agreden a siete periodistas que cubrían protesta.* Available at: http://www.ifex.org/mexico/2010/11/12/periodistas_agredidos/es/. Diario Milenio. October 25, 2010. *Policías estatales agreden a diputados en Tenacatita*. Available at: http://www.milenio.com/node/561989.

[901] International Freedom of Expression Exchange (IFEX). November 2, 2010. *Agreden físicamente a reportera por atender denuncias de supuestos actos de corrupción.* Available at: http://ifex.org/mexico/2010/11/02/chan_dzul_attacked/es/. Diario de Yucatán. October 27, 2010. *La agresión a una reportera del grupo Megamedia llega al Congreso de la Unión.* Available at: http://www.yucatan.com.mx/20101027/nota-9/24824-la-agresion-a-una-reportera-de-grupo-megamedia-llega-al-congreso-de-la-union.htm.

threatened him. The journalist reported the assault to Oaxaca's Public Prosecutor's Office. Oaxaca's Human Rights Commission opened a file to monitor the investigations.[902]

619. On October 30, 2010 the reporter **Adriana Luna** was intimidated by the Secretary of Public Security for the state of Jalisco. According to the information received, on October 30, 2010 the correspondent for the newspapers *Excélsior* and *Grupo Imagen* in the state of Jalisco had approached Secretary Carlos Nájera at the end of a ceremony to mourn the deaths of nine state police gunned down in Jilotlán de los Dolores, in the state of Jalisco, to ask him about versions of events according to which the convoy of state police was ambushed by a group of hit-men who were allegedly guarding the successor of the drug-trafficker Ignacio "Nacho" Coronel, killed shortly before. The secretary did not reply to the questions, and accused the media of giving more say to criminals than to the authorities, before putting an end to the interview. According to the information received, the reporter approached Nájera soon afterwards to explain the reasons behind her questions but the latter warned that he would take measures against Moisés Mora, the reporter's husband. The reporter filed a complaint with the state of Jalisco's Human Rights Commission, which provided her and her family with measures of protection.[903]

620. According to the information received, on October 31, 2010, the journalist **Jorge Alejandro Medellín** received death threats in relation to the publication of a report in the weekly magazine *Milenio*, which alleged links between criminal organizations and government authorities in the state of Chihuahua. Medellín filed a complaint with the National Human Rights Commission for it to monitor the investigation.[904]

621. According to the information received, on November 8, 2010, **two reporters, whose names were withheld, for *El Diario* in Chihuahua,** state of Chihuahua, received death threats which led them to leave Mexico. The threats were made after the journalists covered a car accident in which one person died. The threats were revealed to the journalists by the policemen who had been working at the scene of the accident, who sought out the reporters to tell them that family members of the deceased had threatened to kill them and were already looking for them. Both journalists left the city with the support of the Chihuahua Journalists' Association.[905]

622. According to the information received, on November 14, 2010, **reporters from various media outlets** were assaulted while they reported on the story of an explosion in the Grand Rivera Princess hotel in Playa del Carmen, state of Quintana Roo. **Verónica Alfonso** of *El Quintanarooense* and **Matías Hau** of *Diario Respuesta* were hospitalized as a result of the assault. According to the information received by the Office of the Special Rapporteur, the hotel employees had used sticks, steel bars and fire extinguishers to attack the journalists who had come to the hotel to report on the incident, as those in charge of the hotel administration ordered them to prevent the journalists from entering. Three

---

[902] CEPET. October 29, 2010. *Presuntos agentes estatales agreden y lesionan a periodista radiofónico en Oaxaca*. Available at: http://libexmexico.wordpress.com/2010/10/30/presuntos-agentes-estatales-agreden-y-lesionan-a-periodista-radiofonico-en-oaxaca/. Grupo Fórmula. October 28, 2010. *Denuncia reportero de Oaxaca a presuntos agentes de investigación por agresión*. Available at: http://www.grupoformula.com/notas.asp?Idn=138389

[903] International Freedom of Expression Exchange (IFEX). November 4, 2010. *Secretario de Seguridad Pública de Jalisco intimida a reportera.* Available at: http://www.ifex.org/mexico/2010/11/04/luna_amenazas/es/. La Jornada Jalisco. November 2, 2010. *Medidas cautelares para proteger a la reportera Adriana Luna CEDHJ.* Available at: http://www.lajornadajalisco.com.mx/2010/11/02/index.php?section=politica&article=004n2pol. Excélsior. November 1, 2010. *Intimida SSP de Jalisco a reportera de Excélsior*. Available at: http://www.excelsior.com.mx/index.php?m=nota&id_nota=680645

[904] International Freedom of Expression Exchange (IFEX). November 3, 2010. *Journalist receives death threat after writing article on drug trafficking*. Available at: http://www.ifex.org/mexico/2010/11/04/medellin_death_threats/. Milenio. November 3, 2010. *Piden organizations civiles a PGR investigar amenazas a periodista.* Available at: http://www.milenio.com/node/570038; El Universal. November 3, 2010. *CNDH abre expediente por amenaza a periodista.* Available at: http://www.eluniversal.com.mx/notas/720972.html

[905] International Freedom of Expression Exchange (IFEX). November 15, 2010. *Two reporters flee the country after receiving death threats.* Available at: http://www.ifex.org/mexico/2010/11/15/journalists_leave_mexico/. El Universal. November 12, 2010. *Dos periodistas dejan el país por amenazas.* Available at: http://www.eluniversal.com.mx/primera/35859.html

employees were arrested and handed over to the Public Prosecutor's Office as part of the investigation.[906]

623. According to the information received, on November 19, 2010, the reporter **Rebeca Luna Jiménez** of *Radio Mil México* was assaulted in the city of Oaxaca, state of Oaxaca. According to the information from the Federal District Human Rights Commission, the reporter was traveling on her motorcycle when unknown men on a similar vehicle approached her, tried to pull her off her motorcycle, and attacked with a knife, cutting her forehead and arm. After the attack, the reporter was treated in a Red Cross hospital. According to the information available, Rebeca Luna had received a telephone call after the assault asking whether she had liked "the governor's little present." The journalist reported the incident to the Public Prosecutor's Office of Oaxaca.[907]

624. According to the information received, on November 28, 2010, the photographer **Marco Ugarte** was assaulted by the security personnel of a shopping mall in Mexico City. According to the information received, the Associated Press photographer was assaulted by security guards while reporting on a fashion show staged outside a shopping mall by the animal rights group "Anima Naturalis" in protest against the use of animal fur in clothes. The assault was stopped by other reporters at the scene. The assailants were arrested by the police. Ugarte reported the incident to the Public Prosecutor's Office for the Federal District.[908]

625. According to the information received, on November 24, 2010, **Selene Ríos Andraca,** a reporter for the newspaper *Cambio*, was threatened by the press coordinator of the governor-elect of the state of Puebla and beaten by a bodyguard of the same. According to the information received by the Office of the Special Rapporteur, the threat was made on the morning of November 24 in Izúcar de Matamoros, state of Puebla, when the journalist, in an attempt to interview the governor, crossed over the line established for the press, and the press coordinator threatened to attack her with her own equipment. The same afternoon in the city of Puebla, state of Puebla, the physical assault occurred at the end of an event when the journalist tried to approach the governor and one of his bodyguards took her by the arm and punched her in the abdomen and chest to prevent her approaching the governor.[909]

626. According to the information received, on December 18, 2010, unknown subjects in two moving vehicles fired shots at the home of **José Rosario Olán Hernández**, editor of the magazine *Veredicto Popular*, in Cárdenas, state of Tabasco. The shots damaged the sides and bodywork of the journalist's car. According to the information received, criticism had been expressed in *Veredicto Popular*–and particularly in Olán Hernández' column "*El verdugo*" ("The Executioner")–at the performance of some officials and *regidores* (town council members) from Cárdenas town hall.[910]

---

[906] CEPET. November 16, 2010. *Agreden a periodistas para impedirles cubrir explosión en hotel.* Available at: http://libexmexico.wordpress.com/2010/11/16/atacan-a-periodistas-para-impedirles-cubrir-explosion-en-hotel/. *Milenio*. November 15, 2010. *Condena CDH de Q. Roo agresión a periodistas que cubrían explosión.* Available at: http://www.milenio.com/node/578879. La Crónica de Hoy. November 15, 2010. *Personal de hotel golpea y "gasea" a reporteros.* Available at: http://www.cronica.com.mx/nota.php?id_nota=544170

[907] Federal District Human Rights Commission. Press Release 365/2010, November 23, 2010. Available at: http://www.cdhdf.org.mx/index.php/boletines/460-boletin-3652010. CENCOS. November 25, 2010. *Agreden a reportera en Oaxaca.* Available at: http://www.cencos.org/en/node/25687. El Universal. November 23, 2010. *CDHDF pide investigar agresión a reportera*. Available at: http://www.eluniversal.com.mx/notas/725521.html

[908] CEPET. November 30, 2010. *Agreden a fotógrafo de AP durante protesta de grupo pro defensa de los animales*. Available at: http://libexmexico.wordpress.com/2010/12/01/agreden-a-fotografo-de-ap-durante-protesta-de-grupo-pro-defensa-de-los-animales/. Milenio. November 29, 2010. *Agreden a fotógrafo de AP durante protesta contra comercio de pieles.* Available at: http://www.milenio.com/node/588780

[909] CEPET. November 29, 2010. *Escoltas del gobernador electo de Puebla golpean a reportera.* Available at: http://libexmexico.wordpress.com/2010/11/29/escoltas-del-gobernador-electo-de-puebla-golpean-a-reporteras/. Noticias MVS. November 25, 2010. *Agreden guaruras de Moreno Valle a reportera.* Available at: http://www.noticiasmvs.com/Agreden-guaruras-de-Moreno-Valle-a-reportera.html

[910] CEPET/IFEX. December 23, 2010. *Journalist's house, car shot at in Cárdenas, Tabasco*. Available at: http://www.ifex.org/mexico/2010/12/23/olan_hernandez/. El Independiente del Sureste. December 19, 2010. *Atentan contra el periodista José Rosario Olán en Cárdenas*. Available at:

Continued…

### d. Attacks on media outlets

627. According to the information received, on April 12, 2010 the offices of the magazine ***Contralínea*** in Mexico City were robbed. According to the information received, financial and fiscal documents and the computer of the magazine's editor were removed from the administrative and editorial offices of the magazine. The theft was reported to the Public Prosecutor's Office of the Federal District.[911]

628. On May 17, 2010, according to information from the CNDH, the offices of the ***Canal 2*** television channel in Tepic, state of Nayarit, were attacked with over 100 bullet rounds and three grenades. At around 1:30 a.m. a grenade exploded, while two more failed to detonate. There were no victims, though property damage did occur. It appears that a message attributed to drug trafficking groups was found after the attack. The message read: "Regards, the New People, Chapo Guzmán and Nacho Coronel."[912]

629. According to the information received, at around 11:45 p.m. on June 17 a fragmentation grenade was thrown at the offices of the newspaper ***Zócalo***, in Piedras Negras, in the state of Coahuila, which caused damage to windows, doors and parked cars upon exploding.[913]

630. On June 22, 2010, according to the CNDH the newspaper ***Noticias de El Sol de la Laguna***, in Torreón, Coahuila, was attacked by a group bearing high-caliber weapons who opened fire on the building, breaking windows in the entrance door and some of the vehicles in the parking lot. The receptionist for the newspaper was injured by shrapnel from the bullets.[914]

631. On June 25, 2010, according to information from the CNDH, the headquarters of ***Televisa*** in Torreón, Coahuila, was attacked with high-caliber weapons, causing property damage, including to the electric installations, taking the channel off the air. There were no victims.[915]

632. On July 6, 2010, according to information confirmed by Mexican and international press organizations, unidentified persons entered the offices of the ***El Día de Michoacán*** newspaper in the

---

…continuation
http://www.elindependiente.mx/sitio/index.php?option=com_content&view=article&id=5447:atentan-contra-el-periodista-jose-rosario-olan-en-cardenas&catid=13:agenda&Itemid=5

[911] Campaña Permanente de Protección a Periodistas en México. June 3, 2010. *El peligroso periodismo a Contralínea*, Available at: http://www.libertad-expresion.org.mx/noticias/el-peligroso-periodismo-a-contralinea/ - more-4849. Asociación Mundial de Radios Comunitarias (AMARC). April 14, 2010. *Allanan y Roban Instalaciones de Contralínea*. Available at: http://www.amarcmexico.org/Communications/3096.html

[912] CNDH. Press release CGCP/133/10, May 17, 2010. Available at: http://www.cndh.org.mx/comsoc/compre/2010/133.pdf. Campaña Permanente de Protección a Periodistas. May 19, 2010. *Atacan con armas de fuego y granadas instalaciones de televisora en Nayarit.* Available at: http://www.libertad-expresion.org.mx/noticias/atacan-con-armas-de-fuego-y-granadas-instalaciones-de-televisora-en-nayarit/ - more-4727. El Universal. May 18, 2010. Comando lanza granadas contra televisora en Tepic. Available at: http://www.eluniversal.com.mx/primera/34955.html

[913] International Freedom of Expression Exchange (IFEX). July 2, 2010. *Grenade launched against newspaper building.* Available at: http://www.ifex.org/mexico/2010/07/06/zocalo_grenade_attack/; Noticias MVS. June 18, 2010. *Atacan diario Zócalo en Coahuila*, Available at: http://www.noticiasmvs.com/Atacan-diario-Zocalo-en-Coahuila.html

[914] CNDH. Press release CGCP/171/10, June 23, 2010. Available at: http://www.cndh.org.mx/comsoc/compre/2010/COM_2010_0171.pdf. International Freedom of Expression Exchange (IFEX). June 23, 2010. *Shots fired at "noticias de el Sol de la Laguna" offices in Torreón.* Available at: http://www.ifex.org/mexico/2010/06/23/noticias_de_el_sol/. La Jornada. June 23, 2010. *Atacan con metralletas la sede del Diario Noticias Del Sol de la Laguna.* Available at: http://www.jornada.unam.mx/2010/06/23/index.php?section=politica&article=015n1pol

[915] CNDH. Press release CGCP/174/10, June 25, 2010. Available at: http://www.cndh.org.mx/comsoc/compre/2010/COM_2010_0174.pdf. CENCOS. June 25, 2010. *Atacan instalaciones de transmisión de televisora en Coahuila*. Available at: http://www.cencos.org/es/node/24037; La Jornada. July 26, 2010. *Atacan sede de Televisa in Torreón.* Available at: http://www.jornada.unam.mx/2010/06/26/index.php?section=politica&article=010n2pol

early morning. Here the journalist Hugo Alfredo Olivera Cartas, who turned up dead on the same day, worked as an editor. Computers and memory devices were stolen.[916]

633. According to the information received, on July 9, 2010, unknown subjects threw a grenade, which failed to detonate, at the offices of the broadcaster ***AW Noticias (XEAW 1280 AM)***, belonging to the Multimedios company, in Monterrey, state of Nuevo León. The projectile smashed the glass of the building's front door. According to the information received, 1,000 staff worked in the building, including journalists and personnel who worked for the company.[917]

634. On July 30, 2010, the offices of the Televisa media company's ***Canal 57*** in Nuevo Laredo, state of Tamaulipas, were attacked. According to the information received a group of people traveling in a moving vehicle launched a grenade against the façade of the building, which upon exploding caused property damage, but no deaths or injuries.[918].

635. According to the information received, on August 14 and 15, 2010, the offices of the ***Televisa*** media company in Matamoros, state of Tamaulipas and Monterrey, state of Nuevo León, were attacked with grenades.[919] The PGR appears to be carrying out an investigation into the case.[920]

636. According to the information received, in the early morning of August 27, 2010, a car bomb exploded outside the offices of the ***Televisa*** media company, in Ciudad Victoria, state of Tamaulipas. The TV company staff had left the building just a few minutes before the attack. This was the third and largest in a series of attacks against the company in the course of a single month.[921]

637. According to the information received, in the early morning of September 1, 2010, armed individuals opened fire with high-powered weapons on the offices of the newspaper ***Noroeste*** in

---

[916] Office of the Special Rapporteur for Freedom of Expression – IACHR. July 8, 2010. Press release No. R67/10. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=804&lID=1; Milenio. July 6, 2010. *Ejecutan al periodista Hugo Olivera, colaborador de Quadratín*. Available at: http://www.milenio.com/node/481004; El Universal. July 6, 2010. *Matan a periodista en Michoacán*. Available at: http://www.eluniversal.com.mx/notas/vi_693419.html

[917] Office of the Special Rapporteur for Freedom of Expression – IACHR. July 5, 2010. Press release No. R70/10. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=805&lID=2. Campaña Permanente de Protección a Periodistas en México. July 14, 2010. *Nuevo León, ambiente de inseguridad and violence inhibe flujo de informacion.* Available at: http://www.libertad-expresion.org.mx/noticias/nuevo-leon-ambiente-de-inseguridad-y-violence-inhibe-flujo-de-informacion/; International Freedom of Expression Exchange (IFEX). July 14, 2010. *Five journalists and media workers killed in two weeks.* Available at: http://www.ifex.org/mexico/2010/07/14/journalists_slain/. CNN Mexico. July 10, 2010. *Nueve empresarios con signos de tortura fueron rescatados en Nuevo León.* Available at: http://mexico.cnn.com/nacional/2010/07/10/nueve-microempresarios-estaban-secuestrados-en-un-taller-mecanico

[918] Office of the Special Rapporteur for Freedom of Expression – IACHR. August 27, 2010. Press release No. R87/10. Available at: http://www.cidh.org/relatoria/showarticle.asp?artID=815&lID=1. CEPET. August 2, 2010. *Atacan con granada televisora en Nuevo Laredo, otro medio recibe amenazas en Ciudad Juárez.* Available at: http://libexmexico.wordpress.com/2010/08/02/atacan-con-granada-televisora-en-nuevo-laredo-otro-medio-recibe-amenaza-en-ciudad-juarez/. CNN Mexico. July 30, 2010. *En Nuevo Laredo arrojan granada a instalaciones de la empresa Televisa.* Available at: http://mexico.cnn.com/nacional/2010/07/30/en-nuevo-laredo-arrojan-granada-a-instalaciones-de-la-empresa-televisa

[919] Office of the Special Rapporteur for Freedom of Expression – IACHR. August 27, 2010. Press release No. R87/10. Available at: http://www.cidh.org/relatoria/showarticle.asp?artID=815&lID=1. *CNN Latinoamérica,* August 15, 2010, *Granada lanzada a una estación de televisión mexicana, no hubo heridos*. Available at: http://www.cnn.com/2010/WORLD/americas/08/15/mexico.station.grenade/

[920] Committee for the Protection de Journalists (CPJ). *CPJ condena ataques con granadas contra Televisa*, August 16, 2010. Available at: http://cpj.org/es/2010/08/cpj-condena-ataques-con-granadas-contra-televisa.php. Reporters without Borders. August 17, 2010. *La cadena nacional Televisa fue atacada dos veces en una sola noche en Monterrey y Matamoros*. Available at: http://es.rsf.org/mexico-una-desaparicion-y-un-exilio-03-08-2010,38088.html. El Universal. August 15, 2010. *PGR abre dos actas por ataques contra Televisa.* Available at: http://www.eluniversal.com.mx/notas/701814.html

[921] Office of the Special Rapporteur for Freedom of Expression – IACHR. August 27, 2010. Press release No. R87/10. Available at: http://www.cidh.org/relatoria/showarticle.asp?artID=815&lID=1. International Freedom of Expression Exchange (IFEX). September 1, 2010, *Drugs cartels terrorize media with car bombs and grenades*. Available at: http://www.ifex.org/mexico/2010/09/01/car_bomb/. El Universal. August 27, 2010. *SIP repudia atentado con coche bomba a Televisa.* Available at: http://www.eluniversal.com.mx/notas/704721.html

Mazatlán in the state of Sinaloa, causing property damage but no victims. The newspaper reported just hours previously receiving telephone calls from persons identifying themselves as members of the criminal organization "La Línea", demanding the publication of certain information and making threats. The Deputy Prosecutor General for the state of Sinaloa declared that the attacks may have been the consequence of the newspaper's refusal to publish a certain type of information.[922]

638. On October 3, 2010, unidentified individuals armed with high-powered weapons attacked the offices of the newspaper ***El Debate*** in Mazatlán, state of Sinaloa. According to the information received on the morning of Sunday October 3, 2010, individuals traveling in a vehicle opened fire on the façade and the entrance to the parking lot, causing property damage but no injuries. The newspaper staff who were in the building at the time, took refuge after the first shots.[923]

639. According to the information received, on Wednesday November 10, 2010, an unknown group of armed individuals opened fire on the offices of the newspaper ***El Sur*** in Acapulco, and subsequently burst into the editing room where they fired their weapons, cut telephone lines and poured gasoline around, threatening to start a fire. The staff who were in the building at the time of the attack were able to take refuge, meaning there were no injuries. *El Sur* regularly covers local politics, violence and organized crime.[924]

**e. Detentions**

640. According to the information received, on May 5, 2010, **Carlos Alberto Salazar Ortiz, Carlos Ferrer González** and **Marcos Flores Aguilar**, who work as cameraman, photographer and driver, respectively, for the multimedia publication *Reporte Índigo*, were arrested at approximately 1.00 p.m. near the headquarters of the Federal Public Security Ministry. According to the information received by the Office of the Special Rapporteur, the reporters were taking photographs and video of the building as part of a journalistic investigation. The three individuals were freed on May 6 at around 11.00 a.m. after being detained for around 20 hours in the Camarones Metropolitan Sub-Office of the PGR where, according to the information received, the material they had collected was confiscated.[925]

641. Within the framework of its visit, the Office of the Special Rapporteur requested that the Mexican State provide detailed information about this case.[926] In a reply received on November 12, 2010, the State indicated that both the CNDH and the Public Security Ministry, through the Human Rights Department and the Internal Affairs Department of the Federal Police, had begun the corresponding

---

[922] International Freedom of Expression Exchange (IFEX). September 2, 2010. *"Noroeste" newspaper facilities in Sinaloa attacked by armed men.* Available at: http://www.ifex.org/mexico/2010/09/02/atentado_noroeste_mazatlan/. El Universal. September 2, 2010. *Disparan contra diario "Noroeste".* Available at: http://www.eluniversal.com.mx/primera/35481.html. La Jornada. September 2, 2010. *Ataque al Noroeste de Mazatlán, por negarse a publicar "cierta información".* Available at: http://www.jornada.unam.mx/2010/09/02/index.php?section=politica&article=016n2pol

[923] International Freedom of Expression Exchange (IFEX). October 4, 2010. *Shots fired at "El Debate" newspaper building in Mazatlán.* Available at: http://www.ifex.org/mexico/2010/10/05/el_debate_shots_fired/. Inter-American Press Society (IAPA). October 4, 2010. *Condena SIP ataque a diario mexicano El Debate de Mazatlán.* Available at: http://www.sipiapa.org/v4/index.php?page=cont_Communications&seccion=detalles&id=4452&idioma=sp

[924] Committee to Protect Journalists (CPJ). November 12, 2010. *Sujetos armados atacan diario en Acapulco.* Available at: http://cpj.org/es/2010/11/sujetos-armados-atacan-periodico-en-acapulco.php. El Economista. November 11, 2010. *Balean al diario El Sur en Acapulco*. Available at: http://eleconomista.com.mx/states/2010/11/11/atacan-periodico-sur-guerrero. Proceso. November 10, 2010. *Rafaguean el diario El Sur de Acapulco.* Available at: http://www.proceso.com.mx/rv/modHome/detalleExclusiva/85277

[925] Campaña Permanente de Protección a Periodistas en México. May 7, 2010. *Urgente que las autoridades se responsabilicen de promover y defender la libertad de prensa.* Available at: http://www.libertad-expresion.org.mx/noticias/urgente-que-las-autoridades-se-responsabilicen-de-promover-y-defender-la-libertad-de-prensa/#more-4696. La Jornada. May 7, 2010. *Empleados de Reporte Índigo quedan libres.* Available at: http://www.jornada.unam.mx/2010/05/07/index.php?section=politica&article=008n2pol. CNN Mexico. 6 May 6, 2010. *Tres periodistas detenidos frente a la casa del Secretario de Seguridad.* Available at: http://mexico.cnn.com/nacional/2010/05/06/tres-periodistas-detenidos-frente-a-la-casa-del-secretario-de-seguridad

[926] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

investigations, which remain open.[927] The Public Security Ministry indicated that, according to its investigations, "the complainants did not identify themselves as journalists and […] merely stated they were undertaking confidential research, which led to doubts concerning the authenticity of the identifications which they subsequently presented." It also stated that the journalists "were at no time deprived of their liberty but were detained and taken to where they were presented before the ministerial authority as subject to investigation."[928]

**f. Other incidents**

642. According to the information received, on April 5, 2010 unidentified persons bought from the distributor almost all copies of the weekly magazine ***Proceso*** intended for public sale in the state of Sinaloa. According to the information received, only 200 of the 1779 copies were distributed. The issue of *Proceso* published an interview with Ismael "El Mayo" Zambada, one of the leaders of the Sinaloa Cartel, and articles which made allegations about the drug trafficking *capo*'s relationship with a local politician in Sinaloa.[929]

**3. Illustrative cases of violence and impunity 1988-2009**

643. As a complement to the previous section regarding acts of violence that occurred during 2010, in the following section the Office of the Special Rapporteur analyzes a number of cases of violence against journalists from prior years about which it received information within the framework of its on-site visit to Mexico. These cases, which to date have gone unpunished, were chosen for their representative nature with regard both to the nature of the crime itself as well as to the obstacles that have been observed in the judicial process. As has been stated, the Office of the Special Rapporteur does not intend to award greater significance to these cases over others, but rather to use them to explain and provide evidence for some of the patterns that it has observed with regard to the violence carried out against journalists in Mexico and the impunity that characterizes the majority of these acts.

**a. Murder**

**Felicitas Martínez Sánchez and Teresa Bautista Merino**

644. On April 7, 2008, Felicitas Martínez Sánchez and Teresa Bautista Merino, community radio presenters for *La Voz que Rompe el Silencio* of the Triqui Indigenous community in the state of Oaxaca, were murdered in an ambush by unidentified individuals who opened fire on the vehicle they were traveling in with automatic weapons. A further four people were wounded.[930]

---

[927] Mexican State,"Reply to the Information Request made by the Special Rapporteurs for Freedom of Expression of the OAS and the UN, in Follow-up to their Official Visit to Mexico between August 9-24, 2010", Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[928] Mexican State, "Reply to the Information Request made by the Special Rapporteurs for Freedom of Expression of the OAS and the UN, in Follow-up to their Official Visit to Mexico between August 9-24, 2010", Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[929] International Freedom of Expression Exchange (IFEX). April 13, 2010. *Realizan en Sinaloa compra masiva de ejemplares de "Proceso"; impiden su circulación normal.* Available at: http://www.ifex.org/mexico/2010/04/13/el_proceso/es/. BBC Mundo. April 18, 2010. *México: crece la polémica por entrevista a capo del narcotráfico*. Available at: http://www.bbc.co.uk/mundo/america_latina/2010/04/100408_mexico_revista_proceso_entrevista_cartel_jp.shtml

[930] IACHR. *Annual Report 2008.* OEA/Ser.L/V/II.134, February 25, 2009. Vol. III, *Report of the Office of the Special Rapporteur for Freedom of Expression,* chap. 2, par. 157. Available at: http://www.cidh.oas.org/annualrep/2008eng/Annual Report 2008- RELE - version final.pdf. See Office of the Special Rapporteur for Freedom of Expression – IACHR. April 18, 2008. Press release No. 190/08. Available at: http://www.cidh.org/relatoria/showarticle.asp?artID=729&lID=1. CENCOS/Article 19. April 8, 2008. *Asesinan a dos locutoras de radio comunitaria en Oaxaca*. Available at: http://cencos.org/es/node/18232. Reporters without Borders. April 9, 2008. *Asesinadas a disparos dos jóvenes periodistas de una radio comunitaria indígena, el estado de Oaxaca.* Available at: http://www.rsf.org/article.php3?id_article=26514. Committee to Protect Journalists (CPJ). 10 de April de 2008. *Dos locutoras de una radio comunitaria asesinadas.* Available at: http://cpj.org/es/2008/04/dos-locutoras-de-una-radio-comunitaria-asesinadas.php. Office in Mexico of the United Nations High Commissioner for Human Rights. April 17, 2008. *Press release: La*

Continued…

645. The radio station *La voz que rompe el silencio* forms part of the project for greater autonomy of the municipality of San Juan Copala and belongs to the Network of Community Radio and Television Stations of Southeastern Mexico, as well as the Network of Indigenous Media Workers of the Mixteca-Triqui Region.[931] According to the information received, since its creation the radio sought to be an instrument to make calls for unity, to overcome conflicts and to promote communication. It began transmission on January 20, 2008.[932] According to the information received, the journalists Martínez and Bautista worked as presenters and reporters at the community radio station and often presented information on subjects relating to the autonomous indigenous government, health, education and the culture of their community, thereby complying with a duty assigned to them by their community.[933] After the murders, the station reduced its coverage of delicate political issues.[934]

646. The two media workers were murdered on April 7, 2008, in the course of an ambush in the locality of Llano Juárez, on the highway that leads from Joya del Mamey to Putla de Guerrero, when they were traveling together with other individuals in a private vehicle. According to the information received, the investigations undertaken have shed no light on information that might identify the responsible party.[935]

647. Both the Commission for the Defense of Human Rights of Oaxaca (hereinafter, "CEDHOAX") and the CNDH monitored the case and the measures taken by the judicial authorities. The analysis carried out by these autonomous bodies allow some of the obstacles facing investigation of the crime to be understood.

648. On April 16 and 17, 2008, the CEDHOAX requested protective measures be taken in favor of the survivors of the attack in which the journalists died, as well as the children of the victims and the new presenters of the community radio station, considering there to be a risk to the lives of these people.[936] The requests for protective measures were accepted by the corresponding authorities.[937] On

---

…continuation
*OACNUDH condena los asesinatos y agresiones de periodistas y comunicadores/as sociales.* Available at: http://www.hchr.org.mx/documentos/Communications/Communicationprensa7abril2008.pdf

[931] Luís Hernández Navarro, "México: Once retratos de la impunidad". *El Cotidiano* (Mexico D.F.) July/August 2008. Available at: http://redalyc.uaemex.mx/pdf/325/32515014.pdf. Fr. Francisco de Vitoria Center for Human Rights. April 11, 2008. *Asesinato de dos radialistas indígenas, CACTUS*. Available at: http://www.derechoshumanos.org.mx/modules.php?name=News&file=article&sid=806

[932] Luís Hernández Navarro, "Mexico: Once retratos de la impunidad". *El Cotidiano* (Mexico D.F.) July/August 2008. Available at: http://redalyc.uaemex.mx/pdf/325/32515014.pdf

[933] IACHR. *Annual Report 2008.* OEA/Ser.L/V/II.134, February 25, 2009. Vol. III, *Report of the Office of the Special Rapporteur for Freedom of Expression,* chap. 2, par. 157. Available at: http://www.cidh.oas.org/annualrep/2008eng/Annual Report 2008- RELE - version final.pdf. See Office of the Special Rapporteur for Freedom of Expression – IACHR. April 18, 2008. Press release No. 190/08. Available at: http://www.cidh.org/relatoria/showarticle.asp?artID=729&lID=1. CENCOS/Article 19. April 8, 2008. *Asesinan a dos locutoras de radio comunitaria en Oaxaca*. Available at: http://cencos.org/es/node/18232. Reporters without Borders. April 9, 2008. *Asesinadas a disparos dos jóvenes periodistas de una radio comunitaria indígena, el estado de Oaxaca.* Available at: http://www.rsf.org/article.php3?id_article=26514. Committee to Protect Journalists (CPJ). April 10, 2008. *Dos locutoras de una radio comunitaria asesinadas.* Available at: http://cpj.org/es/2008/04/dos-locutoras-de-una-radio-comunitaria-asesinadas.php. Office in Mexico of the United Nations High Commissioner for Human Rights. April 17, 2008. *Press release: La OACNUDH condena los asesinatos y agresiones de periodistas y comunicadores/as sociales.* Available at: http://www.hchr.org.mx/documentos/comunicados/comunicadoprensa7abril2008.pdf. Centro de Derechos Humanos Fr. Francisco de Victoria O.P.A.C. April 11, 2008. *Asesinato de dos radialistas indígenas, CACTUS*. Available at: http://www.derechoshumanos.org.mx/modules.php?name=News&file=article&sid=806

[934] Committee to Protect Journalists (CPJ). September, 2010. *Silence or Death in Mexico's Press*, (New York: CPJ, 2010), appendix 1. Available at: http://cpj.org/reports/cpj_mexico_english.pdf

[935] Office in Mexico of the United Nations High Commissioner for Human Rights. *Defender los derechos humanos: entre el compromiso y el riesgo. Informe sobre la situación de las and los Defensores*, p. 39. Available at: http://www.hchr.org.mx/documentos/informes/informepdf.pdf

[936] Commission for the Defence of Human Rights in Oaxaca, *Informe Especial Público, Caso: Homicidio de Teresa Bautista Merino y Felícitas Martínez Sánchez* (Oaxaca: April 23, 2008), pp. 6-7, Available at: http://www.cedhoax.org/newcddho/infesp/Homicidio%20Teresa%20y%20Felicitas.pdf

May 15, 2008, the CNDH also requested protective measures be taken in favor of the survivors, the radio staff, the relatives of the murdered women and the human rights workers who filed the complaint and requested investigation of the crimes.[938] The Office of the Special Rapporteur notes that, according to the CEDHOAX, the atmosphere of violence and hostility that held sway led to distrust and fear among those who might help to clarify what occurred, and even among the local police force.[939]

649. Meanwhile, both the CEDHOAX and the CNDH identified various obstacles and irregularities in the investigation. In the first place, as the analysis by the CNDH shows, there was no clarity about the jurisdiction responsible for the investigation, since it was begun by the Public Prosecutor's Office of the state of Oaxaca, and then taken up by the PGR.[940]

650. The CEDHOAX and the CNDH identified a number of deficiencies in the investigation begun by the state judicial authorities. For example, on April 15, 2008, eight days after the attack, the Public Prosecutor's Office had still not visited the site of the attack nor interviewed the police officers who were the first to reach the location of the crime.[941] Further, it failed to make use of police investigation techniques and avoid the loss, destruction, or alteration of tracks or clues; nor did it even cordon off and safeguard the crime scene; nor did it seek the involvement of forensic experts.[942] In the view of the CNDH, the actions of the Public Prosecutor's Office of the state of Oaxaca "lacked any real intention to investigate the offense, insofar as it failed to carry out procedures that would identify the parties likely to be responsible for the crime."[943]

651. As for the investigations undertaken by the PGR, the CNDH considered that while forensic tests in a number of areas were requested, the ministerial authority did not respond in timely fashion to the requirements set out by specialists from the same government body, with regard to the need to carry out a visual inspection and reconstruction of the events, as well as guaranteeing the security of the personnel involved in these procedures.[944]

652. Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case of Teresa Bautista and Felicitas Martínez.[945] In a reply received on November 12, 2010, the State sent a number of documents relating to the investigation. These documents included a letter from the then Special Prosecutor's Office for Crimes against Journalists (hereinafter "FEADP") dated April 25, 2008, in which it affirmed that "neither woman engaged

---

…continuation

[937] Commission for the Defence of Human Rights in Oaxaca, *Informe Especial Público, Caso: Homicidio de Teresa Bautista Merino y Felícitas Martínez Sánchez* (Oaxaca: April 23, 2008), pp. 6-7, Available at: http://www.cedhoax.org/newcddho/infesp/Homicidio%20Teresa%20y%20Felicitas.pdf

[938] CNDH. Press release CGCP/081/08, May 15, 2008. Available at: http://www.cndh.org.mx/comsoc/compre/2008/081.htm

[939] Commission for the Defence of Human Rights in Oaxaca, *Informe Especial Público, Caso: Homicidio de Teresa Bautista Merino y Felícitas Martínez Sánchez* (Oaxaca: April 23, 2008), pp. 6-7, Available at: http://www.cedhoax.org/newcddho/infesp/Homicidio%20Teresa%20y%20Felicitas.pdf

[940] CNDH. General Recommendation 17, August 19, 2009. Available at: http://www.cndh.org.mx/recomen/general/017.htm

[941] Commission for the Defence of Human Rights in Oaxaca, *Informe Especial Público, Caso: Homicidio de Teresa Bautista Merino y Felícitas Martínez Sánchez* (Oaxaca: April 23, 2008), p. 7, Available at: http://www.cedhoax.org/newcddho/infesp/Homicidio%20Teresa%20y%20Felicitas.pdf

[942] CNDH. General Recommendation 17, August 19, 2009. Available at: http://www.cndh.org.mx/recomen/general/017.htm

[943] CNDH. General Recommendation 17, August 19, 2009. Available at: http://www.cndh.org.mx/recomen/general/017.htm

[944] CNDH. General Recommendation 17, August 19, 2009. Available at: http://www.cndh.org.mx/recomen/general/017.htm

[945] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

in activity as a media worker, reporter or presenter for the radio station", such that the "Special Prosecutor is not the competent authority to follow up this case."[946] However, a letter dated May 21, 2008, also from the FEADP, states that "as of May 17 of the present year, this Special Prosecutor for Offenses Committed against Journalists of the PGR exercised its authority to assert jurisdiction and is now in charge of this investigation at its Oaxaca State office."[947] Indeed, the information provided indicates that the criminal investigation is currently being processed by the FEADLE.[948] The available information indicates that those responsible for the deaths of the journalists Teresa Bautista Merino and Felícitas Martínez Sánchez have yet to be identified.

**Armando Rodríguez Carreón**

653. Armando Rodríguez Carreón, a journalist at the newspaper *El Diario* in Ciudad Juárez in the state of Chihuahua, was murdered on November 13, 2008. That morning Rodríguez Carreón was in his car, outside his home with his daughter, who he was about to take to school, when unidentified individuals shot at him with a firearm. The reporter died at the scene. In early 2008, the journalist had received threats, which had led him to leave the city for two months, according to information published at the time by the local press and by NGOs.[949] According to *El Diario,* Rodríguez Carreón had been covering public security issues for more than ten years for the newspaper, and was the author of several analyses and statistics that showed the scale of the rise in violence in Ciudad Juárez.[950] Two weeks before his death, he had published an article that linked family members of a high official at the state Public Prosecutor's office with drug trafficking.[951]

654. According to the press, the then-FEADP immediately exercised its authority to assert its jurisdiction over the homicide of journalist Armando Rodríguez.[952] The state governor announced, however, that the crime would be investigated jointly with the state Public Prosecutor's Office.[953] Indeed, the information available indicates that two investigations were undertaken, one at the federal level and the other at state level, into the murder of Armando Rodríguez.[954] While the authorities claimed that the

---

[946] FEADP, Memo No. SDHAVSC/FEADP/0420/08 of April 25, 2008, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[947] FEADP, Memo No. SDHAVSC/FEADP/0513/08 of May 21, 2008, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[948] FEADLE, Memo No. 0000144/FEADLE/2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[949] Office of the Special Rapporteur for Freedom of Expression – IACHR. November 14, 2008. Press release No. R50/08. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=734&lID=2. See also *El Diario*. September 24, 2010. *Ponen a torturado y a 2 muertos como asesinos de El Choco.* Available at: http://www.diario.com.mx/notas.php?f=2010/09/24&id=2faa7246b17b2a059648c0b775f636fb

[950] El Diario. September 24, 2010. *Ponen a torturado y a 2 muertos como asesinos de El Choco.* Available at: http://www.diario.com.mx/notas.php?f=2010/09/24&id=2faa7246b17b2a059648c0b775f636fb

[951] El Diario. September 24, 2010. *Ponen a torturado y a 2 muertos como asesinos de El Choco.* Available at: http://www.diario.com.mx/notas.php?f=2010/09/24&id=2faa7246b17b2a059648c0b775f636fb

[952] El Universal. November 14, 2008. *Atrae PGR el homicidio de periodista en Chihuahua*. Available at: http://www.eluniversal.com.mx/notas/vi_555641.html

[953] El Universal. November 14, 2008. *Atrae PGR el homicidio de periodista en Chihuahua*. Available at: http://www.eluniversal.com.mx/notas/vi_555641.html

[954] Reporters without Borders. *México: Los entresijos de la impunidad* (Paris: RSF, September, 2009), p. 9. Available at: http://files.reporterossinfronteras.webnode.es/200000142-a5a9ca6a3f/RsF_Informe_Mexico_Impunidad_sept09.pdf. El Diario. September 24, 2010. *Chocan versiones en expedientes de las Procuradurías estatal y federal.* Available at: http://www.diario.com.mx/notas.php?f=2010/09/24&id=4df9d5ab3a977336988078701e342141. See also Memo 0000144/FEADLE/2010, Communication from the FEADLE to the Office of the Special Rapporteur received October 20, 2010, in response to the information request of September 2, 2010.

two investigations were coordinated,[955] the information available raises doubts about this, as detailed below.

655. According to press reports, federal authorities claimed that the Public Prosecutor's Office of the state of Chihuahua had direct responsibility for carrying out the investigation.[956] In fact, the authorities of the state Public Prosecutor's Office provided information that at a given moment the Special Prosecutor's Office had renounced its competence over the case, finding no proof that the murder of Armando Rodríguez was motivated by his profession.[957] According to information *El Diario* claims to have received from the Public Prosecutor's Office for the state of Chihuahua, the investigation carried out by the state Public Prosecutor's office pointed to the perpetrator being Juan Gabriel Dávila Antillón.[958]

656. Notwithstanding the foregoing, on September 23, 2010, the PGR announced the arrest by the federal authorities of a suspect involved in the murder of Armando Rodríguez, and stated that the motive for the murder was his having written "many journalistic articles against one of the criminal organizations that dispute control of the drugs corridor."[959] The detainee, according to press reports, was an individual identified by the nickname *El 7*, who was alleged to have driven the vehicle used by the journalist's murderers.[960] The PGR later informed that it had also detained Hugo Valenzuela Castañeda, known as *El 3*[961]. According to declarations made by the Prosecutor General reported in the press, the information provided by *El 7* allowed identification of the perpetrator as a person known as *El 6* or *El Junior*, and identification of the mastermind as José Antonio Acosta Hernández*, Diego,* who had been killed in 2009.[962]

657. However, *El Diario* and the Committee to Protect Journalists have expressed a series of doubts about these advances in the investigation.[963] As well as the lack of consistency between the line of enquiry taken by the state Public Prosecutor's office and the results presented by the PGR, *El Diario* reported that Hugo Valenzuela Castañeda*, El 3*, had been strangled in a cell of the state correctional facility on July 8, 2010, making it impossible for him to have been detained at the end of September, 2010, as part of the investigation of the murder of Armando Rodríguez.[964] It also reported that the alias "*El 7*" corresponds to Juan Alfredo Soto Arias, who was arrested in March, 2010, and who had filed a

---

[955] See El Diario. September 26, 2010. *Ciudad Juárez: Inconsistencias sobre quién mató a 'El Choco'.* Available at: http://www.eldiariodechihuahua.com/notas.php?IDNOTA=210421&IDSECCION=El%20State&IDREPORTERO=Elena%20Balti%E9rrez

[956] El Diario. September 24, 2010. *Chocan versiones en expedientes de las Procuradurías estatal and federal.* Available at: http://www.diario.com.mx/notas.php?f=2010/09/24&id=4df9d5ab3a977336988078701e342141

[957] See El Diario. September 24, 2010. *'Fiscalía federal regresó el caso al no hallar pruebas de que profesión fuera el móvil'.* Available at: http://www.diario.com.mx/notas.php?f=2010/09/24&id=11779a8e8be92631ed449781f0368937#

[958] See El Diario. September 26, 2010. *Ciudad Juárez: Inconsistencias sobre quién mató a 'El Choco'.* Available at: http://www.eldiariodechihuahua.com/notas.php?IDNOTA=210421&IDSECCION=El Estado&IDREPORTERO=Elena Balti%E9rrez

[959] PGR, Boletín 1108/10, September 23, 2010. Available at: http://www.pgr.gob.mx/prensa/2007/bol10/Sep/b110810.shtm

[960] La Jornada. September 24, 2010. *El homicidio de Rodríguez Carreón, de El Diario, "por hacer notas" sobre La Línea*. Available at: http://www.jornada.unam.mx/2010/09/24/index.php?section=politica&article=015n1pol

[961] El Diario. September 24, 2010. *Fue estrangulado en su celda, recluso que PGR presenta como detenido.* Available at: http://www.diario.com.mx/notas.php?f=2010/09/24&id=4fc5da8c086fbc158430cd13986cda30

[962] La Jornada. September 24, 2010. *El homicidio de Rodríguez Carreón, de El Diario, "por hacer notas" sobre La Línea*. Available at: http://www.jornada.unam.mx/2010/09/24/index.php?section=politica&article=015n1pol. Committee to Protect Journalists (CPJ). September 24, 2010. *Doubt cast on confession in Rodríguez murder*. Available at: http://cpj.org/blog/2010/09/doubt-cast-on-confession-in-rodriguez-murder.php

[963] El Diario. September 26, 2010. Ciudad Juárez: Inconsistencias sobre quién mató a 'El Choco'. Available at: http://www.eldiariodechihuahua.com/notas.php?IDNOTA=210421&IDSECCION=El Estado&IDREPORTERO=Elena Balti%E9rrez. Committee to Protect Journalists (CPJ). September 24, 2010. Doubt cast on confession in Rodríguez murder. Available at: http://cpj.org/blog/2010/09/doubt-cast-on-confession-in-rodriguez-murder.php

[964] El Diario. September 24, 2010. *Fue estrangulado in su celda, recluso que PGR presenta como detenido.* Available at: http://www.diario.com.mx/notas.php?f=2010/09/24&id=4fc5da8c086fbc158430cd13986cda30

complaint with the CNDH alleging that he was tortured.[965] *El Diario* claims to have access to the information that indicates that one of the offenses that Soto Arias had been forced to confess to, was the murder of Armando Rodríguez.[966]

658. As of the date on which this report was completed, the murder of Armando Rodríguez remains unpunished, given that not one of those responsible has been prosecuted or sentenced. There is no clarity, either, about the course taken by the legal proceedings following the progress in the inquiry announced by the PGR in September, 2010, and the subsequent public doubts that were raised in the press and in civil society about these advances. Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case of Armando Rodríguez.[967] In a reply received on November 12, 2010, the State forwarded a FEADLE report that indicates that the investigation is currently "being processed by the state of Chihuahua Public Prosecutor's Office."[968]

**Bradley Roland Will**

659. On October 27, 2006, the American journalist Brad Will lost his life while he was filming a confrontation between sympathizers of the Popular Assembly of the Peoples of Oaxaca (*Asamblea Popular de los Pueblos de Oaxaca*, hereinafter "APPO") and the local police in Santa Lucia del Camino, Oaxaca state. The documentary maker and photojournalist, who was covering the conflict between the state government and a coalition of organizations and labor unions grouped together in the APPO for the independent media organization *Indymedia*, died from the bullet wounds he received. The information received by the Office of the Special Rapporteur at the time of the events indicated that the shots may have come from municipal police dressed as civilians and personnel from the mayor's office, who had opened fire against an APPO barricade near where Brad Will was standing.[969]

660. The investigation into the homicide of the journalist Brad Will was initially assumed by the Oaxaca State Public Prosecutor's Office. On November 2, 2006, the State Public Prosecutor's Office opened a prosecution against two municipal police officers identified as suspects in the homicide. However, on November 28, 2006, the criminal judge of the district court in Etla, Oaxaca released the detained officers due to the annulment of the evidence to be used to try them. On March 22, 2007 the state Public Prosecutor's office declined its competence and referred the inquest to the PGR.[970]

661. The PGR accepted competence with regard to the case of Brad Will on April 4, 2007, and on October 22, 2007—almost a year after the murder—the then-Special Prosecutor's Office for Crimes against Journalists assumed competence over the case.[971] After a year of enquiries the Special Prosecutor decided to prosecute Juan Manuel Martínez Moreno, an APPO sympathizer, as the perpetrator of the homicide of Brad Will, and against a further two people for the offense of accessory after the fact.[972] On February 18, 2010, after spending 16 months in detention, Juan Manuel Martínez

---

[965] El Diario. September 24, 2010. *Ponen a torturado and a 2 muertos como asesinos de El Choco.* Available at: http://www.diario.com.mx/notas.php?f=2010/09/24&id=2faa7246b17b2a059648c0b775f636fb

[966] El Diario. September 24, 2010. *Ponen a torturado and a 2 muertos como asesinos de El Choco.* Available at: http://www.diario.com.mx/notas.php?f=2010/09/24&id=2faa7246b17b2a059648c0b775f636fb

[967] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[968] PGR, Memo 0000144/FEADLE/2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[969] Office of the Special Rapporteur for Freedom of Expression – IACHR. October 31, 2006. Press release No. 156/06. Available at: http://www.cidh.oas.org/relatoria/artListCat.asp?year=2006&countryID=1&lID=1&catID=1

[970] CNDH, Recommendation 50 of 2008, September 26, 2008.

[971] CNDH, Recommendation 50 of 2008, September 26, 2008.

[972] PGR, Memo No. SDHAVSC/FEADP/1058/08, communication from the Special Prosecutor for Crimes against Journalists to the CPJ of October 28, 2008, Available at: http://cpj.org/blog/Mexico.Brad%20Will%5BEspa%C3%B1ol%5D.PDF

Moreno had the charges against him quashed by order of a federal tribunal.[973] The legal representation of the family of Brad Will informed the Office of the Special Rapporteur that the PGR had not advised the reporter's family if it would continue with the investigation following the liberation of Mr. Martínez.[974]

662. The investigations undertaken in the case of Brad Will have been repeatedly questioned by the CNDH and international organizations such as the CPJ. The CNDH carried out a detailed study of the judicial process in its Recommendation 50/2008, identifying a series of irregularities. With regard to the investigation carried out by the state Public Prosecutor's Office, the CNDH detected a number of significant omissions, including the failure to immediately arrive at and secure the crime scene. In addition, according to the CNDH, the state Public Prosecutor's Office did not interrogate the two individuals who were first detained and presented as probable perpetrators of the homicide, and failed to identify, locate or interrogate the armed individuals who appear in the video stills and photographs of the death of the reporter, which were widely circulated in the media. The CNDH also criticized failures on the part of the state Public Prosecutor's Office in the examination of the weapons the municipal police were carrying on the day of the incident. Finally, the CNDH concluded on the basis of independent forensic analysis that the state Public Prosecutor's Office was wrong to determine that the shot that killed the journalist Brad Will was fired from a close distance, at a different time and place from where the initial incident occurred. On the contrary, according to the analysis of the CNDH, Brad Will was killed by shots fired in close succession from a distance of approximately 35 to 50 meters (115 to 164 feet), from a single weapon fired by the same person.[975]

663. The investigation carried out by the PGR's Special Prosecutor's Office was still in process when the CNDH issued its Recommendation 50/08, and Juan Manuel Martínez Moreno had not yet been accused of the crime. Nonetheless, the CNDH observed that said investigation had "failed to put principles of criminology into effect" and recommended "the inclusion of a group of forensic experts, who work together, in order to analyze the clues, evidence and elements of proof that have been recorded in the criminal investigation."[976] The PGR did not accept the CNDH's Recommendation 50/08.[977] In a detailed response to the Recommendation issued by the CNDH, the PGR defended the conclusions of its investigation, noting in the first place that "it is the case that some of the actions requested are being undertaken, have already been carried out, or were of no relevance."[978] It also clarified that the PGR "chose not to be influenced by the rulings at work in the criminal investigation, by requesting a forensic analysis that dissipated the doubts and established the circumstances of the actions that led to the death of the journalist Bradley Roland Will […] which was delivered on March 18, 2008, and to which forensic experts in criminology, chemistry, ballistics, planimetry, photography, video, audio and forensic medicine contributed."[979] The PGR argued that the "CNDH should give total credibility to the report made by the forensic expert's office of this national body", and insisted on giving greater credibility to the conclusions of its own experts, noting that "the conclusions issued by the forensic experts provide elements to establish the circumstances of the manner, time and place in which Mr. Will lost his life."[980] The

[973] Committee to Protect Journalists (CPJ). February 24, 2010. *Only man accused in Brad Will murder goes free*. Available at: http://cpj.org/blog/2010/02/only-man-accused-in-brad-will-murder-goes-free.php

[974] Letter from Miguel Ángel de los Santos Cruz to the Office of the Special Rapporteurs of the IACHR and the United Nations, August 10, 2010, document provided to the Office of the Special Rapporteur during the on-site visit.

[975] CNDH, Recommendation 50 of 2008, September 26, 2008.

[976] CNDH, Recommendation 50 of 2008, September 26, 2008.

[977] PGR, Memo PGR/669/08 October 16, 2008, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[978] PGR, Memo PGR/669/08 October 16, 2008, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[979] PGR, Memo PGR/669/08 October 16, 2008, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[980] PGR, Memo PGR/669/08 October 16, 2008, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

conclusions of the PGR's forensic analysis, to the effect that "the killer fired from a distance of approximately 2 meters (6.5 feet) from the victim for the first shot and for the second shot was located at an approximate distance of between 2 and 8 meters (6.5-26 feet),"[981] was the basis for the prosecution of Juan Manuel Martínez Moreno.

664. On October 21, 2008, Mr. Martínez Moreno was put on trial for the murder of Brad Will. The CPJ questioned the investigation undertaken by the PGR that led to this decision, observing that "the prosecution had failed to present forensic evidence, witness statements or clear and convincing motives in the accusation against Martínez and the other suspects in the murder. At the same time, they appear to have discarded evidence – ballistic, photographic and medical – that would implicate sympathizers with the Oaxaca state government."[982] Similarly, CNDH authorities publicly questioned the forensic analysis that led the PGR to conclude that the murder was committed by an APPO sympathizer standing a short distance from the victim, and not further away, where the police agents were located.[983] As mentioned above, the accused, Martínez, had the charges against him quashed in February, 2010.

665. Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case of Brad Will.[984] In a reply received on November 12, 2010, the State sent a number of relevant documents concerning the investigation, including the PGR's responses to a letter from the CPJ and to the CNDH's Recommendation 50/08.[985] The FEADLE report forwarded by the State indicates that the investigation is in the hands of a judge of the state of Oaxaca.[986] As of the date on which this report was completed the murder of Brad Will remains unpunished and the current direction of the investigation following the release of Juan Manuel Martínez Moreno is unclear. On November 3, 2010, the IACHR granted protective measures to protect the life and integrity of Juan Manuel Martínez Moreno and his family, in response to the harassment they received during and after the detention of Mr. Martínez.

**José Bladimir Antuna García**

666. On November 2, 2009 the journalist José Bladimir Antuna García was murdered in the city of Durango, Durango State. García, who covered police and court news for *El Tiempo de Durango* and *La Voz de Durango*, was taken from his car and kidnapped by armed men on a city street on the morning of November 2, and his body was found with signs of torture the same night. A note left beside his body warned others not to give information to the army.[987]

667. The journalist García had suffered threats and acts of violence during the year prior to his murder. In October 2008 he began to receive the first threatening calls to his cell phone. On April 28, 2009, as he left his house to go to work, he was the victim of an attack when a person emerged from a

---

[981] PGR, Memo PGR/669/08 October 16, 2008, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[982] Committee to Protect Journalists (CPJ). Letter to Prosecutor General Eduardo Medina Mora, October 24, 2008. Available at: http://cpj.org/es/2008/10/el-cpj-preocupado-por-investigacion-en-el-caso-wil.php

[983] Milenio. August 6, 2009. *PGR miente en el caso Brad Will*. Available at: http://www.milenio.com/node/262566

[984] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[985] PGR, Memo No. SDHAVSC/FEADP/1058/08 October 28, 2008 and Memo PGR/669/08 October 16, 2008, Annexes to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[986] PGR, Memo 0000144/FEADLE/2010, Annex to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[987] Office of the Special Rapporteur for Freedom of Expression – IACHR. November 4, 2009. Press release R76/09. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=772&lID=1; Committee to Protect Journalists (CPJ), *Silence or Death in Mexico's Press* (New York: CPJ, 2010), chapter 3 "Murder in Durango", Available at: http://cpj.org/reports/cpj_mexico_english.pdf

vehicle and opened fire. García managed to take refuge in his house and emerged unscathed.[988] García also received threats following the murder of the journalist Eliseo Barrón,[989] which occurred on May 26, 2009.[990] García, who had worked with Barrón on reports about police corruption and organized crime, said that in the threats he received after the death of the reporter he was told that he would be the next to die.[991] García publicly denounced the threats and the attack in an interview with the magazine *Buzos* published in August 2009, and also informed the organization Center for Journalism and Public Ethics (*Centro de Periodismo y Ética Pública*, hereinafter "CEPET").[992] Furthermore, he formally reported the attack on him to the state Public Prosecutor's Office, as the CPJ was able to verify.[993] Despite these denunciations, no progress was made in the investigation and García received no protection from the authorities, such that, his friends informed the CPJ, in the months prior to his death he barely left his house and appeared resigned to being murdered.[994]

668. There is scant information available about the investigation into the homicide of García. The investigation was opened by the Public Prosecutor's Office of Durango State and the available information indicates that, save for a brief period during which the PGR assumed responsibility for the investigation, the state Public Prosecutor's Office has been responsible for investigating the murder.[995] In March 2010 the CPJ undertook a review of the investigation, interviewing the highest-ranking prosecutor with responsibility for cases of offenses against journalists in the Durango Public Prosecutor's Office office.[996] The CPJ identified a series of major omissions in the investigation, in particular that:

> The authorities did not even take the most basic steps to solve the homicide. The investigators did not question his friends, or his enemies, his sources or his colleagues. They did not analyze the close links that Antuna García had with the police or with the gangs that controlled the drugs business in the mountainous region of the state. The investigators did not read news stories that Antuna had written to see whom he could have angered, or check into his pending investigation into police corruption. They never bothered to check Antuna's statement that phone threats had been made by members of the Zetas criminal gang, as he told the Center for

---

[988] Committee to Protect Journalists (CPJ). *Silence or Death in Mexico's Press* (New York: CPJ, 2010), chapter 3 "Murder in Durango", Available at: http://cpj.org/reports/cpj_mexico_english.pdf. *Buzos*. *Con el miedo a flor de piel.* Available at: http://www.buzos.com.mx/360/reporte_especial.html

[989] Sobre el murder de Eliseo Barrón see IACHR, Office of the Special Rapporteur for Freedom of Expression, Press release R34/09, May 29, 2009.

[990] Committee to Protect Journalists (CPJ). *Silence or Death in Mexico's Press* (New York: CPJ, 2010), chapter 3 "Murder in Durango", Available at: http://cpj.org/reports/cpj_mexico_english.pdf. *Con el miedo a flor de piel.* Available at: http://www.buzos.com.mx/360/reporte_especial.html

[991] Committee to Protect Journalists (CPJ). *Silence or Death in Mexico's Press* (New York: CPJ, 2010), chapter 3 "Murder in Durango", Available at: http://cpj.org/reports/cpj_mexico_english.pdf. *Buzos*. *Con el miedo a flor de piel.* Available at: http://www.buzos.com.mx/360/reporte_especial.html

[991] Committee to Protect Journalists (CPJ). *Silence or Death in Mexico's Press* (New York: CPJ, 2010), chapter 3 "Murder in Durango", Available at: http://cpj.org/reports/cpj_mexico_english.pdf. *Buzos*. *Con el miedo a flor de piel.* Available at: http://www.buzos.com.mx/360/reporte_especial.html

[992] Committee to Protect Journalists (CPJ). *Silence or Death in Mexico's Press* (New York: CPJ, 2010), chapter 3 "Murder in Durango", Available at: http://cpj.org/reports/cpj_mexico_english.pdf. *Buzos*. *Con el miedo a flor de piel.* Available at: http://www.buzos.com.mx/360/reporte_especial.html

[993] Committee to Protect Journalists (CPJ). *Silence or Death in Mexico's Press* (New York: CPJ, 2010), chapter 3 "Murder in Durango", Available at: http://cpj.org/reports/cpj_mexico_english.pdf. See also *Buzos*. *Con el miedo a flor de piel.* Available at: http://www.buzos.com.mx/360/reporte_especial.html

[994] Committee to Protect Journalists (CPJ). *Silence or Death in Mexico's Press* (New York: CPJ, 2010), chapter 3 "Murder in Durango", Available at: http://cpj.org/reports/cpj_mexico_english.pdf

[995] Committee to Protect Journalists (CPJ). *Silence or Death in Mexico's Press* (New York: CPJ, 2010), chapter 3 "Murder in Durango", Available at: http://cpj.org/reports/cpj_mexico_english.pdf

[996] Committee to Protect Journalists (CPJ). *Silence or Death in Mexico's Press* (New York: CPJ, 2010), chapter 3 "Murder in Durango", Available at: http://cpj.org/reports/cpj_mexico_english.pdf

Journalism and Public Ethics. State investigators never contacted the center or retrieved telephone records that could have traced the calls.[997]

669. On November 1, 2010, a year after the murder of José Bladimir Antuna García, one of the newspapers where he worked, *La Voz de Durango*, denounced the "lack of progress in the investigation and the unsolved case."[998] Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case of José Bladimir Antuna García[999]. In a reply received on November 12, 2010, the State sent some documents relating to the investigation, which indicate that the PGR opened a criminal investigation into the case of Antuna García, which was referred to the Public Prosecutor's Office of the state of Durango on November 26, 2009, for jurisdictional reasons, where the investigation is currently in process.[1000]

**Cases 11.739 (Héctor Félix Miranda)[1001] and 11.740 (Víctor Manuel Oropeza)[1002]**

670. Below, the Office of the Special Rapporteur summarizes the relevant conclusions of the IACHR in two cases decided by the Inter-American Commission on Human Rights in 1999: the cases of Mexican journalists Héctor Félix Miranda, murdered in 1988, and Víctor Manuel Oropeza, murdered in 1991. The Office of the Special Rapporteur includes these cases in light of their historical and symbolic importance for the Mexican press and for the IACHR itself, the fact that compliance with the recommendations of the Commission in both cases remains pending, and the fact that they reveal causes of violence and impunity that remain relevant despite being crimes that occurred almost two decades ago.

**Héctor Félix Miranda**

671. On April 20, 1988, the journalist Héctor Félix Miranda was murdered in the city of Tijuana, Baja California State. That day, the journalist was driving his car towards his office at the weekly *Zeta* when two vehicles began to follow him. An individual got out of one of them and shot him at close range with a 12 mm rifle, causing his death. Victoriano Medina Moreno, a former judicial police officer from the state of Baja California and his former boss, Antonio Vera Palestina, responsible for security at the Agua Caliente racetrack in Tijuana were accused and prosecuted as perpetrators of the crime.[1003]

672. Héctor Félix Miranda was co-editor of the weekly *Zeta*, for which he wrote a column entitled "*Un poco de algo*" ("A bit of something") with stories from the political sphere and sarcastic comments about government officials. The petitioners (the Inter-American Press Association) made allegations to the IACHR that his murder was directly linked to the publication of his column, for which reason they believed it necessary to investigate who was behind the crime. In this regard, they highlighted the fact that on the day of the murder, Vera Palestina had received a payment equivalent to $10,000 dollars, a fact that was not investigated by state judicial bodies. When the IACHR published its report, the investigation into the murder remained open, in order for the identity of the mastermind to be determined, but the petitioners alleged that this investigation was stalled, due to a lack of will on the part of the Mexican State.[1004] The petitioners did not question the trial and sentencing of the direct

[997] Committee to Protect Journalists (CPJ). *Silence or Death in Mexico's Press* (New York: CPJ, 2010), chapter 3 "Murder in Durango", Available at: http://cpj.org/reports/cpj_mexico_english.pdf

[998] *La Voz de Durango*. November 1, 2010. *Bladimir Antuna, un año de un crimen sin resolver*. Available at: http://www.lavozdedurango.com/noticias/durango/bladimir-antuna-un-ano-de-un-crimen-sin-resolver

[999] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[1000] PGR, Memo No. SJAI/CAIA/DGCI/2816/2010 of July 20, 2010 and Memo 0000144/FEADLE/2010, Annexes to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[1001] IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda, Mexico, April 13, 1999.

[1002] IACHR. Report No. 130/99. Case 11.740. Víctor Manuel Oropeza, Mexico, November 19, 1999.

[1003] IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda, Mexico, April 13, 1999, par. 2.

[1004] IACHR. Report No. 50/99. Case 11.739. Héctor Félix Miranda, Mexico, April 13, 1999, par. 3.

perpetrators, but the lack of inquiry into the masterminds behind the murder. They considered that the crime was the direct consequence of the publication of the column "*Un poco de algo*", in which the journalist "in a harsh and at times sarcastic vein, criticized and denounced private and public matters in connection with acts of corruption, crimes in general and drug trafficking."[1005] The petitioners added that the businessman Jorge Hank Rhon—who they described as "the son of one of the wealthiest and most powerful men in Mexico"—had been attacked several times by Félix Miranda in his *Zeta* column in the months before the murder. This fact was of relevance to the petitioners since both Medina Romero and Vera Palestina were employees at the Tijuana racetrack, the property of the Hank Rhon family. Finally, evidence was found of the payment of a large sum of money to Vera Palestina, traced to the racetrack.[1006]

673. In its report, the IACHR considered that the evidence provided by the petitioners contained numerous elements that pointed to the existence of a mastermind: the payment to the assassins, the inconsistencies in the confessions of the perpetrators, the failure to question the then co-editor of the weekly *Zeta*, Jesús Blancornelas, and the abrupt closure of the police investigation, among others.[1007] The Commission established that the Mexican State was responsible for an unreasonable delay in the investigation of the murder of Héctor Félix Miranda[1008] and that the behavior of the authorities responsible was defined by inactivity in the investigation, interrupted solely by a few procedures of a bureaucratic nature, of no significance and with no concrete outcome whatsoever.[1009] The IACHR concluded that despite its exercise of a monopoly on criminal proceedings, the State had declined to conduct the complete and serious investigation of the crime befalling the journalist as its own juridical duty, so that the judicial remedy available in Mexico had not been simple, rapid or effective.[1010]

674. The Commission determined that the Mexican State violated articles 13, 8 and 25, in relation to article 1.1 of the American Convention on Human Rights in the case of Héctor Félix Miranda, and ordered the State:

1. To conduct a serious, exhaustive and impartial investigation to determine the punitive responsibility of all the perpetrators of Héctor Félix Miranda's assassination.
2. To conduct a serious, exhaustive and impartial investigation to determine whether there have been instances of concealment and crimes against the administration of justice which have impeded a complete investigation of the incidents which give rise to the present report; and, if so, that it apply such pertinent penal, administrative and/or disciplinary measures which may be pertinent.
3. To provide members of Héctor Félix Miranda's family with adequate reparation and compensation for the human rights violations established in this document.[1011]

675. Following the publication of its Report No. 50/99, on October 20, 2003, the IACHR called a hearing to follow up on its recommendations in the Héctor Félix Miranda case. At this meeting the State declared that the Prosecutor General was prepared to meet with the petitioners and that an agreement had been reached between the state and federal governments to proceed with the investigation.[1012] At this meeting the parties also agreed to work on a timetable for following up on the recommendations of

---

[1005] IACHR. *Report No. 50/99*. Case 11.739. Héctor Félix Miranda, Mexico, April 13, 1999, par. 19.

[1006] IACHR. *Report No. 50/99*. Case 11.739. Héctor Félix Miranda, Mexico, April 13, 1999, par. 20.

[1007] IACHR. *Report No. 50/99.* Case 11.739. Héctor Félix Miranda, Mexico, April 13, 1999, par. 29.

[1008] IACHR. *Report No. 50/99*. Case 11.739. Héctor Félix Miranda, Mexico, April 13, 1999, par. 40.

[1009] IACHR. *Report No. 50/99*. Case 11.739. Héctor Félix Miranda, Mexico, April 13, 1999, par. 38.

[1010] IACHR. *Report No. 50/99*. Case 11.739. Héctor Félix Miranda, Mexico, April 13, 1999, par. 40.

[1011] IACHR. *Report No. 50/99*. Case 11.739. Héctor Félix Miranda, Mexico, April 13, 1999, par. 67.

[1012] IACHR, Summary of Meeting No. 43, Follow-up of the Cases 11.739 – Héctor Félix Miranda (Report 50/99) and 11.740 – Víctor Manuel Oropeza (Report 130/99), October 20, 2003.

the Commission.[1013] In effect, on March 13, 2004, the petitioners and the Mexican State signed a document entitled "Terms of Reference: Working Group for Reviewing the Case Files of Héctor Félix Miranda and Víctor Manuel Oropeza," by which they agreed to, among other things, set up a Working Group to review and analyze the criminal investigations and judicial processes in the two cases, with a view to reopening and restarting the investigations and judicial proceedings.[1014]

676. To this effect, on April 23, 2004, the petitioners, the Foreign Ministry and the Public Prosecutor's Office of the state of Baja California signed an agreement that ordered the creation of a Technical Group to review the initial criminal investigations and judicial processes in the case of Héctor Félix Miranda; each of the three parties designated a representative for the Technical Group.[1015] On May 13, 2004, the Technical Group met for the first time, analyzed the legal file in the case, and agreed to request a series of actions from the judicial authorities.[1016]

677. On June 22, 2004, the representative of the petitioners on the Technical Group, Francisco Ortiz Franco, was murdered; Ortiz Franco was editor and, together with Héctor Félix Miranda, co-founder of the weekly *Zeta*.[1017] The information provided to the Commission by the parties indicates that the Technical Group met again on March 17-18, 2005, and on September 26-27 of the same year.[1018] Since then, the information available indicates that the Technical Group has not met again, nor has any significant progress been made in the investigation into the murder of Héctor Félix Miranda.

678. Within the framework of its visit, the Office of the Special Rapporteur requested up-to-date information from the Mexican State on the investigation into the murder of Héctor Félix Miranda.[1019] In a reply received on November 12, 2010, the State indicated that the FEADLE had been charged with the task of documenting cases of homicides and disappearances of journalists that had occurred since the year 2000, and that, once this first stage was complete, it would proceed with the task of documenting those cases which occurred prior to 2000, including the murder of Héctor Félix Miranda. The information sent by the State also indicates that a criminal investigation into the case remains open with the Deputy Attorney General's Office for Special Investigation into Organized Crime.[1020]

679. The Office of the Special Rapporteur expresses its extreme concern about the fact that the recommendations of the IACHR in the case of Héctor Félix Miranda remain pending 11 years after the publication of the decision in the case, and urges the Mexican State to reactivate the investigations into the murder of the journalist in order to comply with these recommendations.

---

[1013] IACHR, Summary of Meeting No. 43, Follow-up of the Cases 11.739 – Héctor Félix Miranda (Report 50/99) and 11.740 – Víctor Manuel Oropeza (Report 130/99), October 20, 2003.

[1014] "Terms of Reference: Working Group for Reviewing the Case Files of Héctor Félix Miranda and Víctor Manuel Oropeza", March 13, 2004, on file with the IACHR.

[1015] "Agreement signed between the Inter-American Press Association (IAPA), the Ministry of Foreign Affairs (SRE) and the Public Prosecutor's Office of the state of Baja California (PFJE) in compliance with the recommendation included in Report 50-99 issued by the Inter-American Commission for Human Rights (IACHR) on the case 11.739 Héctor Félix Miranda, April 23, 2004 in the city of Tijuana, Baja California", on file with the IACHR.

[1016] Minutes of the Working Meeting of the Technical Group on the Death of Mr. Héctor Félix Miranda, May 13, 2004, on file with the IACHR.

[1017] *Washington Post*. 23 de June de 2004. *Gunmen Kill Editor of Tijuana Newspaper*. Available at: http://www.washingtonpost.com/wp-dyn/articles/A61807-2004Jun22.html. UNESCO. June 25, 2004. *El Director General Condena el Asesinato del Periodista Mexicano Francisco Ortiz Franco*. Available at: http://portal.unesco.org/es/ev.php-URL_ID=21346&URL_DO=DO_TOPIC&URL_SECTION=201.html

[1018] Working Meeting on the Héctor Félix Case, March 17-18, 2005, on file with the IACHR. Working Meeting on the Héctor Félix Case, September 26-27, 2005, on file with the IACHR.

[1019] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[1020] Mexican State, "Reply to the Information Request made by the Special Rapporteurs for Freedom of Expression of the OAS and the UN, in Follow-up to their Official Visit to Mexico between August 9-24, 2010" and PGR, Memo 0000144/FEADLE/2010, Annexes to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

**Víctor Manuel Oropeza**

680. Víctor Manuel Oropeza was murdered on July 3, 1991, in Ciudad Juárez, state of Chihuahua. That day, the journalist was in his consulting room when, according to information from witnesses, two individuals entered and after a struggle, inflicted 14 stab wounds in his torso. Víctor Manuel Oropeza was a doctor by profession, and since 1984 had written a column entitled *"A mi manera"* ("My way") for the *Diario de Juárez*, of Ciudad Juárez. Oropeza used this space to lay out criticisms of the authorities and to denounce the "close ties between police forces and drug traffickers" in the region. The judicial investigation took a number of turns and at the time of the publication of the IACHR's report the only suspect was in prison in the United States on an unrelated matter. The petitioners (the Inter-American Press Association) considered that his murder was committed with the intention of silencing his allegations and that as a result the investigation had been deliberately stalled by the authorities he had implicated.[1021]

681. The IACHR noted in its report that over eight years had passed since the murder of the journalist Víctor Manuel Oropeza and the investigation remained open, but not a single person responsible for planning or carrying out the murder had been identified, nor had reparations been made for the consequences of the murder.[1022] Marco Arturo Salas Sánchez and Sergio Aguirre Torres were initially tried for the murder, but they were freed once the CNDH had established that their confessions had been produced under torture.[1023] With regard to the legal process set out before the IACHR the State itself provided numerous details about the punishment of various officials for serious irregularities in this investigation that, as mentioned, went as far as the torture of two people to force them to incriminate themselves. Indeed, the Commission observed that six government employees were accused of abuse of authority, obstruction of justice, and torture; that they were neither tried nor indicted for these acts, due to irregularities in the investigations by the agents responsible from the Public Prosecutor's Office; and that one of these agents was "punished" with dismissal and the other with a written warning.[1024]

682. The IACHR observed that the only person accused was one Samuel de la Rosa Reyes, who was in prison in Texas, U.S.A., on a matter unrelated to the homicide of Oropeza. According to the documentation supplied by the State, on November 14, 1997, officials from the consulate and the Public Prosecutor's Office of Chihuahua traveled to the high-security penitentiary in the city of Livingston, Texas, in order to take a statement from Samuel Reyes. The same documentation indicates that the detainee refused to give a statement, despite the insistence of the Mexican officials; and that, in consequence, they drew up the corresponding report and treated the matter as closed.[1025] At no time was the Commission informed about the motive for which this person was considered the "probable culprit" for the murder, or the reasons why they lacked any other clue that might lead to the identification of the other perpetrators, given it was clear several people were involved in the murder of the journalist, as a number of witnesses at the scene had declared.[1026]

683. The Commission established that the Mexican State was responsible for an unreasonable delay in the investigation of the murder of Víctor Manuel Oropeza. It concluded that despite its exercise of a monopoly on criminal proceedings, the State had declined to conduct the complete and serious investigation of the crime befalling the journalist as its own juridical duty, so that the judicial remedy available in Mexico had not been simple, rapid or effective.[1027]

---

[1021] IACHR. *Report No. 130/99*. Case 11.740. Víctor Manuel Oropeza, Mexico, November 19, 1999, par. 2.

[1022] IACHR. *Report No. 130/99*. Case 11.740. Víctor Manuel Oropeza, Mexico, November 19, 1999, par. 30.

[1023] IACHR. *Report No. 130/99*. Case 11.740. Víctor Manuel Oropeza, Mexico, November 19, 1999, par. 31.

[1024] IACHR. *Report No. 130/99*. Case 11.740. Víctor Manuel Oropeza, Mexico, November 19, 1999, par. 38.

[1025] IACHR. *Report No. 130/99.* Case 11.740. Víctor Manuel Oropeza, Mexico, November 19, 1999, par. 40.

[1026] IACHR. *Report No. 130/99*. Case 11.740. Víctor Manuel Oropeza, Mexico, November 19, 1999, par. 41.

[1027] IACHR. *Report No. 130/99*. Case 11.740. Víctor Manuel Oropeza, Mexico, November 19, 1999, par. 44.

684. The Commission determined that the Mexican State violated articles 13, 8 and 25, in relation to article 1.1 of the American Convention on Human Rights in the case of Víctor Manuel Oropeza, and ordered the State to:

> 1. Investigate in a complete, impartial, and effective manner in order to determine the criminal responsibility of all of the perpetrators of Víctor Manual Oropeza's assassination.
> 2. Investigate in a complete, impartial, and effective manner in order to determine whether cover-up actions were taken and crimes were committed against the Administration of Justice, including the possible participation of judicial personnel, which impeded the complete investigation of the facts addressed in this report; and, as appropriate, apply criminal, administrative, and/or disciplinary sanctions.
> 3. Provide redress and proper compensation to the family members of Víctor Manuel Oropeza for the violations established herein[1028].

685. Following the publication of its Report No. 130/99, on October 20, 2003, the IACHR called a meeting to follow up on its recommendations in the Víctor Manuel Oropeza case. At this meeting the State declared that the Prosecutor General was prepared to meet with the petitioners and that an agreement had been reached between the state and federal governments to proceed with the investigation.[1029] At this meeting the parties also agreed to work on a timetable for following up on the recommendations of the Commission.[1030] In effect, on March 13, 2004, the petitioners and the Mexican State signed a document entitled "Terms of Reference: Working Group for the Review of the Case Files on Héctor Félix Miranda and Víctor Manuel Oropeza", by which they agreed to, among other things, set up a Working Group to review and analyze the criminal investigations and judicial processes in the two cases, with a view to reopening and restarting the investigations and judicial processes.[1031]

686. On February 9 and 10, 2005, a meeting of the Working Group for Joint Review of the Oropeza Case was held, at which representatives of the petitioners, the Public Prosecutor's Office of the state of Chihuahua and the Foreign Ministry were all present.[1032] At this meeting of the Working Group it was established, after reviewing the legal file of the case, that "significant failings were detected in the inquiry and judicial processes," and that "the ministerial authority failed to consider in its investigation whether the motive was connected to his activity as a journalist."[1033] Based on these conclusions, the State Public Prosecutor's Office committed itself to reactivating the case.[1034] On September 27 and 28, 2005, the Working Group met again. At this meeting "the progress that has been made […] on lines of enquiry that had not previously been exhausted was noted", and the Office of the state Public Prosecutor "reaffirmed its commitment to continue to examine as much evidence as is necessary to clarify the events."[1035] Since then, the information available indicates that the Working Group has not met again, nor has any significant progress been made in the investigation of the murder of Víctor Manuel Oropeza.

---

[1028] IACHR. *Report No. 130/99*. Case 11.740. Víctor Manuel Oropeza, Mexico, November 19, 1999, par. 77.

[1029] IACHR, Summary of Meeting No. 43, Follow-up of Cases 11.739 – Héctor Félix Miranda (Report 50/99) and 11.740 – Víctor Manuel Oropeza (Report 130/99), October 20, 2003.

[1030] IACHR, Summary of Meeting No. 43, Follow-up of Cases 11.739 – Héctor Félix Miranda (Report 50/99) and 11.740 – Víctor Manuel Oropeza (Report 130/99), October 20, 2003.

[1031] "Terms of Reference: Working Group for the Revision of the Case Files on Héctor Félix Miranda and Víctor Manuel Oropeza", March 13, 2004, on file with the IACHR.

[1032] Agreement of the Working Group for Joint Revision of the Oropeza Case, February 9-10, 2005, on file with the IACHR.

[1033] Agreement of the Working Group for Joint Revision of the Oropeza Case, February 9-10, 2005, on file with the IACHR.

[1034] Agreement of the Working Group for Joint Revision of the Oropeza Case, February 9-10, 2005, on file with the IACHR.

[1035] Working Meeting on the Case of Víctor Manuel Oropeza, September 27-28, 2005, on file with the IACHR.

687. Within the framework of its visit, the Office of the Special Rapporteur requested additional information from the State about the investigation of these events, both in writing and at its meeting with the authorities from the Public Prosecutor's Office of the state of Chihuahua. At this meeting the authorities expressed their opinion that the real perpetrators of the crime were freed as a result of the CNDH report that concluded they had been forced to incriminate themselves, and that as far as the state Public Prosecutor's Office was concerned the investigation was closed.[1036] Meanwhile, in a written reply received November 12, 2010, the State indicated that the FEADLE had been charged with the task of documenting cases of homicides and disappearances of journalists that had occurred since the year 2000, and that, once this first stage was complete, it would proceed with the task of documenting those cases which occurred prior to 2000, including the murder of Víctor Manuel Oropeza.[1037]

688. The Office of the Special Rapporteur expresses its extreme concern about the fact that the recommendations of the IACHR in the case of Víctor Manuel Oropeza remain pending 11 years after the publication of the decision in the case, and urges the Mexican State to reactivate the investigations into the murder of the journalist in order to comply with these recommendations.

**b. Disappearance**

**María Esther Aguilar Cansimbe**

689. On November 11, 2009, in the city of Zamora, state of Michoacán, the journalist María Esther Aguilar Cansimbe was seen for the last time. Aguilar was a reporter at the local newspaper *El Diario de Zamora* and correspondent for the regional newspaper *Cambio de Michoacán*. According to the information received, on the morning of November 11 Aguilar left her house to cover a disaster training simulation at a kindergarten, but after leaving this place she was never seen again. Her family made fruitless attempts to contact her by telephone during the day of November 11. Since then there has been no contact with her, and her whereabouts remain unknown.[1038]

690. Aguilar, a reporter specializing in issues of security and justice, had ten years' experience at several regional media outlets. Her most recent articles before her disappearance, none of which were signed by her for fear of reprisals, covered issues of local corruption and organized crime. On October 22, 2009, she covered a military operation where at least three individuals, including the son of a local politician, were arrested on suspicion of involvement in organized crime groups.[1039] On October 27, 2009, she published an article about police abuses, following which a high-ranking officer in the local police force was obliged to resign.[1040] On October 30, 2009, she reported on the arrest of a suspected leader of the drugs cartel known as *La Familia Michoacana.*[1041] Further, according to *Cambio de Michoacán*, at the time of her disappearance she was in the middle of three investigations into similar issues. The first concerned legal action taken and complaints made against agents from the federal police and the army regarding property and personal searches made without a warrant. The second dealt with the resources

[1036] Meeting between the Office of the Special Rapporteur and authorities from the Chihuahua State executive during the on-site visit, August 16, 2010.

[1037] Mexican State, "Reply to the Information Request made by the Special Rapporteurs for Freedom of Expression of the OAS and the UN, in Follow-up to their Official Visit to Mexico between August 9-24, 2010" and PGR, Memo 0000144/FEADLE/2010, Annexes to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

[1038] Committee to Protect Journalists (CPJ)/IFEX. November 20, 2009. *Crime reporter vanishes in western Michoacán*. Available at: http://www.ifex.org/mexico/2009/11/20/reporter_vanishes. *Cambio de Michoacán*. November 29, 2009. *María Esther Aguilar, tres semanas desaparecida*. Available at: http://www.cambiodemichoacan.com.mx/vernota.php?id=113726

[1039] Committee to Protect Journalists (CPJ)/IFEX. November 20, 2009. *Crime reporter vanishes in western Michoacán*. Available at: http://www.ifex.org/mexico/2009/11/20/reporter_vanishes/

[1040] Committee to Protect Journalists (CPJ)/IFEX. November 20, 2009. *Crime reporter vanishes in western Michoacán*. Available at: http://www.ifex.org/mexico/2009/11/20/reporter_vanishes/

[1041] Committee to Protect Journalists (CPJ)/IFEX. November 20, 2009. *Crime reporter vanishes in western Michoacán*. Available at: http://www.ifex.org/mexico/2009/11/20/reporter_vanishes/

and strategies of the local police in the highest-crime areas of the municipality of Zamora. The third was a joint preparation for an interview with the mayor of Ecuandureo, Michoacán on issues such as the handling of public finances, the completion of public works, the effects of the financial crisis, migration and public security.[1042]

691. One month after the disappearance of Aguilar, the organization Reporters Without Borders expressed its fear that the "investigation seemed to be going nowhere."[1043] According to the RSF report, though the Public Prosecutor's Office of the state of Michoacán claimed at the time to have carried out 19 procedural steps, "the official investigation has not progressed."[1044] In November, 2010, a year after the disappearance of the journalist, RSF once again lamented the lack of progress in the investigation.[1045]

692. RSF has stated that "there are reasons for thinking her disappearance was linked to her reporting and that drug traffickers were involved." Along with the absence of a ransom request,[1046] and the delicate issues Aguilar reported on prior to and right up to the time of her disappearance, a report by the Woodrow Wilson International Center for Scholars reveals that Aguilar had refused to accept bribes from drug traffickers.[1047] According to an editor from Michoacán, speaking to the Center, Aguilar had told him before her disappearance of a meeting with other reporters from Zamora at which a reporter who represented one of the cartels told those present how much money each of them would receive in exchange for slanting their coverage in favor of the cartel.[1048] Aguilar had refused to accept this and had tried to leave the meeting, but the other reporters obliged her to stay. Even so, Aguilar had not accepted the money.[1049]

693. Within the framework of its visit, the Office of the Special Rapporteur requested detailed information from the Mexican State about the case of María Esther Aguilar Cansimbe.[1050] In a reply received on November 12, 2010, the State indicated that the PGR had opened a criminal investigation for the offense of illegal deprivation of liberty, and that the investigation is currently in the hands of the FEADLE.[1051]

### c. Detention and Aggression

---

[1042] *Cambio de Michoacán*. November 29, 2009. *María Esther Aguilar, tres semanas desaparecida*. Available at: http://www.cambiodemichoacan.com.mx/vernota.php?id=113726

[1043] Reporters without Borders. December 11, 2009. *One month after journalist's disappearance, investigation seems to go nowhere.* Available at: http://en.rsf.org/mexico-one-month-after-journalist-s-11-12-2009,35318.html

[1044] Reporters without Borders. December 11, 2009. *One month after journalist's disappearance, investigation seems to go nowhere.* Available at: http://en.rsf.org/mexico-one-month-after-journalist-s-11-12-2009,35318.html

[1045] Reporters without Borders. November 19, 2009. *Disappearances of four journalists in Michoacán state all still unsolved*. Available at: http://en.rsf.org/mexico-disappearances-of-four-journalists-19-11-2010,38853.html

[1046] RSF. December 11, 2009. *One month after journalist's disappearance, investigation seems to go nowhere.* Available at: http://en.rsf.org/mexico-one-month-after-journalist-s-11-12-2009,35318.html

[1047] Dolia Estévez, *Protecting Press Freedom in an Environment of Impunity* (Woodrow Wilson International Center for Scholars Mexico Institute and University of San Diego Trans-Border Institute, May, 2010), p. 15. Available at: http://wilsoncenter.org/topics/pubs/Protecting%20Press%20Freedom.%20Estevez.pdf

[1048] Dolia Estévez, *Protecting Press Freedom in an Environment of Impunity* (Woodrow Wilson International Center for Scholars Mexico Institute and University of San Diego Trans-Border Institute, May, 2010), p. 15. Available at: http://wilsoncenter.org/topics/pubs/Protecting%20Press%20Freedom.%20Estevez.pdf

[1049] Dolia Estévez, *Protecting Press Freedom in an Environment of Impunity* (Woodrow Wilson International Center for Scholars Mexico Institute and University of San Diego Trans-Border Institute, May, 2010), p. 15. Available at: http://wilsoncenter.org/topics/pubs/Protecting%20Press%20Freedom.%20Estevez.pdf

[1050] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[1051] PGR, Memo No. SJAI/CAIA/DGCI/2816/2010 of July 20, 2010 and Memo 0000144/FEADLE/2010, Annexes to Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

**Lydia Cacho Ribeiro**

694. As detailed in another section of this report (see paragraph 257, *infra*), the journalist Lydia Cacho was criminally prosecuted under defamation laws after having published an article on child pornography that, along with other claims, implicated a textiles businessman and leading politicians.[1052] In the context of these legal proceedings, on October 12, 2005, a judge issued a warrant for the arrest of the journalist. On December 16, 2005, agents of the judicial police of the states of Puebla and Quintana Roo detained Cacho in fulfillment of this arrest warrant, with the aim of taking her to the offices of the Public Prosecutor's Office of the state of Quintana Roo and, subsequently, to the city of Puebla, state of Puebla, where she was confined to the local penitentiary on December 17, 2005.[1053]

695. Examining the circumstances of the detention and transfer of the journalist Lydia Cacho on December 16 and 17, 2005, the CNDH concluded that "the journalist was subject to physical and psychological suffering of a highly traumatic nature, equivalent to torture."[1054] The CNDH verified that the journalist was "subjected to a journey of approximately 1,472 kilometers (915 miles) by land, lasting around 20 hours", and that "the lack of warm clothing and medicine, the presence of unknown male personnel, the solitary confinement she was held in for over four hours, the absence of food or water, the cramped space, the lack of time and place necessary for bodily needs, the insinuations, malevolent hints and the humiliation which she was directly or indirectly subject to during this transfer by the agents who were in charge of her transfer caused her uncertainty and led her to fear for her life, her physical and psychological safety and integrity."[1055]

696. With regard to these events, on February 5, 2008, the PGR decided to open a case against the officers from the Public Prosecutor's Office of the state of Puebla who detained and transferred Lydia Cacho, on suspicion of torture. On May 6, 2008, the second criminal judge of the first instance of the court in Cancun, Quintana Roo refused to issue an arrest warrant, a decision confirmed on January 8, 2009 by the Criminal Division of the High Court of Justice of the state of Quintana Roo.[1056]

697. Meanwhile, the Supreme Court, exercising its investigative faculties set out in article 97 of the Constitution,[1057] opened proceedings on April 18, 2006, in order to determine if there had been serious violations of individual rights against the journalist Lydia Cacho.[1058] On November 29, 2009, the Supreme Court determined that: "The existence of serious violations of the individual rights of the journalist, in the terms of the second paragraph of article 97 of the Political Constitution of the United Mexican States, is not proven."[1059] In reaching this conclusion, the Supreme Court did not take into account a recording that was widely circulated in the media that implicates the governor of the state of

---

[1052] *La Jornada*. January 3, 2007. *Pierde Kamel Nacif demanda contra Lydia Cacho*. Available at: http://www.jornada.unam.mx/2007/01/03/index.php?section=politica&article=005n2pol

[1053] CNDH, Recommendation 16, March 6, 2009. Available at: http://www.cndh.org.mx/recomen/2009/016.pdf

[1054] CNDH, Recommendation 16, March 6, 2009. Available at: http://www.cndh.org.mx/recomen/2009/016.pdf

[1055] CNDH, Recommendation 16, March 6, 2009. Available at: http://www.cndh.org.mx/recomen/2009/016.pdf

[1056] CNDH, Recommendation 16, March 6, 2009. Available at: http://www.cndh.org.mx/recomen/2009/016.pdf

[1057] Article 97 of the Mexican Constitution establishes that, "The Supreme Court of the Nation may appoint one or more of its members, when deemed advisable, or if the federal Executive, one of the chambers of Congress, or the governor of a state so requests, solely to investigate the conduct of any federal judge or magistrate or any act or acts which may constitute a violation of any individual guarantee".

[1058] Supreme Court, *Dictamen relativo a la investigación constitucional cuyos trabajos concluyeron con el Informe preliminar rendido por la Comisión designada por el Pleno de la Suprema Corte de Justicia de la Nación en el expediente 2/2006*, November 29, 2007, p. 5. Available at: http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/06000020.023.doc

[1059] Supreme Court, *Dictamen relativo a la investigación constitucional cuyos trabajos concluyeron con el Informe preliminar rendido por la Comisión designada por el Pleno de la Suprema Corte de Justicia de la Nación en el expediente 2/2006*, November 29, 2007, p. 262. Available at: http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/06000020.023.doc

Puebla in the arrest of Cacho, as it considered that the recording had been made illegally.[1060] However, the Supreme Court clarified that "the outcome of the present investigation in no way impedes or may be understood as an obstacle to the competent authorities acting in exercise of the faculties that have been conferred upon them constitutionally or legally, whether these be of a political, administrative or legal nature, and whether of state or federal jurisdiction."[1061] In his individual dissenting vote, Supreme Court Justice José Ramón Cossío Díaz stated: "As was concluded in the preliminary report, there was a conspiracy on the part of authorities from the governments of the states of Puebla and Quintana Roo to violate the fundamental rights of Lydia María Cacho Ribeiro, and there is no doubt that their agents engaged in a strategy to achieve this, thus violating the principles of the division of the branches of government and of federalism."[1062]

698. As of the date on which this report was completed, no person has been prosecuted or sentenced for the treatment suffered by the journalist Lydia Cacho while she was in the custody of state agents between December 16 and 17, 2005. According to the information received by the legal representatives of Ms. Cacho, the PGR reopened the criminal investigation relating to these events in February, 2010.[1063] Within the framework of its visit, the Office of the Special Rapporteur asked the State for full information on the case of Lydia Cacho,[1064] but received no reply to this request. According to information made known to the Office of the Special Rapporteur, the journalist has continued to be subject to threats and intimidation, despite benefiting from precautionary measures issued by the IACHR.

### 4. "What do you want from us?" Violence, intimidation and self-censorship

699. As the Office of the Special Rapporteur has stated on previous occasions, acts of violence and intimidation against journalists, particularly the murders and physical attacks detailed in the previous sections, limit freedom of expression and produce a chilling effect on the free flow of information.[1065]

700. According to the information received by the Office of the Special Rapporteur, there are now areas of Mexico in which journalists are subject to serious intimidation originating principally from criminal groups who seek to suppress certain information in the media and promote the dissemination of that which furthers their criminal interests. In this high-risk situation, it is extremely difficult for journalists to carry out research and publish material on issues such as organized crime, corruption, public security and similar matters. Self-censorship or the impossibility of undertaking investigative journalism in these areas affects all of Mexican society, which remains in the dark about what goes on in these places, and reduces the ability of the authorities and indeed of society to take action, as they are deprived of information essential to combating criminal activity such as corruption or organized crime. According to the information received from numerous sources, in some states where there is a major organized crime presence such as Chihuahua, Coahuila, Durango, Guerrero, Michoacán, Nuevo León, Sinaloa, and Tamaulipas, self-censorship has reached such serious levels that the local press has been reduced to

---

[1060] Supreme Court, *Dictamen relativo a la investigación constitucional cuyos trabajos concluyeron con el Informe preliminar rendido por la Comisión designada por el Pleno de la Suprema Corte de Justicia de la Nación en el expediente 2/2006*, November 29, 2007, pp. 159-60. Available at: http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/06000020.023.doc

[1061] Supreme Court, *Dictamen relativo a la investigación constitucional cuyos trabajos concluyeron con el Informe preliminar rendido por la Comisión designada por el Pleno de la Suprema Corte de Justicia de la Nación en el expediente 2/2006*, November 29, 2007, p. 261. Available at: http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/06000020.023.doc

[1062] Supreme Court, *Dictamen relativo a la investigación constitucional cuyos trabajos concluyeron con el Informe preliminar rendido por la Comisión designada por el Pleno de la Suprema Corte de Justicia de la Nación en el expediente 2/2006*, November 29, 2007, Individual vote of Justice José Ramón Cossío Díaz, p. 72. Available at: http://www2.scjn.gob.mx/juridica/engroses/cerrados/publico/06000020.023.doc

[1063] Information provided to the Office of the Special Rapporteur by Article 19 during the on-site visit.

[1064] Information request by the Office of the Special Rapporteur to the Mexican State, September 2, 2010.

[1065] See IACHR, Office of the Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right to Access to Information.* OAS/Ser.L/V/II CIDH/RELE/INF. 2/09 December 30, 2009, par. 179. Available at:http://www.cidh.org/pdf files/Inter American Legal Framework english.pdf

silence, and does not report on events of extreme violence that occur in their locality, which, if they are reported at all, appear in the national or international press.

701. While it is difficult, owing to its very nature, to measure the level of self-censorship that prevails in Mexico, indicators do exist of the seriousness of the silencing phenomenon in areas where there is a major presence of organized crime. During 2010, U.S. newspapers the *Dallas Morning News,* the *Los Angeles Times,* the *New York Times* and the *Washington Post* reported acts of violence occurring in the cities of Nuevo Laredo and Reynosa, both in the border state of Tamaulipas, which, they indicated, were not reported in the local press due to the fear of organized crime.[1066] In March, 2010, for example, the *Dallas Morning News* reported that at least eight Mexican journalists had been kidnapped in Reynosa, a fact that was not reported in the local press.[1067] Similarly, the *Washington Post* reported that at the end of July, 2010, the Mexican authorities confronted drug traffickers in the streets of Nuevo Laredo in an armed battle that lasted five hours and which left at least twelve people dead; the incident was not reported on local television, radio or in the print media.[1068] The *Los Angeles Times* reported a similar case in Reynosa a few weeks later.[1069]

702. Declarations made by journalists and editors confirm the silencing effect of the explicit or implicit threats made by criminal organizations. According to a *New York Times* report, a journalist from Reynosa interviewed by the newspaper said, "I censure myself, there is no other way of saying it, but everyone does the same."[1070] Ciro Gómez Leyva, editor of the national newspaper *Milenio,* declared with respect to this city that, "journalism is dead in Reynosa."[1071] An international mission to document attacks against journalists and media outlets undertaken in 2008 documented the use of self-censorship as a means of self-protection by the media in the north of Mexico.[1072] The deputy editor of Michoacán's *La Opinión*, for example, declared to the mission that "we engage in self-censorship, it is a chronic survival strategy."[1073] Perhaps the most dramatic example of this phenomenon occurred in September, 2010, when *El Diario* of Ciudad Juárez, Chihuahua, responded to the murder of its photographer Luis Carlos Santiago Orozco with an editorial entitled, "What do you want from us?", aimed at the organized crime

---

[1066] Dallas Morning News. March 8, 2010. *Cartels use intimidation campaign to stifle news coverage in Mexico*. Available at: http://www.dallasnews.com/sharedcontent/dws/news/world/stories/DN-blackout_08int.ART.State.Edition2.4b84845.html. New York Times. March 13, 2010. *Fearing Drug Cartels, Reporters in Mexico Retreat.* Available at: http://www.nytimes.com/2010/03/14/world/americas/14mexico.html?emc=eta1. Washington Post. August 2, 2010. *In Mexico's Nuevo Laredo, drug cartels dictate media coverage*. Available at: http://www.washingtonpost.com/wp-dyn/content/article/2010/08/01/AR2010080103481.html. Los Angeles Times. August 16, 2010. *Under threat from Mexican drug cartels, reporters go silent*. Available at: http://articles.latimes.com/2010/aug/16/world/la-fg-mexico-narco-censorship-20100816

[1067] Dallas Morning News. March 8, 2010. *Cartels use intimidation campaign to stifle news coverage in Mexico*. Available at: http://www.dallasnews.com/sharedcontent/dws/news/world/stories/DN-blackout_08int.ART.State.Edition2.4b84845.html. See also Committee to Protect Journalists (CPJ), "Silence or Death in Mexico's Press", (New York: CPJ, 2010), chapter 2, "A nation in crisis", available at: http://cpj.org/reports/cpj_mexico_english.pdf

[1068] Washington Post. August 2, 2010. *In Mexico's Nuevo Laredo, drug cartels dictate media coverage*. Available at: http://www.washingtonpost.com/wp-dyn/content/article/2010/08/01/AR2010080103481.html

[1069] Los Angeles Times. August 16, 2010. *Under threat from Mexican drug cartels, reporters go silent*. Available at: http://articles.latimes.com/2010/aug/16/world/la-fg-mexico-narco-censorship-20100816. See also Committee to Protect Journalists (CPJ), *Silence or Death in Mexico's Press*, (New York: CPJ, 2010), chapter 4 "Cartel city", Available at: http://cpj.org/reports/cpj_mexico_english.pdf

[1070] New York Times. March 13, 2010. *Fearing Drug Cartels, Reporters in Mexico Retreat.* Available at: http://www.nytimes.com/2010/03/14/world/americas/14mexico.html?emc=eta1

[1071] Milenio. March 4, 2010. *Dos periodistas de Milenio: el día que el periodismo murió.* Available at: http://impreso.milenio.com/node/8729203

[1072] Misión international 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*, pp. 20-22, Available at: http://www.i-m-s.dk/files/publications/1340%20Mexico%20E_NEW.pdf

[1073] Misión international 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*, pp. 20-22, Available at: http://www.i-m-s.dk/files/publications/1340%20Mexico%20E_NEW.pdf

groups operating in this city.[1074] In this editorial, the newspaper asked, "as information workers we want you to explain what you want from us, what you want us to publish or not to publish, so we know what line to take."[1075]

703. In some particularly extreme cases, the information received by the Office of the Special Rapporteur, including in interviews with journalists, indicates that drug trafficking organizations have tried to actively influence media output.[1076] On the other hand, the Office of the Special Rapporteur noted the armed attack on the newspaper *Noroeste* in Mazatlán, state of Sinaloa, on September 1, 2010, presumably in reprisal for refusing to publish certain information demanded by the criminal organization known as "La Línea."[1077] On September 2, *Noroeste* once again received threatening calls, and the same day, in two separate incidents, journalists from the newspaper were intimidated in the street with firearms and death threats.[1078] In response to the attacks, on September 2 *Noroeste* published an editorial entitled "We won't give in!" reassuring state residents of their right to be informed and demanding that the state and federal authorities investigate the acts of violence and combat organized crime "to the core."[1079]

704. Finally, the magazine *Proceso* and the organization *Periodistas de a Pie* reported in December, 2010, that in recent years seven Mexican journalists had had to take the extreme step of seeking refuge in other countries out of fear for their lives or those of their families. According to the report, these journalists, some of whose cases are detailed in the previous section, were: Horacio Nájera, correspondent for *Reforma* in Ciudad Juárez, Chihuahua; Jorge Luis Aguirre, editor of *lapolaka.com*; Alejandro Hernández Pacheco, *Televisa* cameraman in Durango; Emilio Gutiérrez Solo, of *El Diario* in Ascensión, Chihuahua; Ricardo Chavez Aldana, of *Radio Cañon* in Ciudad Juárez, Chihuahua; and two photographers from Ciudad Juárez whose names were not made public.[1080]

705. These serious trends, which previously only affected local media in locations with a strong organized crime presence, are now beginning to affect national media. To mention just two examples detailed above, in March, 2010, two journalists from the national broadcaster *Multimedios Milenio* were temporarily kidnapped in Reynosa, Tamaulipas and later forced to leave the city, and in July, 2010, journalists from the national broadcaster *Televisa* were kidnapped by an organized crime group in the state of Durango.

### B. The Mexican State's Response

706. The right to express one's own opinion, to disseminate available information and to be able to debate issues of concern to all openly and without inhibition is a basic condition for the

---

[1074] El Diario. September 19, 2010. *¿Qué quieren de nosotros?* Available at: http://www.diario.com.mx/notas.php?f=2010%2F09%2F19&id=ce557112f34b187454d7b6d117a76cb5

[1075] El Diario. September 19, 2010. *¿Qué quieren de nosotros?* Available at: http://www.diario.com.mx/notas.php?f=2010%2F09%2F19&id=ce557112f34b187454d7b6d117a76cb5

[1076] See e.g. Washington Post. August 2, 2010. *In Mexico's Nuevo Laredo, drug cartels dictate media coverage*. Available at: http://www.washingtonpost.com/wp-dyn/content/article/2010/08/01/AR2010080103481.html

[1077] Noroeste. September 1, 2010. *Atacan a Noroeste*. Available at: http://www.noroeste.com.mx/publicaciones.php?id=615000&id_seccion. La Jornada. September 2, 2010. *Ataque a Noroeste de Mazatlán, por negarse a publicar "cierta information"*. Available at: http://www.jornada.unam.mx/2010/09/02/index.php?section=politica&article=016n2pol

[1078] Noroeste. September 3, 2010. *Recibe Noroeste nuevas amenazas*. Available at: http://www.noroeste.com.mx/publicaciones.php?id=615568

[1079] Noroeste. September 2, 2010. *Editorial: ¡No vamos a ceder!* Available at: http://www.noroeste.com.mx/publicaciones.php?id=615243

[1080] Proceso. December 15, 2010. *Periodistas en el olvido*. Available at: http://www.proceso.com.mx/rv/modHome/detalleExclusiva/86410. Periodistas de a Pie. December 15, 2010. *Colecta navideña para apoyar a nuestros colegas en el exilio*. Available at: http://periodistasdeapie.wordpress.com/2010/12/

consolidation, adequate functioning and preservation of democratic governments and the rule of law.[1081] For this reason, the Office of the Special Rapporteur has urgently called upon the Mexican State to implement, as soon as possible, a comprehensive policy of prevention, protection and prosecution in response to the critical situation of violence facing journalists in the country. In formulating and implementing public policies in this area, it is essential to have the active participation of all relevant sectors, including journalists and social organizations that defend human rights and freedom of expression. In the Federal District, for example, a Multisectoral Working Group on the Right to Freedom of Expression has been set up to coordinate the implementation of public policies focused on guaranteeing the right to freedom of expression in Mexico City.[1082] Participants in this Working Group include government authorities, journalists, civil society organizations, academics, and the Federal District Human Rights Commission. The Office of the Special Rapporteur believes that the proper implementation of this Working Group, once its effectiveness and continuity is assured, could serve as a model at the federal level and in the other states.

707. The following section details some of the measures adopted by the Mexican State as well as the challenges that persist with regard to prevention, protection and criminal prosecution, recalling that Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR establishes 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."

### 1. Prevention and protection

708. During its on-site visit the Office of the Special Rapporteur received information about discussions between the federal government and civil society organizations relating to the creation of a mechanism for the protection of journalists and human rights workers. In particular, the Office of the Special Rapporteur had the opportunity to observe a meeting to discuss this issue between the Sub-committee for Civil and Political Rights of the Governmental Policy Commission on Human Rights and freedom of expression and human rights organizations. According to the information received, in the context of these discussions a number of proposals were put forward by freedom of expression and human rights organizations, and by the CNDH and the FEADLE. In addition, in its observations on the preliminary version of this report, the Mexican State recalled that the promotion of institutional and interinstitutional mechanisms to ensure journalists' safety responds to one of the lines of action under the 2008-2012 National Human Rights Program.[1083] At the end of its visit, the Office of the Special Rapporteur highlighted the “the urgent need to make this process a reality and put [the] protection mechanism into operation as soon as possible. In particular, the Rapporteurs consider it essential that [the] mechanism be implemented through a high-level official and inter-institutional committee; be led by a federal authority with the ability to coordinate among different government organizations and authorities; have its own, sufficient resources; and guarantee the participation of journalists and civil society organizations in its design, operation and evaluation.”[1084]

---

[1081] See IACHR, Office of the Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right to Access to Information.* OAS/Ser.L/V/II CIDH/RELE/INF. 2/09 December 30, 2009, par. 8. Available at:http://www.cidh.org/pdf files/Inter American Legal Framework english.pdf

[1082] See Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

[1083] Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

[1084] Office of the Special Rapporteur for Freedom of Expression - IACHR, United Nations Office of the Rapporteurship on Freedom of Opinion and Expression, “Joint Official Visit to Mexico, Preliminary Report”, August 24, 2010. An Executive Summary is available in English at:http://www.cidh.org/Comunicados/Spanish/2010/RELEMexicoEng.pdf

709. During its visit the Office of the Special Rapporteur also received information about the efforts made by some states to adopt measures of protection for journalists at risk. The government of the Federal District, for example, has provided funding for the creation of a *Casa de los Derechos de los Periodistas* ("Journalists' Rights House") which, with the participation of journalists, will among other things provide a place of refuge for journalists from different states who are in high-risk situations.[1085] The Office of the Special Rapporteur applauds this effort and hopes that the project will begin operating in the near future. In addition, in the state of Chihuahua, the Office of the Special Rapporteur was informed of the adoption, beginning in August, 2010, of a "Security Protocol for Journalists in High-Risk Situations." The product of discussions between state authorities and journalists and promoted by the State Commission on Human Rights, the Protocol includes recommendations for journalists to protect themselves as well as a proposal for creating a formal mechanism with the ability to evaluate the risks faced by journalists and authorize the necessary protective measures.[1086] In its observations on the preliminary version of this report, the Mexican State reported that on September 8, 2009, the "Implementation Agreement for the Comprehensive Security System to Protect Journalists in the State of Chihuahua" was published in the state of Chihuahua's Official Gazzette.[1087] The Office of the Special Rapporteur notes that this agreement obligates the state of Chihuahua to create a "Precautionary Protection Procedure for Journalists in Situations of Risk"[1088]; however, the Office of the Special Rapporteur does not have any information regarding the effective implementation of this procedure.

710. Following the on-site visit, the Office of the Special Rapporteur learned that on November 3, 2010, a "Coordination agreement for the implementation of preventive and protective actions for journalists"[1089] was signed by the Ministry of the Interior, the Foreign Ministry, the Public Security Ministry, the PGR, and the CNDH. On November 11, 2010, the Office of the Special Rapporteur received a communication from the Mexican State formally informing it that this Agreement had been signed, which, in the State's view, represents "the first step towards establishing a mechanism for the protection of journalists and media workers" and "complies with one of the recommendations made by the Special Rapporteurs…in their joint official visit made between August 9 and 24, 2010."[1090]

711. The Coordination agreement for the implementation of preventative and protective actions for journalists creates two bodies with responsibilities relating to the protection of journalists. First, an Advisory Committee was created, with responsibility for receiving requests for protection, determining and monitoring preventive and protective measures for journalists, and facilitating the implementation of these measures at a federal and local level. Second, an Evaluation Sub-committee was created and charged with analyzing requests for protection and making the corresponding recommendations to the Advisory Committee. The agreement establishes a limit of 30 days for the setting up of the Advisory Committee and a limit of a further 30 days for this Committee to set out its Operational and Implementation Guidelines to define, among other issues, "the criteria for the adoption, implementation,

---

[1085] Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

[1086] State of Chihuahua, "Protocol de Seguridad para Periodistas", Available at: http://www.cedhchihuahua.org.mx/index.php?option=com_content&task=view&id=57&Itemid=57

[1087] Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

[1088] Implementation Agreement for the Comprehensive Security System to Protect Journalists in the State of Chihuahua, p. 12, available at: http://www.cedhchihuahua.org.mx/Periodistas/Periodico-oficial.pdf

[1089] Coordination agreement for the implementation of preventative and protective actions for journalists, Available at: http://www.cencos.org/documentos/021110ConvenioPeriodistas.pdf

[1090] CommunicationOEA-02547 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 11, 2010.

preservation, modification or termination of preventive and protective measures for journalists."[1091] According to the information received, the Advisory Committee was in fact set up on December 3, 2010.[1092]

712. On November 10, 2010, the Office of the Special Rapporteur wrote to the Mexican State to express its satisfaction with the signing of the coordination agreement for the implementation of preventive and protective actions for journalists. On this occasion, the Office of the Special Rapporteur set out a series of recommendations for the implementation of the Agreement and the development of the Operational and Implementation Guidelines. These recommendations related to five points: 1) the need to guarantee the necessary financial and personnel resources for the effective implementation of the mechanism; 2) the need to guarantee an effective coordination between the bodies responsible for the implementation of preventive and protective measures; 3) the need to adequately define the protective measures contemplated by the mechanism and the procedures for their adoption; 4) the need to guarantee the full participation of journalists, civil society and its beneficiaries in the implementation and functioning of the mechanism; and 5) the expediency of seeking the support of the international community in terms of the implementation of the mechanism.[1093] In its observations regarding the preliminary version of this report, the Mexican State provided information about the steps taken with regard to each of the recommendations provided.[1094] The Office of the Special Rapporteur expresses its satisfaction over the State's attention to its recommendations and will closely follow the development of the Operational and Implementation Guidelines as well as the practical implementation of the agreement.

713. Finally, the Office of the Special Rapporteur observes that a simple but highly effective protective measure consists in the highest authorities of the Mexican State recognizing in a constant, clear, public and firm manner the legitimacy and value of the journalistic profession, even when the information disseminated may prove critical of, inconvenient to or inopportune for the interests of the government. Similarly, it is essential that the authorities vigorously condemn the attacks committed against media workers and encourage the competent authorities to act with due diligence and speed to investigate the facts and punish those responsible.

### 2. Criminal prosecution

#### a. General considerations: impunity and its consequences

714. During its visit, the Office of the Special Rapporteur did not receive enough concrete information about legal and administrative sanctions in cases of violence against journalists. As such, it calls attention once more to the absence of systematic information about criminal prosecution and administrative proceedings relating to these acts.

715. The principal source of information about sentencing in cases of violence against journalists comes from the CNDH. In its General Recommendation 17 of 2009, titled "On the cases of attacks on journalists and the prevailing impunity," the CNDH reported that of 65 cases of homicides, forced disappearances and attacks with explosives on media offices between 2000 and the date of its

---

[1091] Coordination agreement for the implementation of preventative and protective actions for journalists, Available at: http://www.cencos.org/documentos/021110ConvenioPeriodistas.pdf

[1092] Ministry of the Interior. December 3, 2010. *Boletín 602: Instalación del Comité Consultivo para la Implementación de Acciones de Prevención y Protección a Periodistas*. Available at: http://www.segob.gob.mx/es/SEGOB/Sintesis_Informativa?uri=http%3A%2F%2Fwww.SEGOB.swb%23swbpress_Content%3A2572&cat=http%3A%2F%2Fwww.SEGOB.swb%23swbpress_Category%3A1

[1093] Communication from the Office of the Special Rapporteur to the Mexican State with reference to the "creation of a mechanism for the protection of journalists," November 10, 2010.

[1094] Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

report, only in nine cases (13%) had a conviction been handed down.[1095] The Office of the Special Rapporteur requested additional information about these cases, but did not receive a response that provided details about the convictions.[1096] The Office of the Special Rapporteur was able to identify only five of the cases mentioned by the CNDH and observed that in several of these case the motives for the crimes and the identity of those who planned the crimes remains unknown.[1097]

716. Despite the absence of systematic information, the interviews held and the information gathered make it possible to affirm that there exists a climate of generalized impunity with regard to the cases of violence against journalists, even when it comes to the most serious acts such as murders, disappearances and kidnappings. The Office of the Special Rapporteur is certain that, just as the Inter-American Court for Human Rights has stated, impunity fosters the chronic repetition of human right violations and the total defenselessness of victims and their relatives.[1098] Moreover, the murder of a journalist and the absence of investigation and legal punishment of those responsible by the State has major repercussions both on other journalists and on the rest of society, as it generates a fear of reporting violations, abuses and illicit acts of all kinds. This effect can only be avoided through decisive action by the State to punish those responsible.[1099]

**b. Observations on the legal prosecution of crimes against journalists**

717. The Office of the Special Rapporteur considers of great concern the impunity which exists in the great majority of cases of violence against journalists in Mexico. As the CNDH is right to note, the State's failures with regard to its obligations to carry out effective and complete investigations into the attacks against media workers creates impunity, discourages crime reporting, generates a climate of fear and anxiety, encourages self-censorship and leads to a decline in the quality of democratic life.[1100]

718. The CNDH has identified various factors which contribute to the lack of results in these cases. These include: the failure to exhaust relevant lines of inquiry, including that relating to the possibility that the attack was motivated by the victim's exercise of freedom of expression; the failure to apply effective police investigation techniques; judicial agents' failure to collect witness statements, locate witnesses, emit summons or search warrants, and to carry out other relevant procedures; lengthy periods of inactivity in the investigation; the failure to seek the participation of forensic experts; the delays that occur when the agents or attorneys from the Public Prosecutor's office who began the investigation are replaced; and the confusion and delay generated when a controversy arises over whether the case corresponds to federal or state jurisdiction.[1101] The CNDH has called particular attention to what it

---

[1095] CNDH, General Recommendation 17, August 19, 2009.

[1096] Meeting held with the CNDH on August 11, 2010, and written communication from the CNDH to the Office of the Special Rapporteur, August 18, 2010.

[1097] The five cases mentioned are the murders of: 1) Humberto Méndez Rendón. See *El Siglo de Durango*. December 13, 2008. *Pasará 19 años en la prisión el presunto homicida de periodista.* Available at: http://www.elsiglodedurango.com.mx/noticia/193431.pasara-19-anos-en-la-prision-el-presunto-homi.html. 2) Roberto Javier Mora García. See International Freedom of Expression Exchange (IFEX). June 8, 2009. *Journalist's alleged assassin sentenced following judicial process plagued with irregularities.* Available at: http://www.ifex.org/mexico/2009/06/08/alleged_murderer_sentenced/. 3) Gregorio Rodríguez Hernández. See Crimes Against Journalists Impunity Project. *Case: Gregorio Rodríguez Hernández.* Available at: http://www.impunidad.com/index.php?procesos=61&idioma=us. 4) Adolfo Sánchez Guzmán. See *Contralínea*. May 16, 2010. *Adolfo Sánchez, asesinato impunidad*. Available at: http://www.estudiod3.com/alianza/index.php/home/3091-televisa-desconoce-a-reportero-suyo-asesinado. 5) Amado Ramírez Dillanes. See *Noticieros Televisa*. March 24, 2009. *Dan 38 años de prisión a homicida de Amado Ramírez*. Available at: http://www2.esmas.com/noticierostelevisa/mexico/estados/051088/dan-38-anos-prision-homicida-amado-ramirez . See also information from the Committee to Protect Journalists (CPJ), Available at: http://cpj.org/reports/2010/09/silence-death-mexico-press-appendix-1.php

[1098] See IACHR. *Case Bámaca Velásquez Vs. Guatemala*. Verdict of November 25, 2000. Series C No. 70, par. 211.

[1099] See IACHR, Office of the Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right to Access to Information.* OEA/Ser.L/V/II IACHR/RELE/INF. 2/09. December 30, 2009, par. 190. Available at: http://www.cidh.org/pdf files/Inter American Legal Framework english.pdf

[1100] See CNDH, General Recommendation 17, August 19, 2009.

[1101] See CNDH, General Recommendation 17, August 19, 2009.

considers a "general tendency to disregard *a priori* that the motive for the attacks on media workers is connected to their journalistic activities."[1102] In a number of the meetings held by the Office of the Special Rapporteur with state judicial bodies, this tendency was evident.

719. The Office of the Special Rapporteur recognizes that the Mexican Federation has reacted to the situation of general impunity that holds sway with regard to crimes against journalists with the creation of a Special Prosecutor's Office within the structure of the PGR.[1103] The Mexican government, through an agreement with the Prosecutor General of the Republic,[1104] dated February 15, 2006, created the Special Prosecutor's Office for Crimes against Journalists (FEADP), as an administrative body of Office of the Prosecutor General of the Republic's specialized in dealing with matters relating to criminal acts committed against journalists.[1105]

720. The FEADP was subsequently modified in a new agreement of July 5, 2010, becoming the Special Prosecutor's Office for Crimes against Freedom of Expression (FEADLE).[1106] In the agreement that established the FEADLE, the Prosecutor General stated that "the federal government has shown signs of political will and undertaken steps to deal adequately with the issue of attacks on journalists. However, there remains a persistent and deeply-felt demand on the part of society as a whole with regard to the improvement and reinforcement of government actions which guarantee the physical and moral integrity of those engaging in journalistic or informative activities in Mexico, in order that these may carry out this essential function."[1107]

721. The FEADLE is empowered to prosecute crimes committed against those who engage in journalistic activities if and when: the victim of the crime is a practicing journalist; the crime in question was committed as a result of the exercise of the right to information or of press freedom or was motivated by either of these; the crime is of federal or common law jurisdiction, when the acts are connected to federal crimes; and when the crime concerned is punishable by a prison sentence.[1108] Although the agreement that created the FEADLE introduced for the first time a definition of "journalistic activities" for jurisdictional purposes, it does not significantly modify the jurisdictional scope that the previous agreement had assigned to the FEADP.[1109] Similarly, the FEADLE agreement establishes, as did the FEADP agreement, that when in the course of an investigation there are indications that the perpetrators of the crime are members of criminal organizations, the criminal investigation "must" be referred to SIEDO, and this entity will take charge of the inquiry.[1110]

722. Over the course of the on-site visit the Office of the Special Rapporteur twice had the opportunity to meet with the current head of the FEADLE to hear about and discuss the Office's working plan as well as the resources currently assigned to the special prosecutor. According to the information received, the FEADLE is currently making progress in a number of areas, including the investigation and criminal prosecution of crimes falling under its jurisdiction, collaboration with the state Public Prosecutor's Offices in the investigation of attacks on journalists, the creation of a centralized archive of criminal

---

[1102] See CNDH, General Recommendation 17, August 19, 2009.

[1103] It is currently known as the Special Prosecutor for Crimes against Freedom of Expression.

[1104] Agreement A/ 031/06 of the PGR, February 15, 2006, Available at: http://www.pgr.gob.mx/Combate%20a%20la%20Delincuencia/Delitos%20Federales/FPeriodistas/Quienes%20Somos.asp#

[1105] Document provided to the Inter-American Commission for Human Rights by the Special Prosecutor for Crimes against Journalists on March 22, 2010.

[1106] Agreement A/145/10 of the PGR, July 5, 2010, Available at: http://dof.gob.mx/nota_detalle.php?codigo=5150640&fecha=05/07/2010

[1107] Agreement A/145/10 of the PGR, July 5, 2010, considering #3.

[1108] Agreement A/145/10 of the PGR, July 5, 2010, arts. 2 and 5.

[1109] Agreement A/145/10 of the PGR, July 5, 2010, art. 5.

[1110] Agreement A/145/10 of the PGR, July 5, 2010, art. 6. Cf. Agreement A/031/06 of the PGR, February 15, 2006, art. 4.

investigations into homicides and disappearances of journalists, the development of security protocols, and the holding of meetings with public bodies and civil society organizations.[1111]

723. Nevertheless, the Office of the Special Rapporteur observes that to date the office has not made any impact on reducing the generalized impunity that holds sway in cases of violence against journalists, if we consider that according to information provided in the course of the on-site visit, since its creation in 2006 the FEADLE had not achieved a single conviction, and had brought only four cases to trial.[1112] Its tendency to decline responsibility for cases referred to its jurisdiction also reveals a lack of political will that went uncorrected until the designation in 2010 of a new Special Prosecutor who has shown the will to assume the pertinent cases. In its observations on the preliminary version of this report, the Mexican State reported that from February 15 to December 31, 2010, the FEADLE brought to trial seven preliminary investigations involving 17 potentially responsible individuals.[1113] This information is encouraging, inasmuch as it indicates that the will observed by the Office of the Special Rapporteur during its visit is beginning to be reflected in significant progress in legal proceedings, even though convictions of those responsible have not yet taken place.

724. The Office of the Special Rapporteur considers that the meager results obtained by the Special Prosecutor's Office are attributable, in part, to a lack of will on the part of the previous prosecutors to deal with cases and to implement an appropriate working program, but also to a lack of autonomy and resources, and the inadequate definition of its jurisdiction. As such, it urgently calls upon the Mexican State to strengthen the Special Prosecutor's Office, granting it greater autonomy and its own budget, and making the necessary reforms to allow the federal jurisdiction to exercise competence over crimes against freedom of expression. To this effect, the Office of the Special Rapporteur considers that the working plan shown to it by the Special Prosecutor during the on-site visit reveals, for the first time, a seriousness consistent with the gravity and urgency of the situation it confronts. The Office of the Special Rapporteur hopes that this working plan will translate into concrete results in the near future.

725. Even so, resolution of the existing ambiguity with regard to jurisdiction over crimes against freedom of expression remains an urgent matter, in order to permit the exercise of federal jurisdiction over the crimes against freedom of expression when circumstances so demand. In particular, state-level authorities may not have the capacity to adequately resolve crimes in which powerful local actors with the ability to intimidate or infiltrate the judicial system are implicated. For the same reasons, the Office of the Special Rapporteur considers it to be of greatest importance that the necessary reforms be advanced to allow federal judges jurisdiction over these kinds of crimes.

726. It is worth recalling in this regard that as a federal State—a form of government explicitly contemplated by the American Convention[1114]—in Mexico there exist two kinds of legal jurisdiction applicable to crimes: on one hand, state jurisdiction or "*fuero común*" which deals with all crimes that fall under the jurisdiction of each state and which are detailed in the state criminal codes; and on the other hand, federal jurisdiction or "*fuero federal*" which covers crimes included in the Federal Criminal Code given that they are seen to affect or damage legally-protected interests of the community or the nation. Article 73, subparagraph XXI of the Political Constitution of Mexico assigns to Congress the faculty of setting out crimes and offenses against the Federation, as well as legislating with regard to kidnapping

[1111] See the information delivered to the Office of the Special Rapporteur by the Special Prosecutor for Crimes against Freedom of Expression during the on-site visit.

[1112] Special Prosecutor for Crimes Against Journalists, 2009 Report; interview with the Special Prosecutor for Crimes against Freedom of Expression, August 12, 2010.

[1113] Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights" and Annex I, received on February 3, 2011.

[1114] American Convention on Human Rights, art. 28.

and organized crime. Felonies falling under the federal jurisdiction are detailed in article 50 of the Organic Law of the Federal Judiciary.[1115]

727. Meanwhile, crimes falling under state jurisdiction are defined in an exclusive manner with regard to federal crimes, that is to say, all those crimes not explicitly included within federal jurisdiction automatically fall under state jurisdiction. The 1994 federal penal procedure reform incorporated the model of "ancillary *jurisdiction" (*"competencia por conexidad"*),* established in article 10 of the Federal Code of Criminal Procedure (hereinafter "CFPP")[1116] and later, in 1996, elevated to constitutional level by article 73, subparagraph XXI.[1117] Thus, the CFPP indicates that "in the case of offenses treated jointly, the Public Prosecutor's Office will have the competence to prosecute crimes falling under state jurisdiction which are connected to federal crimes, and federal judges will have competence to judge them."

728. In principle, the fact that a crime has been committed to silence a journalist, or owing to his or her exercise of freedom of expression, has no relevance to the definition of jurisdiction. In consequence, in principle, the homicides, kidnappings and other attacks committed against journalists are judged under state jurisdiction, save when one of the abovementioned factors is present. In other words, with regard to crimes committed against journalists, jurisdiction in principle corresponds to state law as expressly established in the governing legal regime. However, there have been attempts—by way of so-called *federalization*—to establish federal jurisdiction to investigate and punish all crimes committed against journalists as a result of the exercise of their profession.

729. Indeed, there have been a number of initiatives in Mexico aimed at federalizing crimes committed against freedom of expression, seeking to grant jurisdiction to the PGR and federal criminal judges to investigate and judge these crimes, through modifications to the Federal Criminal Code, the Federal Code of Criminal Procedure and the Organic Law of the Federal Judiciary.[1118]

730. In April 2009[1119] the Chamber of Deputies approved a reform of the Federal Criminal Code which treats as aggravating circumstances the fact that a crime is committed "with the purpose of impeding, interfering with, limiting or attacking journalistic activity."[1120] However, the reform of the Organic

---

[1115] These crimes correspond in a general manner to those provided for in federal laws and international treaties, crimes committed abroad by a Mexican citizen, diplomatic employee, consul or staff member, those committed in embassies or offices abroad, those committed against a public servant or federal employee in the course of their work, those related to the duties of a federal public servant or when the federation is the injured party. See Constitutional Law of the Federal Judiciary, art. 50.

[1116] Federal Code of Criminal Procedures, art. 10: Any court is competent to hear recurring or permanent offences when they have produced effects in its territorial jurisdiction or been planned there. In the case of offenses treated jointly, the Federal Public Prosecutor's Office will have the competence to indict crimes falling under state jurisdiction when connected to federal crimes, and federal judges will have competence to judge them.

[1117] Article 73 XXI of the Mexican Constitution establishes that: "federal authorities may also hear crimes falling under state jurisdictions, when they are connected to federal crimes". See also Luís Raúl González Pérez. "Federalización de los delitos contra periodistas", *Revista Mexicana de Comunicación*, November 2007. Available at: http://www.mexicanadecomunicacion.com.mx/rmc107_8.htm

[1118] According to an initiative presented in the Chamber of Deputies on November 28, 2008, for example, article 430 of the Federal Penal Code would state the following: "Between one and five years of prison and between 100 and 500 days minimum daily wage equivalent fine would be imposed on the one who, with the aim of restricting a person's right to free expression and circulation of his thoughts, ideas, opionions or information, commits against him any act defined as an offense in this code"; article 116 of the Federal Code of Criminal Procedures indicates the following: "When they are offenses mentioned in article 430 of the Federal Penal Code that probably involve attacks on freedom of speech, the authority hearing the matter shall immediately make it known to the Ministry of the Interior"; and article 50 of the Constitutional Law of the Federal Judiciary indicates the following: "Crimes of a federal order […] are all those mentioned in article 430 of the Penal Code". The initiative is available at: http://gaceta.diputados.gob.mx/Gaceta/60/2008/nov/20081128.html#Initiatives

[1119] Gaceta Parlamentaria, LX Legislature, Chamber of Deputies, of April 2, 2009. Available at: http://gaceta.diputados.gob.mx/Gaceta/Votaciones/60/tabla3or2-61.php3

[1120] Gaceta Parlamentaria, Chamber of Deputies, no. 2728-IV, of Tuesday March 31, 2009, ruling of the Justice Commission for a proposed decree to add the Twenty-seventh Title to the Federal Criminal Code, on Crimes Committed against Freedom of Speech.

Continued…

Law of the Federal Judiciary was not approved, nor was the reform of the Federal Code of Criminal Proceedings.[1121]

731. Although the Chamber of Deputies approved the initiative that adds crimes against journalistic activity to the Federal Criminal Code, it remains under consideration in the Senate.[1122] In addition, some freedom of expression NGOs believe that the reform approved by the Chamber of Deputies only protects in a partial and insufficient manner the right to freedom of expression, as it does not empower the federation to investigate and punish such crimes either by way of federalization or by way of ancillary jurisdiction, because it does not take into account the appropriate procedural reforms, meaning the federal authorities can intervene only under the same circumstances already in effect today.[1123]

732. Following its visit to the country, the Office of the Special Rapporteur was informed by the Mexican State that President Felipe Calderón Hinojosa "reaffirmed his commitment to the federalization of offenses committed against journalists," at a meeting held on September 22, 2010, with the Inter-American Press Association and the Committee to Protect Journalists.[1124]

733. Meanwhile, and notwithstanding any possible reform that permits the federal jurisdiction to assume competence over crimes against freedom of expression, where appropriate, the Office of the Special Rapporteur considers that the struggle against impunity for crimes against freedom of expression also demands an effort on the part of the individual states in order to endow their law enforcement agencies and their judges with more and better operational guarantees, including greater autonomy, resources and technical strengthening. In the absence of a legislative reform that federalizes crimes against freedom of expression, the great majority of cases of violence against journalists in Mexico continue to be processed within the state jurisdictions, that is to say, within the legal systems of the individual states. To this effect, the Office of the Special Rapporteur met with those in charge of the public prosecutor's offices and supreme courts of the states it visited in the course of the on-site visit.

---

…continuation

Article 430. Whoever commits an illegal act covered in the penal laws, with the purpose of impeding, interfering with, limiting or attacking journalistic activity, will be punished with between one and five years of prison and between 100 and 500 days minimum daily wage equivalent fine.

The penalty indicated in the previous paragraph may be increased by one half if the crime is committed by a public servant in the course of his or her duties or motivated by them.

The penalties considered in this article will be imposed without regard for any penalty corresponding to the commission of any other action or actions.

Article 431. For the purposes of this Title, journalistic activity shall be understood to mean the practice of seeking, gathering, photographing, investigating, summarizing, writing up, ranking, editing, printing, circulating, publishing or disseminating information, news, ideas or opinions for to the general public, by any means of communication, as well as their distribution. This activity may be carried out in a regular or sporadic manner, may be paid or unpaid, and regardless of whether a working relationship exists with a media organization. Available at: http://gaceta.diputados.gob.mx/Gaceta/60/2009/mar/20090331-IV.html#Dicta20090331-1

[1121] Gaceta Parlamentaria, Chamber of Deputies, no. 2728-IV, of Tuesday March 31, 2009, ruling of the Justice Commission, considerations four and six. Available at: http://gaceta.diputados.gob.mx/Gaceta/60/2009/mar/20090331-IV.html#Dicta20090331-1

[1122] In February, 2010, Senator Ludivina Menchaca Castellanos presented a motion for the President of the Senate to order monitoring of the work of the Justice and Legislative Studies Commissions for the ruling relating to the Penal Code reform to be resolved immediately; however, no news has been received on the progress of the mentioned reform. Gaceta del Senado no. 78 of Tuesday February 9, 2010. Available at: http://www.senado.gob.mx/index.php?ver=sp&mn=2&sm=2&id=2046

[1123] Article 19 and CENCOS, *Entre la violencia y la indiferencia, Report de agresiones contra la libertad de expresión en México 2009* (Mexico D.F.: CENCOS/Article 19, February, 2010), p. 40. Available at: http://www.ifex.org/mexico/2010/02/18/informe_2009_entre_la_violencia_y_la_indiferencia_article19_cencos.pdf

[1124] Communication OEA-02199 from the Permanent Mission of Mexico to the OAS to the IACHR, September 24, 2010, annex, Foreign Ministry, Informative Bulletin on Human Rights: the Agenda International of Mexico, No. 199, September 24, 2010.

734. During its visit to the country, the Office of the Special Rapporteur observed a broad consensus with respect to the need to continue strengthening the independence and technical capacity of the state legal systems. In this regard, the Office of the Special Rapporteur noted the fact that in June 2008 Mexico adopted a series of significant reforms of its judicial system, both at federal and state levels, which are to be implemented over a period of eight years, ending in 2016.[1125] Among other elements, the reforms introduce oral trials to Mexican legal proceedings as well as an adversarial system.[1126] In the state of Chihuahua in particular, where it observed an oral trial in process, the Office of the Special Rapporteur was able to verify the commitment of the authorities and personnel of the legal system to the judicial reform underway.

735. The Office of the Special Rapporteur was also informed of the adoption, by the Federal District Public Prosecutor's Office, of an "Investigation Protocol for Dealing with Crimes Committed against Journalists Exercising their Profession."[1127] The Protocol awards jurisdiction over such offenses to the Specialized Agency for the Attention to Offenses Committed against Journalists in the Exercise of their Profession, establishes guidelines for the investigation of offenses against journalists that make reference to the line of inquiry relating to the journalistic activity of the victim, and considers the adoption of protective measures for victims and witnesses.[1128] In cases of violence against journalists, the Office of the Special Rapporteur considers that all public prosecutor's offices should also consider the creation of specialized investigation groups as well as special investigation protocols according to which the hypothesis that the crime was committed due to the victim's professional activities must be exhausted. In its observations regarding the preliminary version of this report, the Mexican State reported that the FEADLE has prepared a "Homicide Investigation Guide" which "awaits presentation to the state public prosecutor's offices."[1129] The Office of the Special Rapporteur believes it is essential that this guide contain the necessary elements to ensure that in cases involving violence against journalists, the hypothesis that the crime was committed due to the journalist's professional activities is exhausted.

736. Information received by the Office of the Special Rapporteur also indicates that in some cases of violations of journalists' human rights presumably committed by the military, the investigation of the events has been carried out by the military criminal justice system.[1130]

737. The Political Constitution of Mexico considers military or war jurisdiction to apply exclusively "to those offenses and faults against military discipline", that is to say, those committed by

---

[1125] Diario Oficial, June 18, 2008, Available at: http://www.diputados.gob.mx/LeyesBiblio/legis/reflx/89_CPEUM_18jun08.doc

[1126] See Diario Oficial, June 18, 2008, Available at: http://www.diputados.gob.mx/LeyesBiblio/legis/reflx/89_CPEUM_18jun08.doc. See also, David A. Shirk, "Justice Reform in Mexico: Change and Challenges in the Judicial Sector", April, 2010, Available at: http://wilsoncenter.org/topics/pubs/Shirk.pdf

[1127] Gaceta Oficial del Distrito Federal, Agreement A/011/2010 of the Public Prosecutor's Office of the Federal District, May 14, 2010, Available at: http://www.ordenjuridico.gob.mx/Documentos/Estatal/Distrito%20Federal/wo48403.pdf

[1128] Gaceta Oficial del Distrito Federal, Agreement A/011/2010 of the Public Prosecutor's Office of the Federal District, May 14, 2010, Available at: http://www.ordenjuridico.gob.mx/Documentos/Estatal/Distrito%20Federal/wo48403.pdf

[1129] Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights" and Annex I, received on February 3, 2011.

[1130] In the course of its visit, for example, the Office of the Special Rapporteur received information about the case of journalist Ernesto Reyes Martínez of *Noticias Voz e Imagen* in the state of Oaxaca, who together with his wife was detained and held incommunicado, had his belongings taken, and was threatened by a group of soldiers on June 20, 2009, in the municipality of San Pablo Etla in Oaxaca. According to information received from the organization Article 19, the Oaxaca State Office of the PGR rejected its competence to investigate these events in favor of the Military Justice Attorney in May, 2010, and the Fifth District Court of the State of Oaxaca dismissed the injunction request that prevented the referral of the case to the military penal jurisdiction. The Office of the Special Rapporteur requested additional information from the State on this case. In its response, the State did not refer to the legal process but indicated that "The CNDH, in conformity with article 125 fraction VIII of its Internal Regulations, determined the complaint to be closed, there being no evidence to continue hearing the matter". Communication OEA-02567 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received November 12, 2010.

soldiers in the military sphere, whether to fulfill a mission or order received, or in carrying out operational or administrative functions they are in charge of.[1131]

738. According to article 13 of the Constitution military jurisdiction should only be applied to offenses that affect military discipline, such as insubordination or desertion. By contrast, when an offense occurs that affects human rights or when faults in military discipline and violations to human rights arise from the same acts, competence over the violation to human rights should correspond to civil jurisdiction. Article 13 also establishes that military jurisdiction cannot be extended to a civilian.[1132]

739. However, Article 57.II of the Military Justice Code establishes that offenses against military discipline include, among others, all those "that are committed by soldiers when in service or in the pursuit of service-related actions."

740. The Inter-American Court of Human Rights has observed in this regard that among the characteristic features of Mexican military legal jurisdiction there may be found "[a]n extensive realm of material competence, which surpasses the framework of strictly military crimes", and that "[t]hrough the figure of the crime of duty or with occasion of the service enshrined by Article 57 of the Code of Military Justice, the Mexican criminal jurisdiction has the characteristics of a personal jurisdiction linked to the defendant's condition of soldier and not to the nature of the crime."[1133] The Inter-American Court found that Article 57 of the Military Justice Code is incompatible with the American Convention on Human Rights, and resolved that "the State shall adopt, within a reasonable period of time, the appropriate legislative reforms in order to make the mentioned provision [Article 57] compatible with the international standards of the field."[1134]

741. In the framework of its visit, the Office of the Special Rapporteur learned of an initiative presented by the President of Mexico to Congress, which will exclude from the competence of the military penal jurisdiction the offenses of forced disappearance, torture and rape.[1135] In this regard the Office in Mexico of the United Nations High Commissioner for Human Rights indicated that the initiative represents a "necessary step", but that "the path now open for bringing the Military Justice Code into line with international standards for the protection of Human Rights presents obvious challenges, given the insufficiency–among other issues–of the very limited list of exclusions that are incorporated into the initiative."[1136] Likewise, the Inter-American Court observed in a recent decision that "in the *Case of Radilla-Pacheco*, the Court deemed that the provision contained in the aforementioned Article 57 operates as a rule and not as an exception, the latter characteristic being essential for the military jurisdiction to meet the standards established by this Court. In this regard, the Court emphasizes that these standards are met when all human rights violations are investigated under civilian criminal

---

[1131] United Nations. *Report of the Working Group on the Universal Examination of Journalism: Mexico.* Addition. Opinions on the conclusions and/or recommendations, voluntary commitments and responses presented by the state examined, p. 6. Available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MX/A_HRC_11_27_Add1_MEX_S.pdf

[1132] Montaña Tlachinollan Human Rights Center, Miguel Agustín Pro Juárez Human Rights Center, and the Center for Justice and International Law. *La impunidad militar a juicio* (Mexico: 2010), p. 26. Available at: http://cejil.org/sites/default/files/la_impunidad_militar_a_juicio_casos_0.pdf

[1133] I/A Court H.R., *Case of Radilla-Pacheco v. Mexico.* Preliminary Objections, Merits, Reparations, and Costs. Judgment of 2009. Series C No. 209, par. 276.

[1134] I/A Court H.R., *Case of Radilla-Pacheco v. Mexico.* Preliminary Objections, Merits, Reparations,and Costs. Judgment of November 23, 2009. Series C No. 209, par. 342.

[1135] Ministry of the Interior, Bulletin 530, October 21, 2010, Available at: http://www.gobernacion.gob.mx/es/SEGOB/Sintesis_Informativa?uri=http%3A%2F%2Fwww.SEGOB.swb%23swbpress_Content%3A2482&cat=http%3A%2F%2Fwww.SEGOB.swb%23swbpress_Category%3A1

[1136] Office in Mexico of the United Nations High Commissioner for Human Rights, October 19, 2010, *ONU-DH señala que la iniciativa del Ejecutivo para acotar el fuero militar abre una ruta que debe ser ampliada por el Congreso.* Available at: http://www.cinu.mx/comunicados/2010/10/onu-dh-senala-que-la-iniciativ/

jurisdiction, and thus their scope of application cannot be limited to specific violations such as torture, forced disappearance, or rape."[1137]

742. The Office of the Special Rapporteur reminds the State that: allegations of human rights violations, including those that refer to the right to freedom of expression, must in no case be processed under military legal jurisdiction, in accordance with the jurisprudence of the Inter-American Court of Human Rights.[1138] At the same time, both the military and the various police bodies must openly collaborate with investigations carried out by public human rights bodies and internal control bodies. The Office of the Special Rapporteur recognizes the State's legitimate right to combat organized crime and its efforts to train police and military personnel in human rights issues. However, it reiterates its appeal to the State to bolster measures aimed at ensuring that the battle against organized crime be consistent with democratic principles, including active respect for the control and criticism function that is exercised through the right to freedom of expression. The Office of the Special Rapporteur considers that the press should be seen as an ally of the State and society in strengthening democracy and the rule of law.

743. Finally, the Office of the Special Rapporteur considers that the struggle against impunity for crimes against journalists demands that the Mexican State continue to reinforce complementary control mechanisms. The Office of the Special Rapporteur was informed by the CNDH that of the 19 recommendations relating to freedom of expression issued by this institution since 2005, only six have been fully complied with.[1139] In this regard, it considers it essential that the Chamber of Deputies give priority to approving constitutional reform in human rights to reinforce the ability of public human rights bodies to act. It also considers opportune the existing proposal for the Chamber of Deputies' Special Commission for Monitoring Attacks on Journalists and Media Outlets to become a regular Commission, and to create an equivalent commission in the Senate and in the legislative bodies of those states where violence against journalists is most severe.

## III. FREEDOM, PLURALISM AND DIVERSITY IN DEMOCRATIC DEBATE

744. Mindful that one of the basic requirements for the right to freedom of expression is that a broad diversity of information be available, during its visit to Mexico the Office of the Special Rapporteur evaluated the degree of pluralism and diversity in broadcasting.[1140] Among other issues, the Office of the Special Rapporteur studied regulation of the radio and television frequency spectrum, the status of community broadcasting, and the regulation and allocation of government advertising.

### A. Regulation of the broadcast frequency spectrum and implementation of provisions governing broadcasting

#### 1. Legal framework

745. As the IACHR has noted, the regulation of broadcasting should have the goal of ensuring predictability and legal certainty to those who own or acquire a license, so that they can exercise their right to expression freely and without fear of negative consequences in reprisal for broadcasting information. Consequently, regulations must be designed in such a way that they grant sufficient guarantees against any possible arbitrary act by the State. Meeting this objective requires: (1) that the

---

[1137] I/A Court H.R. *Case of Cabrera-García and Montiel-Flores v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010. Series C No. 220, par. 206. Unofficial translation.

[1138] I/A Court H.R., *Case of Radilla-Pacheco v. Mexico.* Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, par. 342. See also United Nations Human Rights Commission, Final observations of the Human Rights Commission, Mexico, CCPR/C/MEX/CO/5, April 7, 2010, par. 18.

[1139] Information sent by the CNDH to the Office of the Special Rapporteur on August 18, 2010.

[1140] See IACHR, Office of the Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right to Access to Information*. OAS/Ser.L/V/II CIDH/RELE/INF. 2/09 30 December 2009, paras. 225, 231. Available at: http://www.cidh.org/pdf files/Inter American Legal Framework english.pdf

provisions establishing rights and obligations are clear and precise; (2) the inclusion of procedures that are transparent and respect due process—allowing for, among other things, judicial review of 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 demands will be imposed beyond those 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.[1141]

746. In particular, the allocation of radio and television licenses has a definitive impact on the right to freedom of expression in its two dimensions: the right to freely express oneself and society's right to receive diverse ideas and opinions.[1142] Therefore, this process must serve two objectives: 1) to ensure greater security so that people can freely express themselves without fear of being punished or stigmatized, and 2) to ensure equality in the conditions of access to frequencies and greater diversity in the communications media.[1143] The process of allocating frequencies must be strictly regulated by law, characterized by transparency and guided by objective, clear, public-spirited and democratic criteria.[1144]

747. The Office of the Special Rapporteur notes that the regulatory framework governing the broadcast spectrum and the implementation of provisions covering broadcasting in Mexico are principally set forth in the Federal Telecommunications Law,[1145] and the Federal Law on Radio and Television.[1146]

748. The Federal Telecommunications Law states that the Ministry of Communications and Transportation shall "plan, formulate and manage policies and programs, as well as regulate the development of telecommunications."[1147] This law also establishes that the Federal Telecommunications Commission (hereinafter "COFETEL") is the "Ministry of Communications and Transportation's decentralized administrative body [...] in charge of regulating, promoting and overseeing the efficient development and broad-based public coverage of telecommunications and broadcasting in Mexico."[1148] Among the powers assigned to COFETEL are the power to "opine on applications for granting, modifying, renewing and terminating telecommunications-related concessions and permits" and "exclusively, the faculties in the area of radio and television granted to it by the Ministry of Communications and Transportation."[1149] In this regard, the Supreme Court of Justice of the Nation (hereinafter "Supreme Court") has established that "the Federal Telecommunications Commission's exclusive jurisdiction over radio and television does not impinge upon the powers of any other branch of government, specifically

---

[1141] IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, par. 25. Available at: http://www.cidh.org/pdf files/Standards for free and inclusive Boadcating.pdf

[1142] IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, par. 60. Available at: http://www.cidh.org/pdf files/Standards for free and inclusive Boadcating.pdf

[1143] IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, paras. 25-26 Available at: http://www.cidh.org/pdf files/Standards for free and inclusive Boadcating.pdf

[1144] IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, par. 61. Available at: http://www.cidh.org/pdf files/Standards for free and inclusive Boadcating.pdf

[1145] Ley Federal de Telecomunicaciones, published in the *Diario Oficial de la Federación* June 7, 1995, final amendment published on November 30, 2010, available at: http://www.diputados.gob.mx/LeyesBiblio/pdf/118.pdf

[1146] Ley Federal de Radio y Televisión, published in the *Diario Oficial de la Federación* January 19, 1960, last amendment published June 19, 2009, available at: http://www.diputados.gob.mx/LeyesBiblio/pdf/114.pdf.

[1147] Ley Federal de Telecomunicaciones, published in the *Diario Oficial de la Federación* June 7, 1995, last amendment published November 30, 2010, Article 7(I) available at: http://www.diputados.gob.mx/LeyesBiblio/pdf/118.pdf

[1148] Ley Federal de Telecomunicaciones, published in the *Diario Oficial de la Federación* June 7, 1995, last amendment published November 30, 2010, Article 9-A available at: http://www.diputados.gob.mx/LeyesBiblio/pdf/118.pdf

[1149] Ley Federal de Telecomunicaciones, published in the *Diario Oficial de la Federación* June 7, 1995, last amendment published November 30, 2010, Article 9-A(IV) and 9-A(XVI) available at: http://www.diputados.gob.mx/LeyesBiblio/pdf/118.pdf

the regulatory powers of the Office of the Presidency", since COFETEL "is subordinate to [the Ministry of Communications and Transportation] and the head of the Executive Branch."[1150] This notwithstanding the fact that the Supreme Court has also ruled that "the Federal Executive acts through said Commission to address matters related to broadcasting."[1151] The COFETEL Commissioners are appointed by the head of the Executive Branch,[1152] the Supreme Court having struck down an amendment that empowered the Senate to challenge these appointments.[1153]

749. In 2006, a set of amendments to the Federal Telecommunications Law and the Law on Radio and Television were adopted.[1154] Later, in June 2007, the Supreme Court declared several of these amendments unconstitutional.[1155] For example, the Court invalidated the automatic renewal of radio and television concessions without requiring the bidding process set forth in Federal Telecommunications Law Article 16. The Supreme Court considered that direct granting of concessions "fosters situations of concentration with regard to broadcasting concessions, instead of the free and healthy competition that allows equitable access to communications media for all those interested in using bandwidth on the broadcast spectrum."[1156] The Supreme Court also struck down Article 17-G of the Federal Law on Radio and Television, which established the granting of concessions by public auction, because "anything that favors economic interests in granting concessions to frequencies for providing broadcast services favors the monopolization by economically powerful groups of mass communications media, thereby impeding pluralistic participation and the entry of new agents or entities into the sector."[1157] Finally, among many other aspects, the Supreme Court ruling declared unconstitutional several of the discretionary powers related to granting permits that Article 20 of the Federal Law on Radio and Television attributed to the Ministry of Communications and Transportation, because these placed "those applying for permits in a serious state of legal uncertainty."[1158]

750. The Office of the Special Rapporteur considered this Supreme Court ruling to be extremely important, since it invalidated various aspects of the procedures for acquiring broadcast and telecommunications concessions (licenses) and permits that the Court deemed could jeopardize freedom of expression, legal certainty and the prohibition of monopolies.[1159] However, the Office of the Special Rapporteur notes that the Mexican Congress and the Federal Executive had not created a proper regulatory framework for resolving problems the Supreme Court warned of or the gaps in the law that currently exist. Resolution of these problems and endowing the sector with a reasonable framework of legal certainty that allows broadcasters the free exercise of the right to freedom of expression are fundamental to ensuring the appropriate exercise of the freedom of expression.

751. By the same token, the Office of the Special Rapporteur believes that the State must encourage media autonomy, as well as diversity and pluralism in the media by adopting structural measures, such as setting up a regulatory body for broadcasting that is independent of the

---

[1150] Supreme Court, *Unconstitutionality Suit 26/2006*, verdict of June 7, 2007, pp. 68-69.

[1151] Supreme Court, *Constitutional Dispute 7/2009*, verdict of November 24, 2009, pp. 66, 68.

[1152] Ley Federal de Telecomunicaciones, published in the *Diario Oficial de la Federación* June 7, 1995, last amendment published November 30, 2010, Art. 9-C, available at: http://www.diputados.gob.mx/LeyesBiblio/pdf/118.pdf

[1153] Supreme Court, *Inconstitutionality Suit 26/2006*, verdict of June 7, 2007, p. 109.

[1154] Diario Oficial, April 11, 2006, Ministry of Communications and Transportation, *Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Ley Federal de Telecomunicaciones y de la Ley Federal de Radio y Televisión*, available at: http://www.diputados.gob.mx/LeyesBiblio/ref/lfrt/LFRT_ref07_11abr06.pdf

[1155] Supreme Court, *Unconstitutionality Suit 26/2006*, verdict of June 7, 2007.

[1156] Supreme Court, *Unconstitutionality Suit 26/2006*, verdict of June 7, 2007, p. 167.

[1157] Supreme Court, *Unconstitutionality Suit 26/2006*, verdict of June 7, 2007.

[1158] Supreme Court, *Unconstitutionality Suit 26/2006*, verdict of June 7, 2007, p. 76.

[1159] Supreme Court, *Unconstitutionality Suit 26/2006*, verdict of June 7, 2007.

government.[1160] As previously mentioned, although COFETEL has "technical, operating, spending and management"[1161] autonomy, and exercises exclusive Executive Branch powers with regard to radio and television, the Commission is politically and administratively subject to the Federal Executive's control, and the President of Mexico has total discretion in appointing all its members.

### 2. Concentration of communications media property ownership and control

752. The Office of the Special Rapporteur observes that a high degree of concentration in ownership and control continues to exist in Mexico's communications media that are licensed to use broadcast frequencies. Data provided to the Office of the Special Rapporteur by the President of the Senate Radio, Television and Film Commission indicates that more than 90% of television licenses are in the hands of just two companies.[1162] Information provided by civil society organizations coincides in pointing to a high degree of concentration.[1163] The Chair of the Senate Radio, Television and Film Commission also informed the Office of the Special Rapporteur that 76% of the commercial radio stations in the sector are in the hands of 14 families, and that 47.8% of stations belong to four major chains.[1164]

753. The Office of the Special Rapporteur pointed out that the IACHR Declaration of Principles on Freedom of Expression establishes that "monopolies or oligopolies in the ownership and control of communications media must be subject to anti-trust laws to prevent them from conspiring against democracy by limiting the pluralism and diversity than ensures the full exercise of the public's right to information." In this regard, and it has done in the past,[1165] the Office of the Special Rapporteur encourages the Mexican Congress and the Federal Executive to pass legislation that responds to the requirements set forth by the Supreme Court and international organizations for reducing concentration in this sector and for contributing to creating a pluralistic media environment accessible to all sectors of the population. Similarly, the State must ensure the existence of public media that are genuinely independent of the government, in order to promote diversity and guarantee that society receives certain educational and cultural services. As the Mexican Supreme Court itself has stated, "radio and television are mass communications media that have transcendent importance in people's daily lives, such that the State, in regulating use for the public good in that activity, must ensure equality of opportunity for access and foster pluralism that safeguards for society respect for the right to information and the free expression of ideas."[1166]

754. Furthermore, after its visit to Mexico the Office of the Special Rapporteur was informed that on September 2, 2010, the President of Mexico issued a decree "to set forth the actions the Federal Public Administration must take to complete the transition to Digital Terrestrial Television."[1167] Among

---

[1160] See IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, paras. 50-53. Available at: http://www.cidh.org/pdf files/Standards for free and inclusive Boadcating.pdf

[1161] Ley Federal de Telecomunicaciones, published in the *Diario Oficial de la Federación* June 7, 1995, last amendment published on November 30, 2010, Art. 9-A, available at: http://www.diputados.gob.mx/LeyesBiblio/pdf/118.pdf

[1162] Senator Carlos Sotelo García, "*Diagnóstico sobre Libertad de Expresión en México*", document provided to the Office of the Special Rapporteur on August 12, 2010, par. 3.

[1163] See *Asociación Mexicana de Derecho a la Información (AMEDI), "Report sobre Derecho a la Información 2010: Concentración, Medios de Communicationy Obstáculos para un Nuevo marco jurídico"*, p. 1. See also *Asociación Mundial de Radios Comunitarias (AMARC). Diversidad y Pluralismo en la Radiodifusión: Informe Anual 2009 sobre la Diversidad y el Pluralismo de la Radiodifusión en ALC*, p. 44. Available at: http://legislaciones.amarc.org/Informe2009_Diversidad_y_Pluralismo.pdf

[1164] Senator Carlos Sotelo García, "*Diagnostico sobre Libertad de Expresión en México*", document provided to the Office of the Special Rapporteur on August 12, 2010, par. 5.

[1165] Letter from the IACHR Chair to the Chair of the Senate's Board of Directors regarding "*Proyecto de Ley Federal de Radio y Televisión*", May 15, 2008.

[1166] *Supreme Court, Unconstitutionality Suit 26/2006*, verdict of June 7, 2007, p. 167.

[1167] *Decreto por el que se establecen las acciones que deberán llevarse a cabo por la Administración Pública Federal para concretar la transición a la Televisión Digital Terrestre*. September 2, 2010. Available at: http://dof.gob.mx/nota_detalle.php?codigo=5157568&fecha=02/09/2010

other things, the decree moves the shut-off of analog television in favor of digital television forward from 2021 to 2015, and it creates an Inter-Ministerial Commission for the Digital Transition.[1168] According to the information provided, both chambers of the Mexican Congress have filed claims of unconstitutionality against the decree before the Supreme Court, alleging that the President overstepped the limits of his powers.[1169] In October 2010, a Supreme Court judge suspended the decree until the Court could resolve the constitutional challenge,[1170] and the Supreme Court later formally agreed to hear the case.[1171] In addition, some civil society organizations expressed their concern that without the appropriate regulatory and institutional measures in place, the transition to digital television would not give rise to greater diversity and pluralism among those participating in Mexican television.[1172]

755. The Office of the Special Rapporteur recalls in this regard that the technological transformation in broadcasting should be designed to ensure optimal use of the spectrum such that it guarantees the greatest pluralism and diversity possible. To achieve this, states should establish specific legal mechanisms to appropriately manage the transition to digital broadcast services. This regulation should encompass a switch-over program that takes into account the needs and capacities of the various participants involved in the process, as well as the new technologies' level of application. In particular, states should evaluate the potential use of the digital dividend, considering this technological change an opportunity to increase the diversity of voices and enable new sectors of the population to access communications media. At the same time, states should adopt measures to prevent the cost of the transition from analog to digital from limiting the communications media's capacity, given the financial costs.[1173]

### 3. The status of community radio broadcasting

756. As regards community radio stations, the Office of the Special Rapporteur and the IACHR have recognized that these communications media play a fundamental role in the exercise of the freedom of expression for different sectors of society.[1174] The right of Indigenous peoples, in particular, to establish their own communications media is enshrined in Article 2 of the Mexican Constitution.[1175] Nevertheless, it is these same communities that have been frustrated in their efforts to create stations

---

[1168] *Decreto por el que se establecen las acciones que deberán llevarse a cabo por la Administración Pública Federal para concretar la transición a la Televisión Digital Terrestre*. September 2, 2010. Available at: http://dof.gob.mx/nota_detalle.php?codigo=5157568&fecha=02/09/2010

[1169] El Universal. October 7, 2010. *Diputados van contra decreto de TV digital*. http://www.eluniversal.com.mx/notas/714515.html. Observatorio de Medios. October 21, 2010. *Raúl Trejo Delabre: Suspenden apagón analógico.* Available at: http://culturadelalegalidad.wordpress.com/2010/10/21/21oct10-raul-trejo-delabre-suspenden-apagon-analogico/

[1170] CNN. October 21, 2010. *Suprema Corte 'apaga' la TV digital*. Available at: http://www.cnnexpansion.com/economia/2010/10/21/tv-digital-suspension-decreto-analogo. Observatorio de Medios. October 21, 2010. *Raúl Trejo Delabre: Suspenden apagón analógico.* Available at: http://culturadelalegalidad.wordpress.com/2010/10/21/21oct10-raul-trejo-delabre-suspenden-apagon-analogico/.

[1171] CNN. December 1, 2010. *Corte admite controversia por TV digital.* Available at: http://www.cnnexpansion.com/economia/2010/12/01/apagon-analogico-decreto-oficial-corte. Diario de Palanque. December 1, 2010. *Suprema Corte admite controversia por TV digital*. Available at: http://www.diariodepalenque.com/nota.php?nId=23148.

[1172] See, for example, *AMEDI*. September 23, 2010. *Más corporativismo electrónico, o camino a la diversidad y calidad audiovisuales.* Available at: http://www.amedi.org.mx/index.php?option=com_content&view=article&id=534:television-digital-mas-corporativismo-electronico-o-camino-a-la-diversidad-y-calidad-audiovisuales&catid=59:comunicados&Itemid=105

[1173] See IACHR. *2009 Annual Report*. OEA/Ser.L/V/II, December 30, 2009. Report of the Office of the Special Rapporteur for Freedom of Expression, chap. 6, par. 80. Available at: http://www.cidh.org/pdf files/Annual Report 2009.pdf

[1174] IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, par. 30, 97. Available at: http://www.cidh.org/pdf files/Standards for free and inclusive Boadcating.pdf

[1175] Article 2, section B, subsection VI of the Mexican Constitution sets forth the obligation of the federal, state and municipal governments "To establish conditions that enable Indigenous peoples and communities to acquire, operate and manage communications media under the terms of the laws on this subject set forth".

that contribute – among other things – to reflecting the ethno-cultural diversity of Indigenous peoples, and to disseminating, preserving and fostering their cultures and history.

757. The Office of the Special Rapporteur notes that the State must recognize the unique existence of community stations and provide for reserving parts of the spectrum for this type of media, as well as for maintaining equitable conditions for access to licenses that differentiate among the varied circumstances under which private non-commercial media operate.[1176] As this office has indicated, states must have a clear, pre-established, precise and reasonable legal framework that recognizes the special characteristics of community radio broadcasting and that includes simple, accessible procedures for obtaining licenses that do not impose excessive technological requirements, that allow the possibility of using advertising as a means of financing, and that do not impose discriminatory limits on their financing and reach.[1177] The Office of the Special Rapporteur also noted that community stations must operate within the law.

758. The Office of the Special Rapporteur observed that Mexican law, and specifically the Federal Law on Radio and Television, does not explicitly recognize community broadcasting, although it does make reference to "cultural" stations.[1178] As noted above, the aforementioned ruling of the Supreme Court declared the procedure for granting permits to non-commercial radio and television stations unconstitutional owing to the discretionary powers granted to government authorities in that process.[1179] Nonetheless, clear, precise and equitable procedures have not been adopted since that time by which community radio stations can apply for and obtain bandwidth for operation. The information received indicates that the absence of these procedures is creating serious practical obstacles for bringing Mexico's community radio stations into compliance with the law.

759. The Office of the Special Rapporteur points to the progress represented by COFETEL's granting of six permits to community radio stations in January 2010.[1180] It is fundamental, however, to create a standard process for spectrum allocation by designing clear and simple rules that enable radio station applicants to have certainty about the procedure, requirements and the time periods in which their application will be approved or denied.

760. Furthermore, the Office of the Special Rapporteur received information on some measures that could be disproportionate owing not only to their specific content, but also because they occur in the context of the legal framework described above. Some of these situations are described in the paragraphs that follow.

761. According to the information received by the Office of the Special Rapporteur, the *Radio Diversidad* community station in the Paso del Macho municipality in Veracruz State has been closed down on two occasions, once by a COFETEL operation in December 2008, and again by an operation of the PGR on March 11, 2009.[1181] In relation to this second incident, arrest warrants were issued for three

---

[1176] IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, paras. 30, 97. Available at: http://www.cidh.org/pdf files/Standards for free and inclusive Boadcating.pdf

[1177] See IACHR, Office of the Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right to Access to Information*. OAS/Ser.L/V/II CIDH/RELE/INF. 2/09 December 30, 2009, par. 234, 235. Available at: http://www.cidh.org/pdf files/Inter American Legal Framework english.pdf

[1178] *Ley Federal de Radio y Televisión*, published in the *Diario Oficial de la Federación* January 19, 1960, last amendment published June 19, 2009, Art. 13, available at: http://www.diputados.gob.mx/LeyesBiblio/pdf/114.pdf

[1179] Supreme Court, *Unconstitutionality Suit 26/2006*, verdict of September 7, 2007.

[1180] See COFETEL, Press Release No. 05/2010, January 27, 2010.

[1181] World Association of Community Broadcasters (AMARC in its Spanish acronym), *"Caso Radio Diversidad. Paso del Macho, Veracruz*", document delivered during the on-site visit. Information provided by participants in *Radio Diversidad*, August 10, 2010.

Continued…

of *Radio Diversidad*'s staff. According to the information received, on March 26, 2010, a District Court judge handed down a formal detention order against one of them, Mr. Juan José Hernández Andrade, for the alleged crime of using, benefiting from and exploiting property belonging to the nation without a state permit or license.[1182]

762. The Office of the Special Rapporteur also received information regarding *Radio Ñomndaa, La Palabra del Agua* in Xochistlahuaca, in the state of Guerrero, which was created in 2004 as part of an effort to promote autonomy among the Nanncue Ñomndaa (Amuzgo) people of this municipality.[1183] According to the information received, on different occasions in 2005 agents of the Armed Forces, the Ministry of Communications and Transportation and the PGR arrived at the radio station and harassed the radio operators.[1184] In addition, also according to the information received, on July 10, 2008, about 30 police officers arrived at the radio station and tried to dismantle it, disconnecting cables and transmission equipment.[1185] Furthermore, since 2004 a criminal case charging several members of the community with kidnapping has been open. In the context of this case, as the State informed the Office of the Special Rapporteur in its observations regarding the preliminary version of this report, on September 10, 2010, the Judge of First Instance in Criminal Matters of the Abasolo Judicial District convicted Genaro Cruz Apóstol, Silverio Matías Domínguez, and David Valtierra Arango, founding members of the autonomous municipality of Suljaa´ de Xochistlahuaca and members of *Radio Ñomndaa*, and sentenced them to three years in prison and payment of a fine.[1186] An appeal of the conviction has reportedly been filed and is still pending.[1187]

763. Also, the Office of the Special Rapporteur received information about the case of Rosa Cruz, a member of the Purépecha Indigenous group in Michoacan State, who participated in the *Uékakua*

---

…continuation

[1181] World Association of Community Broadcasters (AMARC in its Spanish acronym), *"Caso Radio Diversidad. Paso del Macho, Veracruz*", document delivered during the on-site visit. Information provided by participants in *Radio Diversidad*, August 10, 2010.

[1182] World Association of Community Broadcasters (AMARC in its Spanish acronym), *"Caso Radio Diversidad. Paso del Macho, Veracruz*", document delivered during the on-site visit. Information provided by participants in *Radio Diversidad*, August 10, 2010.

[1183] Community Radio *Ñomndaa La Palabra del Agua* Board of Directors, *Montaña Tlachinollan* Center for Human Rights, *"La Reivindicación de los derechos del Pueblo Nanncue Ñomndaa en Xochistlahuaca: El Hostigamiento en contra de la Radio Ñomndaa".* Received by the Office of the Special Rapporteur October 7, 2010. *Fundación para el Debido Proceso Legal, Criminalización de los defensores de derechos humanos y de la protesta social en México,* pp. 39-40. Available at: http://www.dplf.org/uploads/1279728364.pdf

[1184] Community Radio *Ñomndaa La Palabra del Agua* Board of Directors, *Montaña Tlachinollan* Center for Human Rights, *"La Reivindicación de los derechos del Pueblo Nanncue Ñomndaa en Xochistlahuaca: El Hostigamiento en contra de la Radio Ñomndaa".* Received by the Office of the Special Rapporteur October 7, 2010. *Fundación para el Debido Proceso Legal, Criminalización de los defensores de derechos humanos y de la protesta social en México,* pp. 39-40. Available at: http://www.dplf.org/uploads/1279728364.pdf

[1185] Community Radio *Ñomndaa La Palabra del Agua* Board of Directors, *Montaña Tlachinollan* Center for Human Rights, *"La Reivindicación de los derechos del Pueblo Nanncue Ñomndaa en Xochistlahuaca: El Hostigamiento en contra de la Radio Ñomndaa".* Received by the Office of the Special Rapporteur October 7, 2010. Fundación para el Debido Proceso Legal, *Criminalización de los defensores de derechos humanos y de la protesta social en México,* pp. 39-40. Available at: http://www.dplf.org/uploads/1279728364.pdf

[1186] Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights" and Annex I, received on February 3, 2011. See also Community Radio *Ñomndaa La Palabra del Agua* Board of Directors, *Montaña Tlachinollan* Center for Human Rights, *"La Reivindicación de los derechos del Pueblo Nanncue Ñomndaa en Xochistlahuaca: El Hostigamiento en contra de la Radio Ñomndaa".* Received by the Office of the Special Rapporteur October 7, 2010. Due Process of Law Foundation, *Criminalization of human rights workers and social protest in Mexico,* pp. 39-40. Available at: http://www.dplf.org/uploads/1279728364.pdf

[1187] Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights" and Annex I, received on February 3, 2011.

*de Ocumicho* community radio station. According to the information received, this station had five watts of power, was the only station transmitting in Purépecha in the Ocumicho community, and had been applying for an operating permit since 2002.[1188] According to the information received, on January 29, 2009, dozens of Federal Investigation Agency agents burst into the station's facilities in order to seize radio equipment. Later the PGR initiated criminal proceedings against Ms. Cruz, charging her with the crime of using, benefiting from and exploiting the broadcast spectrum without COFETEL's permission, which is punishable under Article 150 of the General Law on National Goods.[1189]

764. The Office of the Special Rapporteur was also informed that on October 12, 2010, a group of armed people wearing hoods who were employees of the Chiapas State Public Prosecutor's Office and the Chiapas Sectoral Police Special Forces Unit entered *Radio Proletaria* facilities in the city of Tuxtla Gutierrez, the state capital.[1190] According to the information received, these officers took the radio transmission equipment and an antenna and arrested six people, including a minor who was making a live broadcast of a music program.[1191] The Office of the Special Rapporteur was also told that *Radio Proletaria* works in favor of the community's human rights, and is an enterprise created and operated primarily by the youth of the 12 de Noviembre neighborhood in Tuxtla Gutierrez.[1192] In its observations regarding the preliminary version of this report, the Mexican State confirmed that "the minor child Carlos Ernesto Martínez Ruíz was arrested" in this operation and that "a seizure of assets of a precautionary nature was carried out."[1193] The State also reported that "the Public Prosecutor's Office of the state of Chiapas conducted the preliminary investigation...as relates to the events. That inquiry was transferred for lack of jurisdiction to the PGR on October 13, 2010, as it involved the commission of the crime of theft of electromagnetic energy established in subparagraph II of Article 368 of the Federal Criminal Code...the investigation is currently undergoing preparation and legal fine-tuning."[1194]

---

[1188] Information delivered to the Office of the Special Rapporteur by staff at the *Uékakua de Ocumicho* radio station, August 10, 2010. See also Reporters without Borders, *México: Los entresijos de la impunidad* (Paris: RSF, September 2009), p. 5. Available at: http://www.dplf.org/uploads/1279728364.pdf. http://files.reporterossinfronteras.webnode.es/200000142-a5a9ca6a3f/RsF_Informe_Mexico_Impunidad_sept09.pdf. AMEDI. August 28, 2009. *Rosa Cruz, indígena, amenazada con cárcel por participar en una radio comunitaria.* http://www.amedi.org.mx/index.php?option=com_content&view=article&id=161:rosa-cruz-indigena-amenazada-con-carcel-por-participar-en-una-radio-comunitaria&catid=45:externas

[1189] See Reporters without Borders, *México: Los entresijos de la impunidad* (Paris: RSF, September 2009), p. 5. Available at: http://files.reporterossinfronteras.webnode.es/200000142-a5a9ca6a3f/RsF_Informe_Mexico_Impunidad_sept09.pdf. AMEDI. August 28, 2009. *Rosa Cruz, indígena, amenazada con cárcel por participar en una radio comunitaria.* Available at: http://www.amedi.org.mx/index.php?option=com_content&view=article&id=161:rosa-cruz-indigena-amenazada-con-carcel-por-participar-en-una-radio-comunitaria&catid=45:externas.

[1190] World Association of Community Broadcasters (AMARC in its Spanish acronym)/CENCOS/IFEX, October 14, 2010. *Community radio station in Chiapas forcibly shut down.* Available at: http://www.ifex.org/mexico/2010/10/14/radio_proletaria_raided/. *Fray Bartolomé de Las Casas* Center for Human Rights, communication sent to the Office of the Special Rapporteur via email, October 14, 2010.

[1191] World Association of Community Broadcasters (AMARC in its Spanish acronym)/CENCOS/IFEX, October 14, 2010. *Community radio station in Chiapas forcibly shut down.* Available at: http://www.ifex.org/mexico/2010/10/14/radio_proletaria_raided/. *Fray Bartolomé de Las Casas* Center for Human Rights, communication sent to the Office of the Special Rapporteur via email, October 14, 2010.

[1192] World Association of Community Broadcasters (AMARC in its Spanish acronym)/CENCOS/IFEX, October 14, 2010 *Community radio station in Chiapas forcibly shut down.* Available at: http://www.ifex.org/mexico/2010/10/14/radio_proletaria_raided/. *Fray Bartolomé de Las Casas* Center for Human Rights, communication sent to the Office of the Special Rapporteur via email, October 14, 2010.

[1193] Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

[1194] Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

765. Finally, the Office of the Special Rapporteur received information indicating that Hector Camero, a staff member of the *Tierra y Libertad* community radio station was notified on November 3, 2010, that he had been sentenced to two years in prison, fined more than 15,000 pesos and his civil and political rights had been restricted for the crime of using, benefiting from and exploiting the broadcast spectrum without prior authorization.[1195] According to the information received, *Tierra y Libertad* radio was started in 2001 to give voice to the residents of the *Tierra y Libertad* neighborhood of Monterrey in the state of Nuevo León, and that despite having applied for a permit to operate in 2002, they had only received it in 2009.[1196] The charges against Hector Camero, a medic and teacher training professional who supports poor communities in Monterrey, arose out of the events of June 6, 2008, when, according to what the Office of the Special Rapporteur has been told, dozens of federal police officers entered the radio station and confiscated transmission equipment.[1197]

766. The Office of the Special Rapporteur insists on the urgent necessity of approving legislation that responds to the Supreme Court ruling and international standards, so that community broadcasters receive authorization to operate, and so that a clear legal framework is established for their operation. The Office of the Special Rapporteur again observes that community broadcasters have the obligation to operate in a manner consistent with the laws, but insists that these laws should conform to international standards and that they should be enforced using proportionate administrative sanctions and not by resorting to criminal law.[1198] In its observations on the preliminary version of this report, the Mexican State noted regarding this topic that "radio and television [broadcasting] is an activity of public interest, and thus the State should protect it and watch over it to see that it duly fulfills its social function. In this regard, the [Federal Telecommunications] Commission, in accordance with its authority and jurisdiction as fully established in laws governing this area, exercises its powers in the administrative arena with respect to these types of stations, under the terms provided for in Article 104 Bis. of the Federal Radio and Television Law. That is, once a station operating at a frequency not authorized by this agency is detected, the seizure of its facilities and all assets related to its operations takes place, with the alleged violator being granted a hearing as established in our Magna Carta.... The exercise of a criminal action against these types of stations is not within the jurisdiction of the Federal Telecommunications Commission, but falls to the Office of the Prosecutor General of the Republic, who carries out such actions based on the complaints presented by broadcasting station concession holders who are affected by the operation of these stations."[1199]

### B. Government advertising

767. With regard to government advertising, the IACHR has indicated that the State must ensure that official advertising is not used as a means of punishing communications media that are independent or critical of the government, or as a disguised subsidy that directly or indirectly benefits the

---

[1195] International Freedom of Expression Exchange (IFEX). November 5, 2010. *Community radio journalist sentenced to two years in jail*. Available at: http://www.ifex.org/mexico/2010/11/05/camero_prison/. Reporters without Borders. November 8, 2010. *Prisión para un representante de una radio comunitaria; asesinan a otro periodista, el octavo en lo que va del año*. Available at: http://es.rsf.org/spip.php?page=impression&id_article=38756

[1196] International Freedom of Expression Exchange (IFEX). November 5, 2010. *Community radio journalist sentenced to two years in jail*. Available at: http://www.ifex.org/mexico/2010/11/05/camero_prison/. Reporters without Borders. November 8, 2010. *Prisión para un representante de una radio comunitaria; asesinan a otro periodista, el octavo en lo que va del año.* Available at: http://es.rsf.org/spip.php?page=impression&id_article=38756. See also *La Jornada.* August 15, 2009. *Radio comunitaria Tierra y Libertad.* Available at: http://www.jornada.unam.mx/2009/08/15/index.php?section=opinion&article=016a1pol

[1197] IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, par. 25, 41. Available at: http://www.cidh.org/pdf files/Standards for free and inclusive Boadcating.pdf

[1198] IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, par. 25, 41. Available at: http://www.cidh.org/pdf files/Standards for free and inclusive Boadcating.pdf

[1199] Communication OEA-00262 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, received on February 11, 2011.

communications media that are sympathetic to or compliant with the authorities.[1200] States should decide what they will communicate and where they will communicate their messages to the public on the basis of objective criteria considering the best means of transmitting that information in the most effective way, and absolutely independently from the informative or editorial content of the media that they must contract for that purpose.[1201] It is essential that states have specific regulations that expressly establish the prerequisites and objectives of the official guidelines for license allocation, and that these regulations be written in a clear and precise way so that both the state's obligations and the rules for broadcasters can be seen in advance.[1202]

768. The information received by the Office of the Special Rapporteur indicates that Mexican government expenditure on government advertising is high and getting higher. According to information provided by the State, in 2009 the Federal Executive spent MX$5,371,418,470 pesos, the equivalent of US$410,580,429[1203] on government advertising, an increase of more than 60% on the amount spent in 2006.[1204] Such significant spending on government advertising makes the requirement for clear and objective rules for allocation even more important.

769. According to the information received, Mexico does not have specific legislation clearly establishing the criteria that must be used in allocating government advertising. Article 134 of the Constitution sets forth certain restrictions on the content of government advertising by prohibiting the inclusion of "names, images, voices or symbols that imply the individualized promotion of any public servant." Also, the Ministry of the Interior annually issues public guidelines designed to regulate the federal government's public communication processes for that year. The 2010 version of these guidelines includes some parameters for allocating this publicity; for example, they state that "the purchase of radio and television time should be based on criteria of quality that ensure consistency among the content of the message, the target audience and programming."[1205] Furthermore, in its observations on the preliminary version of this report, the Mexican State reported that the guidelines published for 2011 included several relevant additions.[1206] Indeed, the Office of the Special Rapporteur notes that these additions include the requirement that "the selection of media outlets must be made impartially, with greater weight given to their objective characteristics."[1207]

---

[1200] IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, par. 122. Available at: http://www.cidh.org/pdffiles/Standards for free and inclusive Boadcating.pdf

[1201] IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, par. 128. Available at: http://www.cidh.org/pdffiles/Standards for free and inclusive Boadcating.pdf

[1202] IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, par. 130. Available at: http://www.cidh.org/pdffiles/Standards for free and inclusive Boadcating.pdf

[1203] Amount calculated using the exchange rate as of December 31, 2009.

[1204] "*Histórico de Recursos Ejercidos por Tipo de Medio: ejercicio Fiscales 2006 a 2010*", document provided by the Ministry of the Interior during the on-site visit.

[1205] *Diario Oficial,* December 28, 2009, Ministry of the Interior. Agreement establishing general guidelines for orienting, planning, authorizing, coordinating, overseeing and evaluating the strategies, programs and public communications campaigns of Federal Public Administration agencies and entities for Fiscal Year 2010, Article 4 (X).

[1206] Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

[1207] Agreement establishing general guidelines for orienting, planning, authorizing, coordinating, overseeing and evaluating the strategies, programs and public communications campaigns of Federal Public Administration agencies and entities for Fiscal Year 2010, Art. 4, published in the *Diario Oficial* on December 30, 2010. Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, Annex III, received on February 3, 2011.

770. Notwithstanding the above, it is necessary to point out that the CNDH itself has noted that these guidelines do not adequately define the procedure and objective, clear, transparent and nondiscriminatory criteria for contracting government advertising.[1208] The guidelines apply only to the Federal Executive, and fail to address the other branches of government and autonomous bodies, or the states, where the allocation of government advertising is often even less transparent. According to the information received, this includes, for example, the fact that the state of Veracruz considers the amount spent on public communications and government publicity to be confidential information, not available to the public.[1209]

*771.* In the context of this legal framework, the Office of the Special Rapporteur received information regarding cases in which government advertising had been allocated on the basis of the communications media's news reporting. For example, the CNDH established that after *Contralinea* magazine published a series of stories critical of the state oil company, PEMEX, this public entity stopped advertising in the magazine.[1210] Mexico's National Human Rights Commission recommended that the Director of PEMEX "disseminate instructions to the appropriate people to equip the company with objective, clear, transparent and non-discriminatory procedures and criteria for placing and distributing government advertising."[1211] Information from the CNDH indicates that this recommendation was not accepted by the Director General of PEMEX.[1212]

772. Similarly, the CNDH verified that the Guanajuato State government suppressed and cut back the government advertising that it placed in the *A.M.* and *Al Día* daily newspapers as an indirect way of limiting their freedom of expression.[1213] The CNDH confirmed the recommendation issued by the Human Rights Ombudsman's Office of the State of Guanajuato to the governor of the state that he "make necessary provisions so that the State Executive agencies and entities, each within its sphere of authority, establish clear, fair, objective and non-discriminatory criteria to determine the distribution of government advertising."[1214] According to the information received, the governor did not accept this recommendation.[1215]

773. Similarly, the Office of the Special Rapporteur received information indicating that *Proceso* magazine filed a complaint with the CNDH because the federal government had, for no apparent reason, stopped contracting for official advertising, despite the fact that the magazine has a broad and well-known circulation.[1216]

774. The existence of a legal framework that allows the allocation of government advertising in a discretionary manner makes the approval of clear, objective, transparent and non-discriminatory rules

---

[1208] See CNDH, *Recommendation 57*, September 14, 2009, p. 26. Available at: http://www.cndh.org.mx/recomen/2009/057.pdf

[1209] State of Veracruz, *Dirección General de Communication Social*, Case No. DGCS/UAIP/037/2010, June 28, 2010.

[1210] See CNDH, *Recommendation 57,* September 14, 2009, pp. 21-25. Available at: http://www.cndh.org.mx/recomen/2009/057.pdf

[1211] See CNDH, *Recommendation 57*, September 14, 2009, pp. 21-25. Available at: http://www.cndh.org.mx/recomen/2009/057.pdf

[1212] CNDH, *Report de Actividades 2009*, p. 586. Available at: http://www.cndh.org.mx/lacndh/informes/anuales/Informe2009/Informe_2009.pdf

[1213] See CNDH, *Recommendation 60*, September 29, 2009. Available at: http://www.cndh.org.mx/recomen/2009/060.pdf

[1214] See CNDH, *Recommendation 60,* September 29, 2009. Available at: http://www.cndh.org.mx/recomen/2009/060.pdf. Guanajuato State Public Prosecutor's Office, Office for Human Rights, Case 280/07-O, April 17, 2008, available at: http://www.derechoshumanosgto.org.mx/images/stories/pdheg/documentos/gaceta2008_1.pdf.

[1215] Meeting held with the CNDH on August 11, 2010, and information sent by the CNDH to the Office of the Special Rapporteur on August 18, 2010.

[1216] International Freedom of Expression Exchange (IFEX). May 19, 2009. *CNDH investigates anomaly in allocation of federal government advertising contracts.* Available at: http://www.ifex.org/mexico/2009/05/19/proceso_advertising_allegation/. CENCOS. May 11, 2009. *La CNDH investiga el castigo publicitario a Proceso*. Available at: http://www.cencos.org/es/node/20747

for contracting this service at both the federal and state levels all the more urgent. Within the context of the Office of the Special Rapporteur's on-site visit, the Federal Government recognized the need to pass legislation that establishes rules for managing government advertising that are applied consistently throughout the country and at all levels and in all spheres of government.[1217] The Office of the Special Rapporteur was told that in recent years several bills have been introduced in the Mexican Congress to regulate government advertising, but that none have been passed into law.[1218] The Office of the Special Rapporteur again urges the Congress to resume work on this important task.

## IV. LEGAL ACTIONS RELATING TO THE EXERCISE OF FREEDOM OF EXPRESSION

### A. Use of criminal law

775. The IACHR has repeatedly called on States not to criminalize the exercise of freedom of speech, especially with regard to matters of public interest.[1219] Principle 10 of the Declaration of Principles on Freedom of Speech establishes that "Protection of reputation should be guaranteed only through civil sanctions, in cases in which the offended person is a public official or public or private person who has voluntarily become involved in matters of public interest."

776. On the occasion of its last official visit to Mexico in 2003, the Office of the Special Rapporteur considered that "to ensure the adequate defense of freedom of expression, the Mexican State, at both the federal and local levels, should amend its defamation laws such that only civil penalties could be applied in cases of insults to public officials related to the performance of their functions, public figures, or private figures involved voluntarily in matters of public interest."[1220]

777. The Office of the Special Rapporteur recognizes and applauds the fact that since 2007 the Mexican State effectively decriminalized defamation ofenses.[1221] Similarly, the Office of the Special Rapporteur observes that a significant number of states have decriminalized these offenses in recent years, including the state of Veracruz in July 2010.[1222] At the same time, and notwithstanding the importance of these reforms, the Office of the Special Rapporteur observes that the Printing Offenses Law of 1917 remains in effect and provides for penalties involving imprisonment.

778. Likewise, the information received by the Office of the Special Rapporteur indicates that offenses against honor continue to be provided for in the penal codes of 16 states. These are the states of Baja California[1223], Baja California Sur[1224], Campeche,[1225] Colima[1226], Guanajuato[1227], Hidalgo[1228],

---

[1217] "*Asignación de Publicidad Gubernamental Federal*", document provided by the Ministry of the Interior during the Office of the Special Rapporteur's on-site visit.

[1218] See *Fundar, "¿Cuánto cuesta la imagen del gobierno ejecutivo federal? Usos y costumbres del gasto en publicidad oficial en nuestro país*", July 22, 2010.

[1219] See IACHR, Office of the Special Rapporteur for Freedom of Expression, *A Hemispheric Agenda for the Defense of Freedom of Expression.* OAS/Ser.L/v/II/IACHR/RELE/INF.4/09. February 25, 2009, par. 56. Available at: http://www.cidh.org/pdffiles/RELEHemisphericAgenda.pdf

[1220] IACHR. *Annual Report 2003.* OAS/Ser.L/V/II.118, December 29, 2003. Vol. III, *Annual Report of the Office of the Special Rapporteur for Freedom of Expression, chap.* 2, paras. 198-99. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=139&lID=1

[1221] IACHR. *Annual Report 2007.* OAS/Ser.L/V/II.130*, December 29, 2007. Vol.* II, *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*, chap. 2, par. 138. Available at: http://www.cidh.oas.org/annualrep/2007eng/Annual_Report_2007.VOL.II ENG.pdf

[1222] International Freedom of Expression Exchange (IFEX). July 26, 2010. *State of Veracruz decriminalises defamation.* Available at: http://www.ifex.org/mexico/2010/07/27/defamation_decriminalised/; Penal Code of Veracruz, last amended September 8, 2010, available at: http://www.legisver.gob.mx/leyes/LeyesPDF/PENAL080910.pdf

[1223] Defamation laws are established in articles 185 and 191 of the Penal Code of Baja California, available at: http://www.congresobc.gob.mx/legislacion/Parlamentarias/TomosPDF/Leyes/TOMO_V/Codpenal_10SEP2010.pdf

[1224] Defamation laws are established in articles 336, 338 and 342 of the Penal Code of the state of Baja California Sur, available at: http://www.cbcs.gob.mx/marco_juridico/D1525-4.doc

México[1229], Nayarit[1230], Nuevo León,[1231] Puebla,[1232] Querétaro,[1233] Sonora,[1234] Tabasco,[1235] Tlaxcala,[1236] Yucatán,[1237] and Zacatecas.[1238] The Office of the Special Rapporteur expresses its satisfaction with the decriminalization at federal level and in 16 states, and reiterates its call for all the states to follow the example of decriminalizing offenses against honor, especially with regard to matters of public interest. In this regard, the Office of the Special Rapporteur welcomes the fact that, as the Mexican State reported in its observations on the preliminary version of this report, the Chamber of Deputies' Special Commission for Monitoring Attacks on Journalists and Media Outlets hopes in 2011 to meet the objective of "having 16 states decriminalize defamation ofenses, known as offenses against honor."[1239]

779. According to the information received by the Office of the Special Rapporteur, the criminal laws for protection of the honor of public officials have permitted, in some cases, the initiation of criminal proceedings against journalists for expressing their opinion on matters of public interest. The IACHR has considered that the use of legal mechanisms to punish the discussion of matters of public interest or about public officials, candidates to public office or politicians in itself violates Article 13 of the American Convention and can also constitute a means of indirect censorship in view of its intimidatory

…continuation

[1225] Defamation laws are established in articles 313, 315, and 321 of the Penal Code of the state of Campeche, available at: http://www.congresocam.gob.mx/LX/index.php?option=com_jdownloads&Itemid=0&task=finish&cid=2614&catid=5

[1226] Defamation laws are established in articles 218 and 221 of the Penal Code of the state of Colima, available at: http://www.congresocol.gob.mx/leyes/codigo_penal.pdf

[1227] Defamation laws are established in articles 188 and 189 of the Penal Code of the state of Guanajuato, available at: http://www.congresogto.gob.mx/legislacion/codigos/acrobat/Penal.pdf

[1228] Defamation laws are established in articles 191 and 194 of the Penal Code of the state of Hidalgo, available at: http://www.congreso-hidalgo.gob.mx/Contenido/Leyes/08.doc

[1229] Defamation laws are established in articles 275, 278, and 282 of the Penal Code of the State of Mexico, available at: http://www.cddiputados.gob.mx/POLEMEX/POLEMEX.HTML.

[1230] Defamation laws are established in articles 294, 295, and 297 of the Penal Code of the state of Nayarit, available at: http://www.congreso-nayarit.gob.mx/files/1248925540.pdf

[1231] Defamation laws are established in articles 342, 344, and 235, of the Penal Code of the state of Nuevo León, available at: http://www.congreso-nl.gob.mx/potentiaweb/portal/genera/VistasV2_1/PlantillasV2/2010.asp?Portal=17&MenuActivo=8&View=1&Origen=http://189.209.243.82/potentiaweb/portal/Genera/filtros/index.asp

[1232] Defamation laws are established in articles 357 and 362 of the Social Protection Code of the state of Puebla, available at: http://www.congresopuebla.gob.mx/index.php?option=com_docman&task=doc_download&gid=3&Itemid=7

[1233] Defamation laws are established in articles 170 and 173 of the Penal Code of the state of Querétaro, available at: http://www.legislaturaqro.gob.mx/files/codigos/02-Codigo-Penal-para-el-Estado-de-Queretaro.pdf

[1234] Defamation laws are established in article 284 of the Penal Code of the state of Sonora, available at: http://www.congresoson.gob.mx/Leyes_Archivos/doc_6.pdf

[1235] Defamation laws are established in articles 166 and 169 of the Penal Code of the state of Tabasco, available at: http://www.congresotabasco.gob.mx/LX/trabajo_legislativo/pdfs/codigos/Codigo_Penal_Tabasco.pdf

[1236] Defamation laws are established in articles 248, 249, and 251 of the Penal Code of the state of Tlaxcala, available at: http://www.congresotlaxcala.gob.mx/congreso/paginas/leyes.php

[1237] Defamation laws are established in articles 294, 295, and 299 of the Penal Code of the state of Yucatán, available at: http://www.congresoyucatan.gob.mx/pdf/CODIGO_PENAL.pdf

[1238] Defamation laws are established in articles 272 and 274 of the Penal Code of the state of Zacatecas, available at: http://www.congresozac.gob.mx/cgi-bin/coz2/mods/secciones/index.cgi?action=todojuridico&cat=CODIGO&az=3588

[1239] Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

effect, inhibiting the debate on matters of public interest.[1240] The simple threat of being criminally prosecuted for critical expressions on matters of public interest can give rise to self-censorship.[1241]

780. In June 2009, the Supreme Court had to was obliged to annul a decision by the Sole Criminal Judge of the Judicial District of Acámbaro, state of Guanajuato which, on the grounds of the right to honor and to private life, sentenced to imprisonment the editor of a newspaper that had published a report on the behavior of a high-ranking public official.[1242] The ruling of the Supreme Court, expressly citing the highest Inter-American standards, underscored the need to prevent criminal law from being used as a mechanism to silence democratic debate on matters of public interest and state officials. Similarly, the Supreme Court considered that the defamation ofenses of the Print Law of the state of Guanajuato, owing to their extreme vagueness and imprecision, were incompatible with the Constitution and with the standards of the Inter-American system regarding freedom of speech.[1243]

781. The Office of the Special Rapporteur also received information on the case of journalist Lydia Cacho (see *supra*), who was criminally charged with defamation laws in the state of Puebla after having published an investigative book on the crime of child pornography in which, among other things, she made allegations about a textile entrepreneur and leading politicians.[1244] Although subsequently, in 2007, the case was resolved in favor of Ms. Cacho, the admission of the complain initially resulted in the arrest of the journalist in irregular circumstances that, according to the CNDH, included ill-treatment and psychological torture.[1245]

782. Furthermore, the Office of the Special Rapporteur received information according to which two officials of the government of the state of Yucatán had on separate occasions filed legal complaints against journalists at the *Diario de Yucatán.* According to the information received from the newspaper and from an opposition member of the state legislature in this state, in February 2010 the State Secretary for Agricultural Advancement filed a complaint for defamation offenses against the journalist Hernán Casares Cámara, who had published reports on alleged irregularities in this entity.[1246] Likewise, according to the information received, in August 2010 an advisor to the governor of Yucatán brought a criminal action against the reporter Hansel Vargas after he had attempted to cover a fashion

---

[1240] See IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, par. 30, 97. Available at: http://www.cidh.org/pdf files/Standards for free and inclusive Boadcating.pdf

[1241] See IACHR, Office of the Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right to Access to Information.* OAS/Ser.L/V/II CIDH/RELE/INF. 2/09 30 December 2009, par. 114. Available at: http://www.cidh.org/pdf files/Inter American Legal Framework english.pdf

[1242] Supreme Court, *Direct Review Injunction 2044/2008*, verdict of June 17, 2009.

[1243] Supreme Court, *Direct Review Injunction 2044/2008*, verdict of June 17, 2009. See also 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&lID=2; Supreme Court of Justice of Mexico. June 17, 2009. *Injunction granted to man convicted of crime of attacks on private life.* Available at: http://www.scjn.gob.mx/MediosPub/Noticias/2009/Paginas/17-Junio-2009.aspx; CEPET. June 18, 2009. *Court grants injunction to journalist and sets limits on criminal complaints against media workers.* Available at:http://libex.cepet.org/index.php?option=com_content&view=article&id=616:ampara-la-corte-a-periodista-y-fija-limites-a-demandas-penales-contra-comunicadoes&catid=36:alertas&Itemid=55, in general, IACHR, Office of the Special Rapporteur for Freedom of Expression. The Inter-American Legal Framework Regarding the Right to Access to Information. OAS/Ser.L/V/II CIDH/RELE/INF. 2/09. December 30, 2009, chapter on "National Incorporation of Inter-American Standards with regard to Freedom of Expression during 2009," paras. 81-99. Available at: http://www.cidh.org/pdf%20files/Inter%20American%20Legal%20Framework%20english.pdf

[1244]La Jornada, January 3, 2007, *Kamel Nacif loses lawsuit against Lydia Cacho,* available at: http://www.jornada.unam.mx/2007/01/03/index.php?section=politica&article=005n2pol

[1245] CNDH, Recommendation 16 of March 6, 2009. Available at:http://www.cndh.org.mx/recomen/2009/016.pdf

[1246] Letter from Deputy Alicia Magally Cruz Nucamendi to the Office of the Special Rapporteur, August 12, 2010. *Diario de Yucatán*. August 11, 2010. *"Coordinadora de logística": Gabriela López admite su relación con un plan estatal*. Available at: http://v6.yucatan.com.mx/noticia.asp?cx=11$0928010000$4362111&f=0811

show in which a clothing company participated which, according to allegations made by the newspaper, received exorbitant state support.[1247]

783. In the state of Guerrero, civil society organizations working in the state alleged that the authorities were using offenses such as "illegal deprivation of freedom", "attacks on general communication routes", "attacks on communication routes and means of transport", "revolt" and "sedition and sabotage" to criminally prosecute human rights workers and suppress social dissent.[1248] The Office in Mexico of the United Nations High Commissioner for Human Rights also made reference to these types of criminal offenses by observing that "arbitrary use of the legal system has been repeatedly noted" against human rights workers in the country.[1249]

784. In Guerrero the Office of the Special Rapporteur had the opportunity to interview human rights defender Raúl Hernández, indigenous leader of the Me'phaa Indigenous People's Organization (hereinafter "OPIM"), who was in prison in Ayutla de los Libres. The Office of the Special Rapporteur expresses its satisfaction that shortly after the visit, on August 27, 2010, the Combined Jurisdiction Court of First Instance based in Ayutla acquitted and released Mr. Hernández.[1250] According to the information received, in April 2008 Mr. Hernández and four other members of OPIM had been accused of homicide and arrested; arrest warrants for the same offense were issued against another ten members of OPIM, including its president.[1251] In March 2009 all those arrested were released upon obtaining a federal injunction, except for Mr. Hernández who was tried for the crime of homicide.[1252] Among other activities, OPIM has promoted as petitioner the cases *Fernández Ortega vs. Mexico*[1253] and *Rosendo Cantú vs.* Mexico,[1254] in which the Inter-American Court found the Mexican State responsible for the rapes suffered by the respective victims and the subsequent denial of justice in their cases. In its observations on the preliminary version of this report, the Mexican State reported that the acquittal of Mr. Raúl Hernández had been appealed.[1255]

785. The Office of the Special Rapporteur recalls that social protest is important for the consolidation of democratic life and that, in general, this form of participation in public life, as an expression of freedom of speech, is of imperative social interest. Therefore, the State is subject to an

---

[1247] Email from Pablo Cicero Alonzo, assistant editor of Grupo Megamedia, to the Office of the Special Rapporteur, August 10, 2010. Letter from Deputy Alicia Magally Cruz Nucamendi to the Office of the Special Rapporteur, August 12, 2010. *Diario de Yucatán*. August 10, 2010. *Mordaza encubierta: Atenta contra la libertad de prensa una denuncia, opinan*.Available at: http://v6.yucatan.com.mx/noticia.asp?cx=11$0928010000$4361667&f=20100810

[1248] Due Process of Law Foundation, *Criminalization of human rights workers and social protest in Mexico,* chap. 2. Available at: http://www.dplf.org/uploads/1279728364.pdf of *Montaña de Tlachinollan* Human Rights Center, *Report on the Criminalization of Social Protest in the State of Guerrero,* August 2010.

[1249] OUNHCHR. *Defending human rights: between commitment and risk. Report on the situation of human rights defenders in Mexico.* Available at: http://www.hchr.org.mx/documentos/libros/informepdf.pdf

[1250] *Montaña de Tlachinollan* Human Rights Center. August 27, 2010. *Raúl Hernández released after being acquitted by judge*.

[1251] Due Process of Law Foundation, *Criminalization of human rights workers and social protest in Mexico*, pp. 31-32. Available at: http://www.dplf.org/uploads/1279728364.pdf *Montaña de Tlachinollan* Human Rights Center. August 27, 2010. *Raúl Hernández released after being acquitted by judge*.

[1252] Due Process of Law Foundation, *Criminalization of human rights workers and social protest in Mexico*, pp. 31-32. Available at: http://www.dplf.org/uploads/1279728364.pdf *Montaña de Tlachinollan* Human Rights Center. August 27, 2010. *Raúl Hernández released after being acquitted by judge*.

[1253] I/A Court H.R., *Case of Fernández Ortega et al. v. Mexico.* Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010. Series C No. 215.

[1254] I/A Court H.R., *Case of Rosendo Cantú et al. v. Mexico.* Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31. Series C No. 216.

[1255] Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

even stricter framework to justify a limitation on the exercise of this right.[1256] In this regard, the Office of the Special Rapporteur takes note of the decision of June 30, 2010, by the First Chamber of the Supreme Court which released 12 persons held in relation to the demonstrations that took place in San Salvador Atenco, State of Mexico, in 2006. The Office of the Special Rapporteur agrees with the Supreme Court in the sense that the authorities should not act on the basis of a prejudice regarding the behavior of a person who demands, via social protest, that his interests be taken into account, and that there should be no stigmas associating protest with violence and subversion.[1257]

786. Finally, the Office of the Special Rapporteur reiterates the importance of protecting the right of journalists to protect their sources of information, as pointed out by the Office of the Special Rapporteur in its 2003 report, on the occasion of its previous visit to Mexico. In this regard, the Office of the Special Rapporteur welcomes the progress registered at federal level by reason of the reform of the Federal Code of Criminal Proceedings, which includes the above-mentioned right,[1258] as well as the Law on Professional Secrecy of Journalists in the Federal District, approved in 2006,[1259] and recommends that these advances be reflected in every state.

### B. Civil actions

787. The Office of the Special Rapporteur also received information on legal actions of a civil nature against journalists and media organizations. In this regard, the Office of the Special Rapporteur recalls that, as the Inter-American Court has indicated, opinions cannot be considered either true or false; therefore, opinion cannot be the object of punishment.[1260] Likewise, heightened standards should exist to assess the subsequent responsibility of those who disseminate information on matters of general interest or of political criticism, including the standard of "actual malice", and the strict proportionality and reasonableness of sanctions.[1261] Finally, journalists who investigate cases of corruption or improper conduct should not be subject to judicial prosecution or other type of harassment in reprisal for their work.[1262] It should be recalled that, as the Inter-American Court has observed, fear of civil punishment can be equally or more intimidating and inhibiting to the exercise of freedom of expression than criminal punishment, and clearly leads to the harmful outcome of self-censorship, both for the affected party and for other potential critics.[1263]

788. The Office of the Special Rapporteur welcomes the decision handed down by the Supreme Court of Justice in October 2009 which, with reference to the aforementioned Inter-American standards, acquitted the magazine *Proceso* of the charges of moral prejudice for the publication of a

---

[1256] IACHR. *Annual Report 2002.* OEA/Ser.L/V/II.117, March 3, 2003. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression,* chap. IV, par. 34. Available at: http://www.cidh.oas.org/relatoria/docListCat.asp?catID=32&lID=1

[1257] First Division of the Supreme Court of Justice of the Nation, Direct Review Injunction 4/2010, June 30, 2010.

[1258] Federal Code of Penal proceedings, Art. 243 Bis.

[1259] *Ley del Secreto Profesional del Periodista en el Distrito Federal* [Law for the Professional Secrecy of Journalists in the Federal District], published in the *Gaceta Oficial del Distrito Federal* on June 7, 2006, available at: http://www.aldf.gob.mx/archivo-0c29824a7c3a8aa1ae66f58dad3110cb.pdf

[1260] 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, par. 86.

[1261] IACHR. *Annual Report 2007.* OAS/Ser.L/V/II.130, December 29, 2007. Vol. II, Report of the Office of the Special Rapporteur for Freedom of Expression, chap. VII, par. 7. Available at: http://www.cidh.oas.org/annualrep/2007eng/Annual_Report_2007.VOL.II ENG.pdf

[1262] See Joint Declaration of the Rapporteurs for Freedom of Expression of the UN, OSCE and IACHR, 2003. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=88&lID=1

[1263] 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. 129.

report about the first divorce of the wife of an ex-President of the Republic.[1264] The Twelfth Civil Court of the Federal District had ruled in favor of the complainant in the first instance, a ruling partially confirmed by the First Civil Division of the High Court of Justice of the District. By adopting a decision to the contrary, the Supreme Court explained that the case involved "a public figure, who, while at the time of the contested publication did not hold public office, it is true that her personal situation and her political activities were of national and international scope." It mentioned that this scope was of such a degree "that it led to greater interest in and public scrutiny of her actions or behavior, and therefore to a legitimate interest on the part of society in receiving certain information about it."[1265] The Supreme Court, incorporating Inter-American standards, reiterated the need to apply specific rules for resolving the conflict between freedom of expression, information and honor in cases involving public officials and public figures.[1266]

789. Furthermore, the information received by the Office of the Special Rapporteur indicates that, in some cases, the civil actions were filed for the purpose of harassing journalists and critical media. The CNDH has characterized as "harassment,"[1267] for example, the civil actions initiated against journalists from the magazines *Contralínea* and *Fortuna, Negocios y Finanzas* by individuals and companies linked to a single business group who filed at least five civil lawsuits against them in three different states.[1268] According to the information received, in one of these cases, Judge 44 of the Civil Court of the Federal District, on May 30, 2008, ruled against the editor of the magazine *Contralínea*, Agustín Miguel Badillo Cruz, the journalist Ana Lilia Pérez Mendoza, and the company to which the above-mentioned magazines belong.[1269] The verdict concludes that the articles published about the chairman of the board of directors of a business consortium of over 80 companies, which included an interview agreed to by the complainant himself as well as documents he had voluntarily handed over, constituted an "abuse of the right to information and to freedom of expression, by which the honor of the plaintiff was harmed."[1270] The judicial decision gives no importance to "the fact that the plaintiff had granted the interviews and handed over the documents", or "the fact that some of the information is in the public domain both in the national territory and abroad."[1271] The verdict orders the publication of the full text of the sentence in the magazines, and the removal of the articles in question from the Internet.[1272] According to the information received, the appeal heard by the Sixth Civil Court of the High Court of Justice of the Federal District on September 23, 2008 upheld the verdict, and the direct writ for constitutional protection presented by the defendants was refused on December 11, 2008 by the Seventh Collegiate Court for Civil Matters.[1273] In its observations on the preliminary version of this report, the Mexican State reported that "the High Court of Justice of the Federal District underscores in the strongest

---

[1264] Supreme Court of Justice. Judgment of October 7, 2009. Direct injunction 6/2009. CEPET. October 9, 2009. *Weekly cleared of charges, but writer still required to pay damages*. Available at: http://www.ifex.org/mexico/2009/10/09/wornat_owes_damages/

[1265] Supreme Court of Justice. Judgment of October 7, 2009. Direct Injunction 6/2009. CEPET. October 9, 2009. *Court acquits weekly magazine "Proceso" for complaint from ex-first lady*. Available at: http://www.ifex.org/mexico/2009/10/09/wornat_owes_damages/

[1266] See, in general, IACHR, Office of the Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right to Access to Information*. OAS/Ser.L/V/II CIDH/RELE/INF. 2/09. December 30, 2009, chapter on "National Incorporation of Inter-American Standards with regard to Freedom of Expression during 2009," paras. 100-114. Available at: http://www.cidh.org/pdf%20files/Inter%20American%20Legal%20Framework%20english.pdf

[1267] See CNDH, Recommendation 57 of September 14, 2009, pp. 12-14. Available at: http://www.cndh.org.mx/recomen/2009/057.pdf

[1268] See CNDH, Recommendation 57 of September 14, 2009, pp. 12-14. Available at: http://www.cndh.org.mx/recomen/2009/057.pdf

[1269] Judge 44 for Civil Matters of the Federal District, File 757/2007, verdict of May 30, 2008.

[1270] Judge 44 for Civil Matters of the Federal District, File 757/2007, verdict of May 30, 2008.

[1271] Judge 44 for Civil Matters of the Federal District, File 757/2007, verdict of May 30, 2008.

[1272] Judge 44 for Civil Matters of the Federal District, File 757/2007, verdict of May 30, 2008.

[1273] Information provided to the Office of the Special Rapporteur by the magazine *Contralínea* during the on-site visit.

terms that in this matter, as is clear from the account itself, all instances—that is, the deciding judge who ruled against the defendants in exercise of his jurisdictional functions, as well as the respective judges who upheld the decision—were in agreement regarding the ruling, and even the writ filed by the defendants was denied. So then if two higher authorities have reviewed the decision by Judge 44 and upheld his reasoning and ruling, it is pointless to engage in excessive analysis or subjective assessments, as in the case before us."[1274]

790. The Office of the Special Rapporteur is also concerned that within the framework of the proceedings mentioned in the preceding paragraph, a civil judge issued a provisional sentence against the journalists and the company prohibiting them from referring to the plaintiffs "by way of insults" in their reports,[1275] a measure equivalent to prior censorship. In addition, according to the information received by the Office of the Special Rapporteur, as part of these civil proceedings, the editor of *Contralínea* was arrested in circumstances questioned by the CNDH.[1276] Likewise, according to information from the CNDH, personnel from the Public Security Ministry of the Federal District and several civilians who, according to information provided by the magazine, declared themselves to be representatives of the plaintiffs, raided the premises of the magazine on February 11, 2009.[1277] The Office of the Special Rapporteur expresses its concern over these events, which indicate an attempt to use the judicial system to harass and silence journalists.[1278]

791. In its comments regarding the preliminary version of this report, the Mexican State referred to the February 11, 2009 operation carried out by the Federal District Public Security Secretariat at the offices of *Contralínea* magazine, noting that the operation was headed by Atty. Javier Campos Cervantes, clerk of the Thirty-Ninth Civil Court of the Federal District, to carry out the request of a judicial authority as part of an action brought by Gas Licuado S.A. de C.V. against Corporativo Internacional de Medios de Comunicación, the company to which *Contralínea* magazine belongs.[1279] Nonetheless, Clerk Campos reportedly stated that "the visit was likely made to a mistaken location, since it was not in line with social grounds," and thus he decided not to carry out the operation but to withdraw the personnel of the Federal District Public Security Secretariat.[1280] The State also reported that with respect to these events, "the National and Federal District Human Rights Commissions...decided to close their investigations."[1281]

---

[1274] Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

[1275] Civil Court 54 Secretariat "B", File 492/09, decision of April 22, 2009.

[1276] See CNDH, Recommendation 57 of September 14, 2009, p. 16. Available at: http://www.cndh.org.mx/recomen/2009/057.pdf

[1277] CNDH, Press Release CGCP/020/09, February 12, 2009.

[1278] The Office of the Special Rapporteur requested information from the State about the appearance of unknown individuals on the premises of the magazine *Contralínea* which took place in February 2009, but no reply was received. Request for information from the Mexican State by the Office of the Special Rapporteur, September 2, 2010.

[1279] Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

[1280] Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

[1281] Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

792. In the state of Guerrero, the Office of the Special Rapporteur also received information about the existence of a substantial civil suit initiated in 2007 against journalists from the newspaper *El Sur*, as a result of the publication of information of public interest about the awarding of state contracts.[1282]

### C. Other related information

793. Finally, the Office of the Special Rapporteur received information about other actions which, as alleged by the affected parties, illegitimately restrict freedom of expression.

794. The Office of the Special Rapporteur received information about a campaign launched by the organization Catholics for Choice, called "*Otra mirada católica del aborto*" ("A different Catholic view of abortion").[1283] According to the information received, in June 2010 censure stamps were placed on the billboards that were placed in the city of Querétaro, state of Querétaro as part of this campaign. According to the information received, the City Council of the city publicly stated that the billboards did not comply with the corresponding permits.[1284] The organization Catholics for Choice informed the Office of the Special Rapporteur, however, that it had complied with the required norms and that it had not received an official explanation of the reason for the censure; as a result, it considered that its freedom of expression had been censored.[1285] The Office of the Special Rapporteur recalls that Article 13.3 of the American Convention prohibits indirect restrictions on freedom of expression, "such as abuse of government controls."

795. The Office of the Special Rapporteur also received information about the case of journalist Jesús Lemus Barajas, editor of the newspaper *El Tiempo* in La Piedad, located on the border of the state of Michoacán with the states of Jalisco and Guanajuato. According to the information received, Mr. Lemus Barajas has been held since May 2008, accused of "organized crime" and "crimes against public health."[1286] The journalist denounced to the Office of the Special Rapporteur that the criminal proceedings against him are the result of having reported on the new drug trafficking routes in the south of Guanajuato and the links between the drug cartels and the authorities.[1287] His complaint has been backed by the organization Reporters Without Borders which had access to the case file and concluded that "the evidence against him is non-existent […] and the procedures followed reveal appalling failings."[1288]

796. Meanwhile, the Office of the Special Rapporteur received information about the application of the provisions of Article 41 of the Constitution and of the corresponding norms of the

---

[1282] Second Court of First Instance for Civil Matters, *Alberto Javier Torreblanca Galindo vs. Información del Sur, S.A. de C.V. and others,* File 656-3/2007.

[1283] Catholic Women for the Right to Decide, "Campaign 'Another Catholic look at abortion' Censorship of billboards in Querétaro: a violation of freedom of expression," document provided to the Office of the Special Rapporteur during the on-site visit. IFEX. June 24, 2010. *Censorship of billboards for the campaign "A Different Catholic View of Abortion" in Querétaro.* Available at: http://www.ifex.org/mexico/2010/06/25/derecho_a_decidir_censurado/es/

[1284] Catholic Women for the Right to Decide, "Campaign '*A Different Catholic View of Abortion*' Censorship of billboards in Querétaro: a violation of freedom of expression," document providedto the Office of the Special Rapporteur during the visit on-site. IFEX. June 24, 2010. Censorship of billboards for campaign 'Another Catholic look at abortion' in Querétaro. Available at: http://www.ifex.org/mexico/2010/06/25/derecho_a_decidir_censurado/es/

[1285] Catholic Women for the Right to Decide, "Campaign '*A Different Catholic View of Abortion*' Censorship of billboards in Querétaro: a violation of freedom of expression," document provided to the Office of the Special Rapporteur within the framework of the on-site visit.

[1286] Letter from J. Jesús Lemus Barajas to the Office of the Special Rapporteur, August 2010, received during the on-site visit. See also Reporters without Borders, "México: los entresijos de la impunidad," September 2009, p. 6.

[1287] Letter from J. Jesús Lemus Barajas to the Office of the Special Rapporteur, August 2010, received during the on-site visit.

[1288] Reporters without Borders, *México*: *Los entresijos de la impunidad* (Paris: RSF, September 2009), p. 6. Available at: http://files.reporterossinfronteras.webnode.es/200000142-a5a9ca6a3f/RsF_Informe_Mexico_Impunidad_sept09.pdf

Federal Code of Electoral Institutions and Procedures. These norms establish a series of rules about the broadcasting of political party advertising on radio and television during electoral times. They also establish a system of allotment of broadcasting times distributed among the political parties by the Federal Electoral Institute, and prohibit political parties or individuals from buying or obtaining radio or television advertising aimed at influencing citizens' electoral preferences outside of this system. The Office of the Special Rapporteur received information according to which the existence and application of these norms resulted in the imposition of sanctions against political actors and communications media for expressing themselves on electoral matters. The Office of the Special Rapporteur recognizes that the legitimate interest of the State in promoting free, accessible and equitable elections can justify the imposition of rules on the dissemination of party-political advertising during electoral times. At the same time, it recalls that the proper development of democracy requires the greatest possible circulation of information, opinions and ideas on matters of public interest,[1289] and that expressions about public officials or candidates for public office should enjoy an especially strong margin of openness.[1290] Both the design of the norms and their application or implementation should take into account the delicate balance that should exist between the principles of equity and electoral transparency on the one hand, and the right to freedom of expression on the other. Currently various petitions regarding the application of the above-mentioned provisions are pending before the IACHR, and as such these norms and their application in the specific cases presented will be analyzed in detail within the framework of the contentious proceedings before the Commission.

## V. ACCESS TO INFORMATION

### A. Legal framework and effective guarantee of law

797. The right of access to information is a fundamental right protected by Article 13 of the American Convention. It is a particularly important right for the consolidation, functioning and preservation of democratic systems.[1291]

798. With regard to access to information, the Office of the Special Rapporteur expresses its satisfaction with the notable advances achieved by the Mexican State in recent years, which have made the country a point of reference on the issue. While the right to information has been provided for in the Mexican Constitution since 1977,[1292] as of 2007 the Constitution enshrines the right of access to government information by establishing in Article 6, *inter alia*, that "[a]ny information in possession of any federal, state or municipal authority, entity, body or agency, is public and may only be temporarily reserved for reasons of the public interest for periods set out by law."[1293]

799. The Office of the Special Rapporteur also recognizes the importance of the Federal Law on Transparency and Access to Public Government Information, published on June 11, 2002. In particular, this law created the Federal Institute for Access to Information and Protection of Data (hereinafter "IFAI") as the agency in charge of promoting and disseminating the exercise of the right to

---

[1289] I/A Court H.R., *Case of Kimel vs. Argentina.* Merits, Reparations and Costs. Judgment of May 2, 2008. Series C No. 177, paras. 57 and 87.

[1290] See IACHR, Office of the Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right to Access to Information.* OAS/Ser.L/V/II CIDH/RELE/INF. 2/09 December 30, 2009, par. 40. Available at: http://www.cidh.org/pdf%20files/Inter%20American%20Legal%20Framework%20english.pdf

[1291] See IACHR, Office of the Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right of Access to Information.* OAS/Ser.L/V/II CIDH/RELE/INF. 1/09 December 30, 2009, par. 1. Available at: http://www.cidh.org/pdf files/Access to information.pdf

[1292] Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights," received on February 3, 2011.

[1293] Political Constitution of the United Mexican States, Art. 6. See also the document "Reform of Article 6 of the Constitution" delivered to the Rapporteur by IFAI within the framework of the on-site visit.

access to information, adjudicating denials to requests for access to information and protecting personal data held by agencies and entities.[1294] With the coming into effect of the Federal Law on Transparency and Access to Public Government Information, all federal public administration departments had to establish a liaison unit and an information committee as part of their structure. The former is in charge of receiving and processing requests for information from all persons[1295] and providing the information requested.[1296] Should the information requested be classified, it is the agency's information committee that decides whether to make it public or withhold it.[1297] Should the information be denied, be declared nonexistent, be considered incomplete or not match the information requested, the applicant may file an appeal for review before the IFAI.[1298] In such a case, the IFAI issues a resolution in which it decides to provide the information requested or withhold it.[1299] This resolution may not be appealed by the liable party (the public administration department) but may be appealed in court by the party making the request.[1300]

800. The Office of the Special Rapporteur considers that the IFAI has played an exemplary role in protecting the right of access to information of individuals and developing a culture of transparency in public institutions of the federal public administration. This is reflected by the fact that requests for information made to the Mexican federal public administration increased from 37,732 in 2004 to 117,597 in 2009.[1301] Furthermore, according to the information received, in only 2.7% of cases was delivery of the information denied in the first instance on the grounds it was withheld or secret information.[1302]

801. The Office of the Special Rapporteur also gives special recognition to the Supreme Court of Justice and the Electoral Tribunal of the Federal Judiciary (hereinafter "Federal Electoral Tribunal") for their decisions guaranteeing the right of access to information. The Supreme Court has established that access to information is a "right founded on one of the principal characteristics of republican government, which is the public nature of acts of government and the transparency of the administration."[1303] The Federal Electoral Court, for its part, has applied the obligation to respect the right of access to information to political parties, since "the nature of the political parties as entities of public interest means they share in the obligation of the State to guarantee the right to timely and truthful information, and obliges them to safeguard observance of the principles of openness and transparency in their internal affairs."[1304]

802. These courts also stand out thanks to their innovative transparency policies. The Supreme Court, for example, has adopted a series of measures aimed at improving the public's access to information on its activities, among them publicity regarding the public sessions of the Plenary and

---

[1294] *Federal Law on Transparency and Public Government Information,* Art. 33.

[1295] *Federal Law on Transparency and Public Government Information,* Article 28 subsection II. Available at http://www.ifai.org.mx/transparencia/LFTAIPG.pdf

[1296] *Federal Law on Transparency and Public Government Information,* Article 44. Available at http://www.ifai.org.mx/transparencia/LFTAIPG.pdf

[1297] *Federal Law on Transparency and Public Government Information,* Article 45. Available at http://www.ifai.org.mx/transparencia/LFTAIPG.pdf

[1298] *Federal Law on Transparency and Public Government Information,* Articles 49 and 50. Available at http://www.ifai.org.mx/transparencia/LFTAIPG.pdf

[1299] *Federal Law on Transparency and Public Government Information,* Article 56. Available at http://www.ifai.org.mx/transparencia/LFTAIPG.pdf

[1300] *Federal Law on Transparency and Public Government Information,* Article 59. Available at http://www.ifai.org.mx/transparencia/LFTAIPG.pdf

[1301] Information delivered to the Office of the Special Rapporteur by the IFAI during the on-site visit.

[1302] The statistics correspond to requests for information to the federal public administration between June 12, 2003 and July 31, 2010. Information delivered to the Office of the Special Rapporteur by the IFAI during the on-site visit.

[1303] Supreme Court of Justice of the Nation. Thesis on Jurisprudence P./J. 54/2008.

[1304] Electoral Court of the Judicial Branch of the Federation, Thesis XII/2007, *Jaime Delgado Alcalde vs. National Commission on Party Justice of the Institutional Revolutionary Party.*

Chambers of the court, the supply of a significant amount of information through its Internet portal, and the creation of a diploma course in legal journalism aimed at journalists who cover the Supreme Court's activities.[1305] The Office of the Special Rapporteur calls upon the other courts in the country, particularly state courts, to follow these examples of transparency and accessibility to citizens. The Office of the Special Rapporteur was informed that in some states, such as the state of Sinaloa and the Federal District, the paragraphs setting forth the legal grounds on which a judgment is based in verdicts of first instance are withheld from the public until all the judicial instances of the corresponding proceedings have been exhausted, a practice that affects the right of access to information and hinders citizen control over the performance of the judicial authorities.

803. In addition to meeting with the IFAI, the Office of the Special Rapporteur had the opportunity to interview the institutes for access to information of the states of Chihuahua, Guerrero and Sinaloa and of the Federal District, all of which provided important information for assessing the exercise of the right of access to information in these entities. The Office of the Special Rapporteur was able to verify that in general terms these agencies play an important role in implementing the respective legislation for access to information in force at state and municipal level, which were approved by each state between the years 2002 and 2007.

### B. Challenges for the consolidation of the right of access to information

804. Notwithstanding the significant advances recognized above, the Office of the Special Rapporteur notes that challenges still exist with regard to the effective guarantee of the right of access to information in Mexico.

805. At the federal level, it is important to point out that the IFAI only supervises compliance with the Federal Law on Transparency and Access to Public Government Information in the federal public administration, while the judiciary and legislature, and autonomous bodies do not have an independent supervisory body.

806. At the state level, the Office of the Special Rapporteur received information from various parties, including public servants, journalists and civil society organizations, indicating that the legal and institutional framework that guarantees the effective exercise of the right of access to information before the Federal Executive does not always exist at the state and municipal levels. In this regard, there are both normative and practical challenges for the effective guarantee of the right of access to information at the local level.

807. With regard to the normative challenges, according to the information received by the Office of the Special Rapporteur during the in loco visit, nine states – Baja California, Baja California Sur, Campeche, Guerrero, Oaxaca, Puebla, Querétaro, Sonora and Zacatecas – had still not adapted their laws on access to information to the amendments made to Article 6 of the Constitution in 2007.[1306] Furthermore, the Office of the Special Rapporteur was informed of a reform of the Law on Transparency and Access to Public Information in the state of Guerrero, published in June 2010, which would entitle the government entity obliged to comply with an information request to legally contest the decisions of the Institute of Transparency and Access to Public Information of this state.[1307] The Office of the Special Rapporteur considers that the possibility of government entities challenging by means of ordinary appeals

[1305] "Actions of transparency, Access to Public Information, Personal Data and their Dissemination in the Supreme Court of Justice of the Nation," document delivered to the Office of the Special Rapporteur by the Supreme Court of Justice of the Nation during the on-site visit.

[1306] See Institute for Access to Public Information of the Federal District, "Access to Information and Protection of Personal Data in the Federal District," document delivered to the Office of the Special Rapporteur during the on-site visit.

[1307] *Law No. 374 on Transparency and Access to Public Information of the State of Guerrero,* published on June 15, 2010, Art. 146.

the resolutions of the institutes for access to information leads to a denial of the right to obtain the information requested by way of a simple, expeditious and specialized process.[1308]

808. From a practical perspective, the Office of the Special Rapporteur first observes a major disparity in the exercise of the right of access to information among the different states. Taking as a reference point the places visited during the on-site visit, it was observed that in the Federal District one information request for every 95 persons was presented to the entity's institute for transparency during 2009,[1309] whereas in Chihuahua one request was presented for every 865 persons,[1310] in Guerrero one request was presented for every 1,014 persons,[1311] and in Sinaloa one request for every 412 persons was presented.[1312] This pattern is repeated at the federal level, where more than half of the requests for information between 2003 and 2010 come from the Federal District and the State of Mexico alone.[1313] These statistics point to the need to expand and standardize knowledge and real access to the right of access to information throughout Mexico. In this regard, the Office of the Special Rapporteur considers it important to continue advancing in the incorporation of all the states into the Infomex platform, which allows the electronic submission of requests for access to public information. According to information from the IFAI, 21 states entities already have the system, while ten are in the process of implementing it.[1314] At the same time, the Office of the Special Rapporteur insists on the need to continue strengthening and extending other ways of exercising the right of access to information, bearing in mind that according to State figures only 26.4% of the Mexican population has access to the Internet.[1315]

809. Likewise, according to the information received, many state and municipal authorities are unaware of their obligations in relation to the right of access to information, and do not have established procedures to allow people to exercise this right in a real and effective manner. Thus, for example, the Commission for Access to Public Information of the State of Guerrero informed the Office of the Special Rapporteur that the challenges it faces for effectively guaranteeing the exercise of the right of access to information in this State include, among others, the "resistance and lack of interest" of some public

---

[1308] See IACHR, Office of the Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right to Access to Information.* OAS/Ser.L/V/II CIDH/RELE/INF. 2/09 December 30, 2009, par. 26. Available at: http://www.cidh.org/pdf%20files/Inter%20American%20Legal%20Framework%20english.pdf

[1309] In 2009 there were 93,195 requests for information out of a population of 8,841,916 persons in the Federal District. See Institute of Access to Public Information of the Federal District, "Access to Information and Protection of Personal Data in the Federal District," document delivered to the Office of the Special Rapporteur during the on-site visit. See also data on population of the National Population Council, available at: http://www.conapo.gob.mx/index.php?option=com_content&view=article&id=125&Itemid=203

[1310] In 2009 there were 3,919 requests for information out of a population of 3,391,617 persons in Chihuahua. See Institute of Chihuahua for Transparency and Access to Public Information "Access to Public Information and Protection of Personal Data in the State of Chihuahua," document delivered to the Rapporteur during the on-site visit. See also data on population of the National Population Council, available at: http://www.conapo.gob.mx/index.php?option=com_content&view=article&id=125&Itemid=203

[1311] In 2009 there were 3,097 requests for information out of a population of 3,140,529 persons in Guerrero. See Institute of Transparency and Access to Public Information of the State of Guerrero, "4 years of activities," document delivered to the Rapporteur during the on-site visit. See also data on population of the National Population Council, available at: http://www.conapo.gob.mx/index.php?option=com_content&view=article&id=125&Itemid=203

[1312] In 2009 there were 6,441 requests for information out of a population of 2,652,451 persons in Sinaloa. See State Commission on Access to Public Information of the State of Sinaloa, "Annual Report on Activities and Results 2009," p. 7, available at: http://www.ceaipes.org.mx/pdf/informe2009.pdf See also data on population of the National Population Council, available at: http://www.conapo.gob.mx/index.php?option=com_content&view=article&id=125&Itemid=203

[1313] According to the information delivered to the Rapporteur by IFAI during the on-site visit, between June 12, 2003 and July 31, 2010, 560,148 requests for information were presented to the federal public administration, of which 249,295 came from the Federal District and 73,353 came from the State of Mexico.

[1314] IFAI, Press Release IFAI/133/10, October 9, 2010.

[1315] According to COFETEL, 28,439,250 people had access to Internet in Mexico in 2009. See information available at: http://www.cft.gob.mx/en/Cofetel_2008/Cofe_usuarios_estimados_de_internet_en_mexico_2000 The population of Mexico in 2009 was 107,550,697. See data on population of the National Population Council, available at: http://www.conapo.gob.mx/index.php?option=com_content&view=article&id=125&Itemid=203

officials, "mainly in city councils"; the "lack of appropriate training of personnel in information management and protection of personal data"; and the "insufficient operational infrastructure in the government entities obliged to comply with the law."[1316]

810. The Office of the Special Rapporteur was also informed of the existence of lawsuits that seek to contest the definitive and unchallengeable nature of the resolutions by the IFAI[1317] and state transparency agencies that oblige government institutions to hand over the information in question.[1318] According to the information provided, while the courts had traditionally rejected attempts by public authorities to judicially challenge the resolutions of the IFAI, the Federal Court of Fiscal and Administrative Justice (hereinafter "TFJFA") recently agreed to review two resolutions of the Institute.[1319] In one of those cases, according to the information received, it has already declared the partial nullity of an IFAI resolution that ordered the PGR to hand over the public versions of criminal investigations initiated against a former head of government in the Federal District.[1320] The other case, according to the information received, deals with a petition for nullity proceedings presented by the Tax Administration Service (hereinafter "SAT") against the IFAI resolution that ordered the SAT to reveal the names of taxpayers (559,000 persons and companies) who benefited from the cancellation or amnesty of fiscal credits in 2007 for a total of 74 billion pesos.[1321]

811. As of the date on which this report was completed the Supreme Court of Justice was analyzing an unconstitutionality suit against the Law of Transparency and Access to Public Information in the state of Campeche.[1322] This legislation allows liable public bodies to legally challenge the resolutions of the Commission on Transparency and Access to Public Information of this state.[1323] In this regard, the IFAI has expressed that this provision violates the Constitution, since "it not only slows down proceedings, but also complicates them, for the individual who does not possess technical knowledge in juridical matters will necessarily require legal advice to duly process the litigious proceedings and thus try to obtain a verdict favorable to his interests."[1324]

---

[1316] See Institute for Transparency and Access to Public Information of the State of Guerrero, "4 years of activities," document delivered to the Rapporteur during the on-site visit. See also Institute of Transparency and Access to Public Information of the State of Guerrero, "Annual Report on Activities and Results 2009," p. 40.

[1317] The *Federal Law on Transparency and Access to Public Government Information* establishes in Article 59 that "The resolutions of the Institute shall be definitive for agencies and entities." Individuals may challenge them before the Judicial Branch of the Federation.

[1318] See, in general, Litiga OLE, "the Defense of the Right to Information in Mexico," document delivered to the Office of the Special Rapporteur during the on-site visit.

[1319] Fundar and Article 19. May 28, 2010. *Lack of transparency gains ground in Mexico.* Available at: http://www.fundar.org.mx/index.html/files/ComPrensaA19yFundar28May10.pdf

[1320] Fundar and Article 19. May 28, 2010. *Lack of transparency gains ground in Mexico*. Available at: http://www.fundar.org.mx/index.html/files/ComPrensaA19yFundar28May10.pdf

[1321] Fundar and Article 19. May 28, 2010. *Lack of transparency gains ground in Mexico*. Available at: http://www.fundar.org.mx/index.html/files/ComPrensaA19yFundar28May10.pdf

[1322] Information delivered to the Office of the Special Rapporteur by the IFAI during the on-site visit, including IFAI, *Report on Action of Unconstitutionality 56/2009*, Memo IFAI/SA/089/09, July 15, 2009, document delivered to the Office of the Special Rapporteur by the IFAI during the on-site visit.

[1323] The State of Campeche Law on Transparency and Access to Public Information establishes in its Article 74: "Resolutions issued by the Commission may be challenged by individuals before the Administrative Division of the state High Court of Justice, through nullification proceedings provided for in the State Code of Contentious-Administrative Proceedings; and by the access units before the Plenary of the High Court, in accordance with the provisions established in the aforesaid Code for processing an appeal for review. In this last case, the Commission may not require that its resolution be executed or carried out unless and until it has been confirmed by the Plenary of the Court." Communication OEA-00198 from the Permanent Mission of Mexico to the OAS to the Office of the Special Rapporteur, "Government of Mexico's Observations to the Preliminary Report on the Situation of Freedom of Expression in Mexico by the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights" and Annex VIII, received on February 3, 2011.

[1324] IFAI, *Report on Action of Unconstitutionality 56/2009*, Memo IFAI/SA/089/09, July 15, 2009, document delivered to the Rapporteur by IFAI during the on-site visit, p. 16.

812. The Office of the Special Rapporteur expresses its concern over these developments since, as has been stated, the possibility of government entities challenging by means of ordinary appeals the resolutions of the IFAI and its equivalent state bodies risks denying the right to obtain the information requested by way of a simple, expeditious and specialized process, thus depriving the right of access to information of its purpose.[1325]

813. Finally, the Office of the Special Rapporteur received information on an constitutional challenge brought by the CNDH[1326] alleging the invalidity of Article 16 of the Federal Code of Criminal Procedure,[1327] which regulates access to the case files of preliminary criminal investigations. Based on the amendments made to this norm in January 2009, the PGR has refused to provide public versions of preliminary investigations that are concluded or inactive beyond a reasonable term, including with regard to serious violations of human rights or crimes against humanity, such as for example the investigations into the forced disappearances of Rosendo Radilla Pacheco and other persons.[1328] Like the CNDH, the IFAI has considered that permanent, indiscriminate restrictions on access to preliminary investigation files violates the guarantees of access to public information contained in Article 6 of the Political Constitution.[1329]

814. The Office of the Special Rapporteur recognizes the need to withhold open criminal investigations in order not to affect the investigation and to protect sensitive data. Nevertheless, the Office of the Special Rapporteur considers that delivery of a public version of information on investigations that have been concluded or inactive for years, with due regard for the protection of sensitive data and elements which it can be proven should be withheld to protect other legitimate interests, promotes the public nature of the proceedings and is a guarantee of appropriate inter-departmental and public oversight of the bodies of administration of justice. This is precisely the purpose of the right of access to information.

## VI. CONCLUSIONS AND RECOMMENDATIONS

815. Based on the information gathered on the occasion of the on-site visit to Mexico, and in view of the situation that holds sway with regard to freedom of expression in the country, which demands urgent action, the Office of the Special Rapporteur herewith takes the opportunity to reiterate many of the conclusions and recommendations issued on the completion of its official visit to the country in August 2010. The Office of the Special Rapporteur once again places itself at the disposal of the Mexican State and offers its assistance in order that the recommendations may be complied with as soon as possible.

### A. Violence, impunity and self-censorship

816. The Office of the Special Rapporteur finds that freedom of expression in Mexico faces grave obstacles, mainly due to the acts of violence and intimidation against journalists in the country. According to the information received, between the year 2000 and July, 2010, 64 journalists have been murdered and 11 have been disappeared, making Mexico the most dangerous country in the Americas in

---

[1325] See IACHR, Office of the Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right of Access to Information in the.* OAS/Ser.L/V/II CIDH/RELE/INF. 1/09 December 30, 2009, par. 26. Available at: http://www.cidh.org/pdf files/Access to information.pdf

[1326] Petition for unconstitutionality suit brought by the National Commission on Human Rights, AC 26/09, February 5, 2009, document delivered to the Office of the Special Rapporteur by the IFAI during the on-site visit.

[1327] Article 16 of the Federal Code of Criminal Procedures establishes, in the relevant part, that "For purposes of access to public government information, only a public version of the resolution of non-exercise of penal action should be provided, as long as a term equal to the prescription period of the offenses involved has elapsed, in accordance with the provisions of the Federal Criminal Code, with a minimum of three and maximum of twelve years, counted from the time the resolution was declared final."

[1328] Litiga OLE, "the Defense of the Right to Information in Mexico," document delivered to the Office of the Special Rapporteur during the on-site visit.

[1329] IFAI, Report on Action of Unconstitutionality 26/2009, Memo IFAI/ALI/069/09, March 25, 2009, document delivered to the Office of the Special Rapporteur by the IFAI during the on-site visit.

which to practice journalism. The security situation for journalists remains critical; in 2010 the Office of the Special Rapporteur recorded 13 murders of journalists in the country, as well as disappearances, kidnappings, armed attacks against media offices, and numerous instances of threats and harassment. The Office of the Special Rapporteur was able to verify that in recent years most of the murders, disappearances and kidnappings of journalists have occurred in states where organized crime has a strong presence, including the states of Chihuahua, Coahuila, Durango, Guerrero, Michoacán, Nuevo León, Sinaloa and Tamaulipas. In some of these states there are communities that have been completely silenced by the chilling effect of the climate of violence and impunity.

817. Incomplete investigations in most of the cases prevent an exact determination of the causes and perpetrators of these crimes. However, the information received by the Office of the Special Rapporteur makes it possible to assert that in these places organized crime is the greatest threat to the lives and physical safety of journalists, especially those who cover local affairs such as government corruption, drug trafficking, organized crime, public safety, and related subjects.

818. The Office of the Special Rapporteur is aware that the issue of violence in Mexico affects all sectors of the population. Nevertheless, it observes that the attacks against journalists and members of the media have multiplying effects that impact all other journalists and media workers, generate fear and self-censorship, deprive society in general of its right to be informed, and discourage reports or complaints, all of which increases impunity. As such it welcomes the adoption, in November, 2010, of the Coordination agreement for the implementation of preventive and protective actions for journalists, which represents the first step towards the creation of a national mechanism for the protection of journalists and media workers.

819. The Office of the Special Rapporteur is convinced that the protection of the right to freedom of expression must be a fundamental part of the citizen security agenda in Mexico. Accordingly, the Office commends the existence of a Special Prosecutor's Office to attend to crimes against freedom of expression, and the aforementioned adoption of an agreement that seeks to guarantee the protection of journalists. Nevertheless, the Office of the Special Rapporteur is seriously concerned to have verified the impunity that is typical of crimes against journalists in Mexico, a phenomenon that perversely encourages the recurrence of these types of crimes.

820. Without a comprehensive public policy aimed at guaranteeing the freedom to seek, receive and disseminate information by any means, it is impossible for Mexican society to contribute to the fight against crime and corruption, and for it to exercise active and informed oversight of the State's actions to deal with crime and protect the public.

821. Therefore, the Office of the Special Rapporteur makes the following specific recommendations:

- Recognize, at the highest levels of the State, the legitimacy and value of the work of journalists, and condemn attacks committed in reprisal for the exercise of freedom of expression.

- Compile detailed, disaggregated criminal statistics on violence against journalists and the criminal prosecution of these crimes.

- Strengthen the Office of the Special Prosecutor for Crimes against Freedom of Expression of the PGR as well as the state criminal justice systems. It is especially recommended that the necessary reforms be made to facilitate the exercise of federal jurisdiction over crimes against freedom of expression.

- Endow the Special Prosecutor's Office and the local prosecutors' offices with greater autonomy and greater resources. In particular, adopt special protocols of investigation for crimes committed against journalists, requiring the full consideration of the possibility that the crime was committed because of the victim's professional activity, and ensure that all possible violations of the right to freedom of expression are investigated by the civilian authorities.

- Strengthen the capacity of public human rights bodies to act by, among other things, approving the proposed constitutional reform on human rights that is currently pending.

- Implement the Coordination Agreement for the implementation of preventive and protective actions for journalists as a national mechanism for the protection of journalists and media workers. The application of the Agreement should take into account: 1) the need to guarantee the necessary financial and personnel resources for the effective implementation of the mechanism; 2) the need to guarantee effective coordination between the bodies responsible for the adoption of preventive and protective measures; 3) the need to adequately define the protective measures contemplated by the mechanism and the procedures for their adoption; 4) the need to guarantee the full participation of journalists, civil society and beneficiaries in the implementation and functioning of the mechanism; and 5) the expediency of seeking the support of the international community in implementing the mechanism

- Provide training to members of the security forces on the subject of freedom of expression.

**B. Freedom, diversity and pluralism in democratic debate**

822. With respect to the regulation of the electromagnetic spectrum and the enforcement of broadcasting provisions, the Office of the Special Rapporteur observes a high degree of concentration in the ownership and control of the communications media to which television and radio frequencies are allocated.

823. In addition, it notes that there is no independent regulatory body, and that the legal framework currently in force does not provide guarantees of certainty, pluralism and diversity. In particular, there is no legal framework that recognizes community broadcasters and establishes clear, well-founded, and equitable procedures whereby such broadcasters can apply for and obtain operating frequencies.

824. With regard to government advertising, government spending is high and increasing. The absence of a regulatory framework has allowed government advertising to be used discretionally, and it can therefore be employed to pressure, punish, reward or favor communications media according to their editorial slants.

825. Therefore, the Office of the Special Rapporteur makes the following specific recommendations:

- Adopt a legal framework that provides legal certainty, promotes the diversification of radio and television, and contributes to the creation of a media market that is pluralistic and accessible to all sectors of the population, especially community broadcasting.

- Guarantee that the allocation of radio or television licenses be fully, clearly, and transparently regulated by law, based on criteria that are objective, clear, public, and democratic.

- Establish a public body to regulate radio and television that is independent of the government.

- Establish legal mechanisms to guarantee that the transition to digital broadcast services guarantees the greatest plurality and diversity possible in the use of the spectrum.

- Establish objective, clear, transparent and nondiscriminatory criteria in the allocation of government advertising for all levels and bodies of government.

### C. Legal actions relating to the exercise of freedom of expression

826. The Office of the Special Rapporteur acknowledges the progress made at the federal level and in many states with regard to the decriminalization of defamation laws libel, slander and defamation. Nevertheless, there are still criminal law provisions that allow the criminalization of the exercise of freedom of expression. The Office of the Special Rapporteur is concerned about the use of criminal provisions against journalists who cover issues of public interest, individuals who work at community radio stations, and social activists in the context of social protest.

827. The Office of the Special Rapporteur is concerned about civil legal actions against journalists and media outlets in a legal environment lacking specific standards to evaluate the subsequent liability of individuals who disseminate information on matters of public interest or public affairs. Furthermore, the Office of the Special Rapporteur received information concerning civil actions that may be meant to harass and to silence criticism, and that have been filed against journalists and media outlets.

828. Therefore, the Office of the Special Rapporteur makes the following specific recommendations:

- Repeal the criminal provisions that penalize expression, including those contained in the 1917 Press Crimes Act and in the state criminal codes, and refrain from using other criminal provisions to suppress the legitimate exercise of freedom of expression.

- Guarantee that journalists not be subjected to judicial harassment or other types of legal harassment in retaliation for their work. This entails establishing specific standards for evaluating subsequent civil liability, including the standard of actual malice and the strict proportionality and reasonableness of any subsequent sanctions.

### D. Access to information

829. The Office of the Special Rapporteur acknowledges the notable progress made by the Mexican State in recent years, which has made the country a point of reference on the subject of access to information. At the same time, it observes that the institutional and legal framework to guarantee the effective exercise of the right to access to information before the federal executive branch does not always exist at the state and municipal levels. The Office of the Special Rapporteur also was informed of the existence of state legislation and legal actions which seek to reverse the final and unchallengeable nature of the decisions of the Federal Institute for Access to Information and Data Protection and of the state transparency bodies.

830. The Office of the Special Rapporteur was informed of practices that limit transparency in the justice system. Thus, for example, some state courts keep lower court judgments that have been appealed confidential until all corresponding remedies are exhausted in the case. Likewise, pretrial investigations are kept confidential until a period of time has elapsed equal to the one provided for in the statute of limitations for the offense in question. This is based on a recent amendment to Article 16 of the Federal Code of Criminal Procedure, which is under review by the Supreme Court.

831. Therefore, the Office of the Special Rapporteur makes the following specific recommendations:

- Preserve the advances made with respect to access to information, ensuring that the transparency bodies are autonomous, have appropriate and stable budgets, and that their decisions are final and unchallengeable.

- Continue to expand real access to the right of access to public information, strengthening the institutional capacity at every level of government so as to respond appropriately and in a timely

manner to requests for information and establishing simple mechanisms (which include, but are not limited to, the Internet) to make such requests.

- Deepen transparency in the justice system, guaranteeing access to the judgments of the courts and to a public version of pretrial investigations that have either concluded or have been inactive for an unreasonable period of time.

### E. Final comments

832. The Office of the Special Rapporteur feels privileged to have witnessed an emerging sense of solidarity among journalists in Mexico. On August 7, 2010, the day before it arrived in the country to carry out its on-site visit, reporters, camera operators, photographers and columnists from numerous media outlets held public demonstrations in 14 cities to demand secure working conditions for the exercise of their professions and to protest against the kidnapping of four journalists in Gómez Palacio, state of Durango, by a group demanding the broadcast of videos in exchange for their freedom. The Office of the Special Rapporteur applauds these efforts and calls upon all journalists to continue and expand upon these solidarity and mutual support initiatives. It also expresses its admiration towards those journalists it met – and many it did not have the chance to meet – who exercise their profession with great dignity and dedication in spite of the difficult and perilous conditions to which they are subject. It also expresses its solidarity with those journalists who have been victims of violence, and their families.

833. In the course of its visit the Office of the Special Rapporteur received information about a number of initiatives undertaken by some communications media to improve working and security conditions for their staff. Following its visit it also received information about an initiative of the National Chamber for the Radio and Television Industry to draw up a security protocol for the protection of media workers against attacks and threats from criminal organizations.[1330] The Office of the Special Rapporteur invites all media company owners to provide appropriate support to journalists,[1331] including security protocols and the training required to minimize the risks. Similarly, journalists and their families should have access to social security benefits.

834. Further, the Office of the Special Rapporteur recognizes the fundamental importance of the work carried out by civil society organizations that monitor the state of freedom of expression in Mexico in all its aspects, including attacks on journalists. It considers it essential that these organizations continue to carry out this important work in safe conditions and urges Mexican society and the international community to continue to support their efforts.

835. Finally, the Office of the Special Rapporteur acknowledges once again the openness displayed by the Mexican State in inviting it to conduct an official visit to the country, and expresses its continued willingness to support all efforts by the State to strengthen the freedom of expression of all Mexicans. It respectfully urges the State to implement these recommendations as quickly as possible, and again offers to participate in the follow-up mechanism proposed by the State at the conclusion of the on-site visit. The urgent state of freedom of expression in Mexico requires immediate and effective actions such as those identified in this report.

---

[1330] El Universal. October 12, 2010. *Anuncian protocolo para proteger a periodistas*. Available at: http://www.eluniversal.com.mx/notas/715725.html

[1331] See Joint Declaration by the Rapporteurs for Freedom of Expression of the UN, OSCE and IACHR, 2003. Available at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=88&lID=1

## 29. Proposed Categories and Standards for the Special Country Reports of the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights

### Introduction

836. The purpose of this document is to propose a series of categories and standards on freedom of expression and access to information that can provide basic input for the preparation of the special reports of the Office of the Special Rapporteur for Freedom of Expression (hereinafter, the Office of the Rapporteur) of the Inter-American Commission on Human Rights, following an official visit or in special circumstances that may so warrant.

837. Over the years, the Office of the Rapporteur has varied the depth of its country reports and the type of facts it reported. At times it included all the information and cases it had received, while on other occasions it placed special emphasis on certain emblematic events.

838. The methodology for preparing these reports has essentially been the following: in direct meetings or through documents, sources provide different types of information, ranging from attacks on journalists to laws and government decisions that could affect freedom of expression. This information is confirmed to a reasonable degree and included in the report along with a series of recommendations.

839. Using the proposed input should serve the Office of the Rapporteur's aim that the special country reports that come out of official visits bring to light the main problems related to freedom of expression in the country, so as to generate recommendations and proposals that are relevant, viable, and feasible.

840. In the medium term, in accordance with technical possibilities, the Office of the Rapporteur will plan to develop thematic indicators based on these standards, as well as to implement these categories and standards in its annual reports. This effort will depend both on the Office of the Special Rapporteur's real operational and management capacity and on the information that the States and strategic actors are able to provide.

841. This series of standards is based on the development of the right to freedom of expression and the right of access to information carried out thus far by the Commission and the Inter-American Court of Human Rights. Thus, its formulation is primarily descriptive. To the extent that the inter-American system expands the scope of these rights, it will be necessary as well to expand the standards presented here.

* *

842. The categories were developed using different types of input and after going through several stages. The following documents were used as a basis: (i) the Office of the Rapporteur's country reports; (ii) the "2010 Methodology to Evaluate the Situation of the Right of Access to Public Information in the Americas," also by the Office of the Rapporteur; and (iii) "The Situation of Freedom of Expression in the Americas: An Analysis in Light of the Reports of the Office of the Special Rapporteur for Freedom of Expression," by the University of Palermo's Center for Studies on Freedom of Expression.

843. Also analyzed were monitoring and reporting protocols used by the region's civil society organizations that work to defend freedom of expression. Finally, in-person and virtual consultations were held with representatives of these organizations to discuss and validate this document. A number of the suggestions made in these venues were incorporated into the final version.

844. This document is divided into two parts: (i) a preliminary explanation of the methodology used to develop this document; and (ii) the proposed categories and standards that have been developed. An additional document will develop subjects related to the validation and documentation of the standards for the preparation of the reports.

**Preliminary Explanation of the Methodology Used**

845. The proposed standards are divided into seven categories: 1. Infringement of the right to life and physical integrity, and omission of the guarantee obligation; 2. Censorship and other prior conditioning; 3. Detentions; 4. Imposition of subsequent liability; 5. Access to information; 6. Pluralism and diversity; and 7. Indirect censorship or abusive use of State power.

846. Each category, which is briefly defined, thematically groups together a number of standards, which vary depending on the subject matter. Both the definition of the categories as well as the formulation of the standards were done based on Article 13 of the American Convention on Human Rights; the "Declaration of Principles on Freedom of Expression" of the Inter-American Commission on Human Rights; and the doctrine and case law of the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights.

847. The categories are written in such a way as to be able to identify whether a fact (or series of facts) or piece of information about the legal system (a legal or constitutional principle, a judicial decision, or an administrative ruling) negatively affects or ensures the right to freedom of expression.

848. This document understands the term standard as a piece of information that provides guidelines regarding compliance with a specific aspect of the right to freedom of expression and the right of access to information. It is differentiated from the term indicator in that the formulation of the standard is broader and does not aim to elicit quantitative facts in order to obtain comparative scales or values, but aims rather to guide the documentation of cases and lay the foundation for subsequent methodologies.

849. The standards are divided into two types: structural and dynamic. Structural standards refer to the States' adoption of basic laws, instruments, and mechanisms in the area of freedom of expression and access to information. Dynamic standards, for their part, refer to changing and actual conditions regarding the guarantee of this right.

850. Where necessary, the standards will be accompanied by their respective verification factors. These are supplementary descriptions that allow for a clearer definition of the scope of each standard. They are especially necessary to use when the standards are broad or are presented as negative formulations, representing the States' obligations "not to do."

851. It is important to clarify that the application of these standards will depend on how and when the information is received or captured, and on the Office of the Rapporteur's real capacity to evaluate and consider it. Thus, the intent is not that all these categories should necessarily be developed in depth in each country report, in response to each standard, but rather that the information that is received can be classified and grouped in such a way that it can later be analyzed according to the office's institutional capacity. In other words, the fact that a specific standard is not addressed in a report, with respect to a country or several countries, does not imply that that standard is being met.

**2. Proposed Categories and Standards**

**1. Infringement of the Right to Life and Physical Integrity, and Omission of the Guarantee Obligation**

Any kidnapping, intimidation, attack, or threat made against media workers (*comunicadores sociales*) or those who disseminate information or opinions, for reasons related to these activities, violates people's fundamental rights and severely restricts freedom of expression.

States have the obligation to prevent and investigate such acts, punish the perpetrators, and ensure appropriate redress for the victims. The authorities have the obligation to guarantee the conditions under which individuals can exercise freedom of expression without it costing them their lives or personal integrity.

The State has an obligation to guarantee freedom of expression, which it omits when it fails to take the steps within its power to prevent a real or immediate special risk, or when it fails to meet its obligation to punish third parties who have committed crimes to inhibit the exercise of freedom of expression or in reprisal for this right having been exercised.[1332]

**Structural Standards**

1.1. Types of conduct that constitute attacks on life and physical integrity are established as crimes, through laws of either a general or specific nature, with regard to journalists or those who exercise freedom of expression.

**Verification Factors**
- Laws exist that criminally punish attacks on the life and integrity of all citizens.
- Laws exist that criminally punish attacks on the life and integrity of journalists or those who exercise freedom of expression.

1.2. In States in which special risks exist for those who exercise their right to freedom of expression, there are special mechanisms for protection.

**Verification Factors**
- In the State in question, there are special risks for those who practice journalism or exercise the right to freedom of expression.
- Special protection mechanisms exist for journalists or those who exercise freedom of expression who are at risk for practicing their profession.

1.3. In the investigation and prosecution of crimes committed to silence an expression or in reprisal for an expression, special investigative mechanisms exist to advance the fight against impunity for such crimes.

**Verification Factors**
- Special mechanisms exist for investigating murders and attacks carried out against journalists and those who exercise freedom of expression.
- The special mechanisms for investigating murders and attacks carried out against journalists and those who exercise freedom of expression contemplate measures to fight impunity for such crimes.

1.4. Murders. Journalists, media workers, and persons who exercise freedom of expression are not killed due to the occupation they practice or to the dissemination of opinions or information.

[1332] See Ríos et al. v. Venezuela, Inter-American Court of Human Rights, judgment of January 28, 2009, para. 137.

**Verification Factors**
- Murders, during the established time frame, of journalists, media workers, or those who exercise freedom of expression.
- Murders of such persons due to their occupation or to the exercise or dissemination of opinions or information, within the established time frame.

…continuation

[1333] See Inter-American Convention on Forced Disappearance of Persons, Article II.

[1334] Cf., among others, Chilean Criminal Code: "Article 141. Anyone who wrongfully confines or detains another person, depriving that person of his or her liberty, commits the crime of kidnapping and shall be punished with the penalty of short-term imprisonment in the maximum degree...."

Colombian Criminal Code: "Article 168. Simple kidnapping. Anyone who, for purposes other than those provided for in the following article, snatches, abducts, holds, or hides a person, shall incur a prison sentence ranging from ten (10) to twenty (20) years and a fine of six hundred (600) to one thousand (1,000) times the current monthly minimum wage."

Federal Criminal Code of Mexico: "Article 366. To anyone who deprives another of liberty, the following shall apply...."

[1335] Cf. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1: "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

Rome Statute, Article 7, No. 2, para. (e): "'Torture' means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions..."

[1336] See Committee against Torture, General Comment No. 2: Cruel, inhuman, and degrading treatment are referred to as "ill-treatment" by the Committee: "In comparison to torture, ill-treatment differs in the severity of pain and suffering and may not require proof of impermissible purposes."

[1337] Op. Cit. Inter-American Court of Human Rights, Case of Ríos et al. v. Venezuela, para. 277 and ff.

[1338] Cf., among others, Chilean Criminal Code: "Article 397. Anyone who injures, strikes, or mistreats another by deed shall be punished and tried for grievous bodily harm: 1.1. With the penalty of long-term imprisonment in the minimum degree, if as a result of the injuries the victim is left insane, unable to work, impotent, with a major limb disabled or significantly deformed...."

Colombian Criminal Code: "Article 111 - Injuries. Anyone who causes harm to the body or health of another shall incur the penalties established in the following Articles."

Peruvian Criminal Code: "Article 121. - Serious injury. Anyone who causes serious harm to the body or health of another shall be punished by deprivation of liberty for not less than three and not more than eight years."

Argentine Criminal Code: "Art. 89. Imprisonment of one month to one year shall be imposed on anyone who causes to the body or health of another a harm that is not contemplated in another provision of this Code..."

[1339] Cf., among others, Mexican Criminal Code: "Article 282. A sanction of three days to one year in prison or a fine of 180 to 360 days shall apply: To anyone who in any way threatens another with harm to his or her person, property, honor, or rights, or to the person, property, honor, or rights of someone to whom he or she has ties, and To anyone who uses threats of any kind to try to keep another from carrying out what he or she has the right to do."

Colombian Criminal Code: "Article 347 - Threats. Anyone who, by any suitable means used to impart thought, frightens or threatens a person, family, community, or institution for the purpose of causing alarm, anxiety, or terror in the population, or in any segment of such, shall incur, for this sole conduct, a prison sentence of one (1) to four (4) years and a fine of ten (10) to one hundred (100) times the current legal monthly minimum wage. If the threat or intimidation falls on a public servant who is a member of the judiciary or the Public Prosecutor's Office or his or her relatives, due to or on the occasion of his or her post or functions, the sentence shall be increased by one third."

Argentine Criminal Code: "Article 149 Bis. - Anyone who uses threats to alarm or intimidate one or more persons shall be punished by six months to two years in prison. In this case the sentence shall be from one to three years in prison if weapons are used or if the threats were anonymous. Anyone who uses threats for the purpose of forcing another to do, not to do, or to tolerate something against his or her will shall be punished by imprisonment or confinement of two to four years."

[1340] See "Declaration of Principles on Freedom of Expression," No. 5, of the Inter-American Commission on Human Rights (IACHR).

[1341] Ibid., No. 7.

1.5. Disappearances. Journalists, media workers, and those who exercise freedom of expression are not disappeared due to the occupation they practice or to the dissemination of opinions or information. Forced disappearance is understood to mean the act of depriving a person or persons of freedom, in whatever way, perpetrated by agents of the State or by persons or groups of persons acting with the authorization, support, or acquiescence of the State, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.[1333]

**Verification Factors**
- Journalists, media workers, or those who exercise freedom of expression who have disappeared within the established time frame.
- Cases of disappearances of such persons due to their occupation, or to the exercise or dissemination of opinions or information, within the established time frame.

1.6. Kidnappings. Journalists, media workers, and those who exercise freedom of expression are not kidnapped due to the practice of their profession or to the dissemination of opinions or information. Kidnapping shall be understood to mean the taking, holding, or hiding of a person.[1334]

**Verification Factors**
- Journalists, media workers, and those who exercise freedom of expression who are kidnapped within the established time frame.
- Cases of kidnappings of such persons due to their occupation or to the exercise or dissemination of opinions or information, within the established time frame.

1.7. Torture. Journalists, media workers, and those who exercise freedom of expression are not tortured due to the occupation they practice or to the dissemination of opinions or information. Torture shall be understood to mean any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind.[1335]

**Verification Factors**
- Journalists, media workers, and those who exercise freedom of expression who are tortured within the established time frame.
- Cases of torture of such persons due to their occupation, or to the exercise or dissemination of opinions or information, within the established time frame.

1.8. Cruel, inhuman, or degrading treatment. Journalists, media workers, and those who exercise freedom of expression do not receive inhuman, cruel, or degrading treatment due to the occupation they practice or to the dissemination of opinions or information. Cruel, inhuman, or degrading treatment is understood to mean the same types of conduct described as torture. These differ in the severity of pain and suffering and in the fact that they do not require proof of impermissible purposes.[1336]

**Verification Factors**
- Journalists, media workers, or those who exercise freedom of expression who received cruel, inhuman, or degrading treatment within the established time frame.
- Cases of cruel, inhuman, or degrading treatment inflicted on such persons due to their occupation, or to the exercise or dissemination of opinions or information, within the established time frame.

1.9. Female journalists, female media workers, and women who exercise freedom of expression are not victims of sexual assaults or other acts of gender-based violence, nor are they the target of threats of such acts, as a consequence of the expressions or opinions they disseminate.[1337]

**Verification Factors**
- Female journalists, female media workers, or women who exercise freedom of expression who were

victims of sexual assaults or other acts of gender-based violence within the established time frame.
- Cases of sexual assaults or other acts of gender-based violence that these women suffered due to their occupation, or to the exercise or dissemination of opinions or information, within the established time frame.
- Other acts of gender-based violence.

1.10. Violation of personal integrity (assault). Journalists, media workers, and those who exercise freedom of expression are not assaulted due to the occupation they practice or to the dissemination of opinions or information. Assault shall be understood as injury to a person's body or health caused by the action of another.[1338]

**Verification Factors**
- Journalists, media workers, or those who exercise freedom of expression who have been assaulted within the established time frame.
- Cases of assaults that such persons received due to their occupation, or to the exercise or dissemination of opinions or information, within the established time frame.

1.11. Threats. Journalists, media workers, and those who exercise freedom of expression are not threatened or forced to move or to go into exile due to the occupation they practice or to the dissemination of opinions or information. A threat shall be understood as any external manifestation announcing a behavior capable of frightening a person, community, or institution for the purpose of causing alarm, anxiety, or terror.[1339]

**Verification Factors**
- Journalists, media workers, or those who exercise freedom of expression who have been threatened or forced to move or to go into exile within the established time frame.
- Cases in which such persons have been threatened, displaced, or exiled due to their occupation, or to the exercise or dissemination of opinions or information, within the established time frame.

1.12. Journalists, media workers, and those who exercise freedom of expression, and who are or could be at special risk due to the dissemination of information or opinions in the public interest, receive protection from the State.

**Verification Factors**
- Journalists, media workers, or those who exercise freedom of expression who are at special risk during the established time frame.
- Journalists, media workers, or those who exercise freedom of expression who are at special risk, and who have received protection from the State, during the established time frame.

1.13. The States' judicial systems investigate and appropriately punish those responsible for murders; disappearances; kidnappings; acts of torture; cruel, inhuman, or degrading treatment; and threats against journalists, media workers, or those who disseminate opinions or information in the public interest.

**Verification Factors**
- Investigations launched by the judicial system as a result of murders; disappearances; kidnappings; acts of torture; cruel, inhuman, or degrading treatment; and threats against journalists, media workers, or those who disseminate opinions or information in the public interest, within the established time frame.
- Sanctions imposed by the judicial system as a result of investigations into murders; disappearances; kidnappings; acts of torture; cruel, inhuman, or degrading treatment; and threats against journalists, media workers, or those who disseminate opinions or information in the public interest, within the established time frame.

**2. Censorship and Other Prior Conditioning**

Limitations to freedom of expression may not constitute mechanisms for control of content. Censorship

and prior conditioning are incompatible with the right to freedom of expression.

Censorship is understood as a ban on disseminating any expression, opinion, or information through any oral, written, artistic, visual, or electronic communication medium.[1340]

Prior conditioning of expressions by States on grounds such as truthfulness, timeliness, or impartiality; the imposition of degree requirements or compulsory membership in professional associations; and the imposition of prior requirements, such as the administrative registration of any communication medium as a condition to be able to exercise the right to freedom of expression, are incompatible with this right.[1341]

**Structural Standards**

2.1. Laws establish only subsequent liabilities and not mechanisms for prior censorship.[1342]

**Verification Factors**
- Subsequent liabilities established by law.
- Prior censorship mechanisms established by law.

2.2. No compulsory membership in a professional association or requirement of an appropriate degree exists for the practice of journalism or the dissemination of expressions or opinions.

**Verification Factors**
- Appropriate degrees or compulsory membership required for the practice of journalism or the dissemination of expressions or opinions.

2.3. No prior conditioning of expressions is imposed, whether legal or regulatory, such as whether information is truthful, timely, or impartial.

**Verification Factors**
- The existence of legal or regulatory prior conditioning, such as that information must be truthful, timely, or impartial.

2.4. Beyond the requirements involved in the process of obtaining broadcasting licenses and in regular commercial registrations, no special prerequisites are imposed on media outlets, such as administrative registration requirements.

**Verification Factors**
- Existence of special prerequisites that are different from those involved in the process of obtaining broadcasting licenses and in regular commercial registrations.

**Dynamic Standards**

2.5. No public official imposes prior restrictions for the circulation of information, ideas, or opinions.

**Verification Factors**
- Prior restrictions imposed by public officials for the circulation of information, ideas, or opinions.

2.6. Whenever journalists must receive accreditation from authorities to cover a public official's press conference or any other public event, this must be justified based on reasonable, public, clear, and nondiscriminatory criteria, and must be subject to the control of an independent government body.

**Verification Factors**
- The existence of an accreditation system for journalists for the coverage of press conference or other public events.

[1342] See "Declaration of Principles on Freedom of Expression," No. 5.

- The degree to which the application of the accreditation system is reasonable, public, clear, and nondiscriminatory.

2.7. Any person, solely by virtue of being a person, may exercise the right to freedom of expression.

**Verification Factors**
- The existence of additional prerequisites, other than being a person, for someone to be able to exercise freedom of expression.

**3. Detentions**
Public authorities shall not arbitrarily detain anyone for the simple act of exercising freedom of expression. In no case shall a journalist be able to be detained for the simple act of covering an event of public interest.

**Structural Standards**

3.1. The legal system does not condone temporary or permanent arrests or detentions for the simple act of exercising freedom of expression. Any detention on the occasion of the collection or dissemination of information must be based on the alleged commission of a crime or an offense of such seriousness that it allows such a restriction, and full due process guarantees apply. At a minimum, the authorities must make known the reasons for the detention at the time it occurs; they must bring the person before a judge or an officer authorized by law to exercise judicial power; and the lawfulness of the arrest must be determined promptly. The arrest or detention of a person may not be due solely to the fact that the person was exercising his or her right to freedom of expression.[1343]

**Verification Factors**
- Temporary or permanent arrests or detentions condoned under the legal system for the simple act of exercising freedom of expression.
- Requirement that a crime or serious offense has allegedly been committed for a detention to be permissible when the collection or dissemination of information is involved.
- Full applicability of due process guarantees in detentions in which the collection or dissemination of information is involved.
- Obligation of the authorities to make known the reasons for the detention at the time it occurs; bring the person before a judge or an officer authorized by law to exercise judicial power; and promptly make a determination as to the lawfulness of the arrest.
- Prohibition barring the arrest or detention of a person due solely to the fact that the person was exercising his or her right to freedom of expression.

**Dynamic Standards**

3.2. The authorities do not detain persons who are exercising the right to freedom of expression solely because they are exercising that right.[1344]

**Verification Factors**
- Detentions, within the established time frame, of persons who were exercising their right to freedom of expression.
- Detentions of these persons solely because they were exercising their right to freedom of expression, within the established time frame.

[1343] See American Convention on Human Rights, Article 7: "...4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him. "5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial. "6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful...."

[1344] Ibid.

3.3. At a minimum, the authorities make known the reasons for the detention at the time it occurs; bring the person before a judge or an officer authorized by law to exercise judicial power; and promptly rule on the lawfulness of the arrest.

**Verification Factors**
- Reasons for the detention made known by the authorities at the time it occurred; the person's being brought before a judge or an officer authorized by law to exercise judicial power; and the time in which the lawfulness of the arrest was determined, all in cases involving detentions reported during the established time frame.

**4. Imposition of Subsequent Liability**

Any limitation to the right to freedom of expression must meet the following three basic conditions for it to be admissible: (a) the limitation must have been defined precisely and clearly through a formal, actual law; (b) the limitation must be designed to achieve overriding purposes allowed under the American Convention; and (c) the limitation must be necessary in a democratic society to obtain the overriding purposes sought, namely, it must be strictly proportional to the purpose being sought and suitable to reach the overriding purpose it seeks to achieve. It is up to the authority imposing the limitations to prove that these conditions have been met.[1345]

The protection of privacy or reputation must be guaranteed only through civil sanctions, in cases in which the offended person is a public official or public person or a private citizen who has voluntarily become involved in matters of public interest.

In addition, in these cases it must be proved that in disseminating the information the person had the intent to inflict harm; was fully aware that false information was being disseminated; or acted with gross negligence in the search for information.[1346]

The imposition of any subsequent liability may be done only by independent and impartial judicial authorities, except in cases involving proportional administrative sanctions for the violation of conditions for a license or concession, imposed on media outlets that use electromagnetic frequencies. In these cases, the enforcing authority must be impartial and independent of the political or economic powers. In any case, any subsequent liability imposed must be proportional.

**A. Criminal proceedings for "desacato"**

The use of criminal law mechanisms to penalize offensive expressions directed at public officials ("desacato laws") violates the right to freedom of expression.[1347]

**Structural Standards**

4.1. The crime of "desacato" does not exist.

**Verification Factors**
- Existence of the crime of "desacato."

**Dynamic Standards**

4.2. Public officials do not bring criminal cases for "desacato."

**Verification Factors**

[1345] See American Convention on Human Rights, Article 13.2. See also, Inter-American Court of Human Rights, Case of Usón Ramírez v. Venezuela. Preliminary Exceptions, Merits, Reparations, and Costs. Judgment of November 20, 2009. Series C No. 207, para. 86.

[1346] See "Declaration of Principles on Freedom of Expression," No. 10, IACHR.

[1347] Ibid., No. 11.

- Criminal cases brought by public officials for crimes involving "desacato."

4.3. Judges do not impose criminal convictions for the crime of "desacato."
**Verification Factors**
- Criminal convictions imposed by judges for the crime of "desacato."

**B. Criminal prosecutions for the offense of criminal defamation, to protect the honor or reputation of public officials, private persons involved in matters of public interest, or publicly recognized figures.**
The use of criminal law to ensure the protection of the reputations of public officials or private individuals who have voluntarily become involved in matters of public interest violates freedom of expression.[1348]

**Structural Standards**

4.4. No criminal offenses exist to protect the reputations or penalize criticism of public officials, public figures, or private individuals who have voluntarily become involved in matters of public interest.

**Verification Factors**
- Existence of criminal offenses to protect the reputations or penalize criticism of public officials, public figures, or private individuals who have voluntarily become involved in matters of public interest.

**Dynamic Standards**

4.5. Public officials, public figures, or private individuals who have voluntarily become involved in matters of public interest do not seek the application of criminal sanctions to protect their reputation or to penalize criticisms of them.

**Verification Factors**
- Requests submitted during the established time frame by public officials, public figures, or private individuals who have voluntarily become involved in matters of public interest, seeking to have criminal sanctions applied to protect their reputation or to penalize criticisms of them.

4.6. Judges do not apply criminal sanctions to protect the reputation of public officials, public figures, or private individuals who have voluntarily become involved in matters of public interest, or to penalize criticisms of them.

**Verification Factors**
Criminal sanctions applied during the established time frame to protect the reputation of public officials, public figures, or private individuals who have voluntarily become involved in matters of public interest, or to penalize criticisms of them.

**C. Cases brought so journalists will reveal their sources**

Journalists and media workers have the right to keep their sources of information, notes, and personal or professional files confidential.[1349]

**Structural Standards**

4.7. Journalists and media workers are guaranteed the right to keep their sources confidential.

**Dynamic Standards**

4.8. Journalists are not required by the authorities to reveal the source of any information, notes, or personal or professional files containing facts related to the practice of their profession.

---

[1348] Ibid, No. 10. See also, Office of the Special Rapporteur for Freedom of Expression, Annual Report of the Inter-American Commission on Human Rights, Chapter IV: "A Hemispheric Agenda for the Defense of Freedom of Expression," 2008, para. 54.

[1349] See "Declaration of Principles on Freedom of Expression," No. 8, IACHR.

**Verification Factors**
- Demands made by the authorities, during the established time period, that journalists reveal the source of information, notes, or personal or professional files containing facts related to the practice of their profession.

4.9. The authorities do not make demands on third parties, such as telephone companies or companies that manage electronic mail, to learn the source of any information, notes, or personal or professional files containing facts related to journalists' practice of their profession.

**Verification Factors**
- Demands made by the authorities on third parties, during the established time frame, to learn the source of information, notes, or personal or professional files containing facts related to journalists' practice of their profession.

4.10. Journalists who refuse to reveal their sources, notes, or personal or professional files containing facts related to the practice of their profession are not penalized.

**Verification Factors**
- Sanctions imposed on journalists, during the established time frame, for refusing to reveal their sources, notes, or personal or professional files containing facts related to the practice of their profession.

4.11. The authorities do not conduct searches or seizures involving journalists or media outlets or offices so as to obtain information about the source of any information, notes, or personal or professional files containing facts related to the practice of a journalist's profession.

**Verification Factors**
Searches or seizures involving journalists or media outlets or offices, conducted during the established time frame, to confiscate material so as to obtain information regarding the source of information, notes, or personal or professional files containing facts related to the practice of a journalist's profession.

**D. Insult to national symbols or public institutions and religious defamation**

The concept of defaming religions or any other belief or idea, or defaming public institutions, does not accord with international standards regarding defamation, which refer to protecting the reputation of individuals and not of ideas, beliefs, or public institutions, which cannot be said to have a right to reputation.

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.[1350]

**Structural Standards**

4.12. There are no criminal offenses designed to penalize insults to national symbols.

**Verification Factors**
- Existence of criminal offenses that penalize insults to national symbols.

…continuation

[1350] See "Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation." Frank LaRue, United Nations Special Rapporteur on Freedom of Opinion and Expression; Miklos Haraszti, Representative on Freedom of the Media for the Organization for Security and Co-operation in Europe; Catalina Botero Marino, Organization of American States Special Rapporteur on Freedom of Expression; and Faith Pansy Tlakula, Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights.

4.13. There are no criminal offenses designed to penalize defamation of public institutions.

**Verification Factors**
- Existence of criminal offenses that penalize defamation of public institutions.

4.14. There are no criminal offenses designed to penalize expressions against religions or religious symbols.

**Verification Factors**
- Existence of criminal offenses that penalize expressions against religions or religious symbols.

**Dynamic Standards**

4.15. The application of criminal sanctions is not sought to penalize insults to national symbols.

**Verification Factors**
- Requests submitted within the established time frame to apply criminal sanctions for insults to national symbols.

4.16. Judges do not apply criminal sanctions to penalize insults to national symbols.

**Verification Factors**
Criminal sanctions applied within the established time frame to penalize insults to national symbols.

4.17. The application of criminal sanctions is not sought to penalize defamation of public institutions.

**Verification Factors**
- Requests submitted within the established time frame to apply criminal sanctions for defamation of public institutions.

4.18. Judges do not apply criminal sanctions to penalize defamation of public institutions.

**Verification Factors**
- Criminal sanctions applied within the established time frame to penalize defamation of public institutions.

4.19. The application of criminal sanctions is not sought to penalize expressions against religions or religious symbols.

**Verification Factors**
- Requests submitted within the established time frame to apply criminal sanctions for expressions against religions or religious symbols.

4.20. Judges do not apply criminal sanctions to penalize expressions against religions or religious symbols.

**Verification Factors**
- Criminal sanctions applied within the established time frame to penalize expressions against religions or religious symbols.

**E. Criminal proceedings on other grounds**

The disproportionate and arbitrary use of criminal law for the sole purpose of limiting the right to freedom of expression violates this right.[1351]

[1351] See "Declaration of Principles on Freedom of Expression," No. 10, IACHR.

**Structural Standards**

4.21. The category of offense that penalizes incitement to violence does not encompass so-called "crimes of opinion."

**Verification Factors**
- Existence of a category of offense that penalizes incitement to violence.
- Inclusion of "crimes of opinion" in this category of offense.

4.22. No categories of offenses exist to penalize participation, in and of itself, in a public demonstration or social protest.

**Verification Factors**
- Existence of categories of offenses that penalize participation, in and of itself, in a public demonstration or social protest.

4.23. The specific crime of opinion does not exist.

**Verification Factors**
- Existence of specific crimes of opinion.

**Dynamic Standards**

4.24. Criminal sanctions for incitement to violence presuppose actual, certain, and objective proof that the person had the clear intent to commit a crime and had the actual and real possibility of achieving the proposed objective.

**Verification Factors**
- Existence of criminal sanctions for incitement to violence, within the established time frame.
- Within such sanctions, existence of actual, certain, and objective proof that the person had the clear intent to commit a crime and had the actual and real possibility of achieving the proposed objective.

4.25. Criminal sanctions are not imposed for the mere act of participating in a public protest or demonstration.

**Verification Factors**
- Criminal sanctions applied, within the established time frame, for the mere act of participating in a public protest or demonstration.

4.26. Existing categories of offenses designed to protect public order or property, among other things, are not applied to repress or penalize simple public protest.[1352]

**Verification Factors**
- Repression or punishment of participation in public protests through the application of categories of offenses designed to protect public order or property, occurring within the established time frame.

4.27. The crimes of terrorism, national treason, and related categories of offenses are not applied for the mere act of imparting opinions in opposition to those of the government, or positions critical of government policies.[1353]

**Verification Factors**
- Cases in which terrorism, national treason, and related categories of offenses were applied for the mere

[1352] See Office of the Special Rapporteur for Freedom of Expression, Annual Report of the Inter-American Commission on Human Rights, Chapter IV: "A Hemispheric Agenda for the Defense of Freedom of Expression," 2008, para. 69.

[1353] Ibid, para. 65.

act of imparting opinions in opposition to those of the government, or positions critical of government policies, during the established time frame.

4.28. Sanctions are not imposed for the expression of ideas, as in crimes of opinion.

**Verification Factors**
- Cases in which crimes of opinion were applied to sanction the expression of ideas, during the established time frame.

**F. Civil proceedings involving protection of honor**
Privacy laws may not inhibit or restrict the investigation and dissemination of information of public interest. The protection of reputation should be guaranteed only through civil sanctions, in those cases in which the person offended is a public official, a public person, or a private individual who has voluntarily become involved in matters of public interest.[1354]

In addition, in these cases it must be proved that in disseminating the news, the journalist had the specific intent to inflict harm, was fully aware that false news was being disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news (actual malice standard). The sanctions imposed through this avenue must be proportional and not punitive, and may never be imposed for the expression of opinions.[1355]

**Structural Standards**

4.29. Civil actions involving protection of honor or reputation incorporate criteria to differentiate liability for publishing information about public officials and private individuals involved in matters of public interest, on the one hand, and private individuals not involved in such matters, on the other. At least in the first case, when information about public officials is involved, such civil actions contemplate the standard of actual malice.

**Verification Factors**
- Existence of civil actions to protect the honor or reputation of persons.
- Incorporation into these actions of criteria to differentiate liability for publishing information about public officials and private individuals involved in matters of public interest, on the one hand, and private individuals not involved in such matters, on the other.
- Incorporation of the actual malice standard into civil actions involving public officials.

**Dynamic Standards**

4.30. Judicial authorities apply the actual malice standard to impose civil sanctions for subsequent liability when it comes to protecting the honor of public officials, recognized public figures, or private individuals voluntarily involved in matters of public interest.

**Verification Factors**
- Within the established time frame, civil sanctions imposed by judicial authorities for subsequent liability to protect the honor of public officials, public figures, or private individuals voluntarily involved in matters of public interest.
- Civil sanctions imposed in these cases, during this period, in which the actual malice standard has been applied in imposing the sanctions.
- Civil sanctions imposed in these cases, during this period, in which the actual malice standard has not been applied in imposing the sanctions.

4.31. When civil sanctions are applied, they are proportional and geared only toward repairing the harm.

…continuation

[1354] See "Declaration of Principles on Freedom of Expression," No. 10, IACHR.

[1355] Ibid.

**Verification Factors**
- Proportional civil sanctions applied, within the established time frame.
- Civil sanctions that impose the obligation to repair the harm, and civil sanctions that impose punitive penalties, applied within the established time frame.

4.32. Civil liabilities are not imposed for the expression of opinions.

**Verification Factors**
- Civil sanctions applied, during the established time frame, for the expression of opinions.

**G. Ratification mechanisms**

The strict necessity test demands that subsequent liabilities be the least costly for freedom of expression. Thus, when strictly personal rights have been injured due to false accusations that must be corrected, the mechanism of correction or reply under equal conditions applies. This frees the medium and the journalist from liability, except in cases in which actual malice is established. The arbitrary or disproportional burden to publish information violates freedom of expression.[1356]

**Structural Standards**

4.33. The law recognizes and regulates the right to correction or reply, under equal conditions, when it is strictly necessary and proportional to correct false information that injures a right of third parties, under the terms of Article 14 of the Convention.

**Verification Factors**
- Legal recognition and regulation of the right to correction or reply.
- Legal recognition of the right to correction or reply under equal conditions when it is strictly necessary and proportional to correct false information that injures a right of third parties.

4.34. Correction under equal conditions makes subsequent individual liability disappear, except when the existence of actual malice is demonstrated, in which case civil actions apply.

**Verification Factors**
- Existence of subsequent liability despite correction under equal conditions.
- Requirement that the existence of actual malice be established for subsequent liability to apply, after correction under equal conditions.

**Dynamic Standards**

4.35. Judicial authorities order the correction under equal conditions only when it has come to be clear that the published information is false and that it has caused unjustified harm.

**Verification Factors**
- Corrections ordered by judicial authorities during the established time frame.
- Disproportional corrections or those in which the issue of whether the published information was false or whether it had caused unjustified harm was not taken into account.

**5. Access to Information**

…continuation

[1356] See American Convention on Human Rights, Article 14: "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."

The right of access to information includes the right to seek and receive information, and protects the right that everyone has to access information under the State's control, with the exceptions permitted under the strict regime of restrictions established by law.[1357]

**Structural Standards**

5.1. The right of access to public information is constitutionally or legally guaranteed.

5.2. The right of access to information is binding on anyone who performs public duties, provides public services, or executes public resources on behalf of the State.

5.3. It is established that the right of access to information is the general rule and the withholding of information is the exception.

5.4. The law contemplates an appropriate and effective administrative recourse for requesting public information. It is not necessary to establish a direct interest to make a request, and implies only meeting basic requirements. A reasonable time limit is established for a response.

5.5. The law contemplates an appropriate and effective court appeal to challenge final administrative decisions that deny the right of access to information.

5.6. Limitations to the right of access to information are established previously and expressly by law in a formal and material sense.

5.7. A reasonable time limit exists for withholding information, after which the information becomes public.

5.8. Laws regulating secrecy or the withholding of information specify clearly which officials are authorized to make a decision and adopt criteria for classifying documents as secret or reserved.

5.9. No regulation exists establishing sanctions for journalists or civil society representatives for the simple act of disseminating information that has been withheld.

5.10. There are legal provisions to sanction officials who deliberately obstruct access to information.

5.11. The State has a legal obligation to preserve public archives.

5.12. The State has a legal obligation to allocate the resources, infrastructure, and budget to satisfy the right of access to public information.

5.13. The State has a legal obligation to publish information on the basic rules regarding its authority; the duties it is assigned; budgets for expenses and investment; steps and procedures under its control, especially those related to the allocation of goods or provision of services; the authorities or venues designated to carry out such procedures, how these procedures are carried out, and the way any required forms are handled; and the offices to which one can go to seek guidance or lodge complaints, ask questions, or make claims regarding the rendering of a service or the exercise of the functions or duties for which the entity or person in question is responsible.

5.14. Legal or regulatory provisions exist regarding e-government.

5.15. The State has the obligation to publish information on its structure, functions, and operating and investment budget.

…continuation

[1357] See AG/RES. 2607 (XL-O/10), *Model Inter-American Law on Access to Public Information*, approved at the fourth plenary session, held on June 8, 2010. Available at: http://www.oas.org/dil/esp/CP-CAJP-2840-10_Corr1_esp.pdf

5.16. The State has the obligation to publish information required for the exercise of other rights, such as the rights to pensions, health, or education.

5.17. The right of *habeas data* is recognized.

**Dynamic Standards**

5.18. The judicial or administrative authorities provide that the right of access to information is preeminent when it comes into conflict with other standards or when no regulation exists on a particular matter.

**Verification Factors**

- Judicial or administrative decisions, made within the time frame, in which the principle of maximum transparency is applied or no longer applied in any of its three derivations.

5.19. Public authorities, and those who are legally required to do so, respond in a timely manner to requests regarding access to information. If they deny such requests, they provide reasoned, justified grounds for their decisions.

**Verification Factors**

- Timely responses from public authorities to requests for access to information during the established time frame.
- Untimely responses from public authorities, and those legally obligated to do so, to requests for access to information during the established time frame.
- Negative responses to requests for information, during the established time frame, in which no grounds were given for the decision.
- Negative responses to requests for information, during the established time frame, in which reasoned, justified grounds were given for the decision.

5.20. The court appeal for challenging decisions denying the right of access to information is used, and is ruled on by judges within a reasonable period.

**Verification Factors**

- Court appeals for challenging decisions denying the right of access to information lodged during the established time frame.
- Court appeals for challenging decisions that deny the right of access to information ruled on by judges within a reasonable period, during the established time frame.

5.21. Only public officials authorized by law may classify documents as secret or reserved from disclosure.

**Verification Factors**

- There are trained officials who have been assigned this function.
- Documents that have been classified as secret or reserved by persons other than those public officials, or those authorized by law, during the established time frame.

5.22. Secrecy or confidentiality is not claimed as grounds for not turning over information related to human rights violations.

**Verification Factors**

- State agencies or situations in which information related to human rights violations was not turned over during the established time frame, based on a claim of secrecy or confidentiality.

5.23. The State publishes information on the structure, functions, and operating and investment budget of the corresponding entity.

**Verification Factors**

- Cases in which information on the State's structure, functions, and operating and investment budget has

been published during the established time frame.
- Agencies or situations in which the State refrained from doing this type of publication during the established time frame.

5.24. The State publishes information that is required for the exercise of other rights, such as the rights to pensions, health, or education.

**Verification Factors**
- Cases in which the State has published information that is required for the exercise of other rights, such as the rights to pensions, health, or education, during the established time frame.
- Agencies or situations in which the State refrained from doing this type of publication during the established time frame.

5.25. The State publishes information on the provision of services, benefits, subsidies, or contracts of any kind.

**Verification Factors**
- Cases in which the State has published information regarding the provision of services, benefits, subsidies, or contracts of any kind, during the established time frame.
- Agencies or situations in which the State refrained from doing this type of publication during the established time frame.

5.26. Journalists or civil society representatives are not sanctioned for the mere act of disclosing confidential information.

**Verification Factors**
- Sanctions imposed on journalists or civil society representatives for disclosing confidential information, during the established time frame.

5.27. Officials who deliberately obstruct access to information are sanctioned.

**Verification Factors**
- Deliberate obstructions of access to information on the part of officials, during the established time frame.
- Sanctions imposed on officials for deliberately obstructing access to information, during the established time frame.

5.28. The State implements public policies regarding preservation of archives.

**Verification Factors**
- Public polices for preserving and managing archives implemented during the time period.

5.29. The State implements public policies regarding the dissemination of information. These take into account the segments of the population that do not have access to new technologies.

**Verification Factors**
- Public policies on the dissemination of information, implemented during the established time frame.
- Public policies on the dissemination of information, implemented during the established time frame, which took into account segments of the population that do not have access to new technologies.

5.30. The State trains public officials, bodies, and agents who are involved in satisfying the right of access to public information.

**Verification Factors**
- Training of public officials, bodies, and agents involved in satisfying the right of access to public information, carried out by the State during the established time frame.

5.31. The State allocates a budget to be able to progressively satisfy the demands generated by the right of access to information.

**Verification Factors**
- Budget allocation carried out by the State during the established time frame to progressively satisfy the demands generated by the right of access to information.

**6. Pluralism and Diversity**

The participation of pluralistic and diverse ideas in the public debate is a legal imperative based on the principle of nondiscrimination and the obligation of inclusion.

Monopolies or oligopolies in the ownership and control of the media must be subject to antitrust laws, as they conspire against democracy by limiting the pluralism and diversity that ensure the full exercise of citizens' right to information. The allocation of radio and television frequencies should take into account democratic criteria that guarantee equal opportunity of access for all individuals.[1358]

**Structural Standards**

6.1. The right to express oneself in any language is guaranteed.

6.2. The right to establish mass communications outlets is guaranteed.

6.3. Laws exist that, clearly and precisely and following reasonable and appropriate criteria, transparently define the rules of the game for the allocation of radio and television broadcast frequencies and for the new digital dividend spectrum.

**Verification Factors**
- Existence of laws establishing the rules of the game for the allocation of frequencies for radio and television and for the new digital dividend.
- Transparency, clarity, and precision of these rules of the game.
- Incorporation of reasonable and appropriate criteria into the rules of the game.

6.4. The authority in charge of enforcement and oversight of broadcasting activity is independent, both from government influence and from the financial interests of private groups linked to public, private, commercial, or community broadcasting , and is subject to clear and transparent procedures.

**Verification Factors**
- Existence of an authority in charge of enforcement and oversight of broadcasting activity.
- Independence of this authority from government influence and from the financial interests of private groups linked to public, private, commercial, or community broadcasting.
- Whether this authority is subject to clear and transparent procedures.

6.5. Administrative sanctions in the field of broadcasting are subject to judicial oversight.

6.6. Broadcasting laws guarantee conditions that are sufficient to ensure the independence and economic self-sufficiency of the communications media that are regulated by law.

6.7. States adopt antitrust laws that limit the concentration of ownership and control of broadcast media.

[1358] See "Declaration of Principles on Freedom of Expression," No. 12, IACHR.

6.8. The regulation of broadcasting contemplates reserving part of the spectrum for a diverse system of media, including community radio stations.

6.9. Broadcasting laws do not include discriminatory differentiations between the various forms of broadcasting. Any differentiation must be based on reasonable and objective conditions.

**Verification Factors**
- Discriminatory differentiations between the various forms of broadcasting contemplated in broadcasting laws.
- Discriminatory differentiations between these forms of broadcasting based on reasonable and objective conditions.

6.10. Broadcasting license periods are established by law, are reasonable to ensure independence and sustainability, and respect equality of conditions for all sectors.

**Verification Factors**
- Establishment in the law of broadcasting license periods.
- Reasonableness of these periods to ensure independence and sustainability.
- Whether these periods respect equality of conditions for all sectors.

6.11. The allocation of broadcasting licenses is guided by criteria that are democratic and equitable and by procedures that are pre-established, public, and transparent.

6.12. Procedures for allocating licenses are subject to judicial oversight.

6.13. Sanctions for unauthorized broadcasting are found in civil or administrative regulations. The use of criminal law is not contemplated in these cases.

**Verification Factors**
- Existence of civil or administrative sanctions for unauthorized broadcasting.
- Existence of criminal sanctions for unauthorized broadcasting.

6.14. Laws regulating the spectrum do not delegate the definition of strategic policies to the authority responsible for enforcing them.

**Verification Factors**
- Existence of an authority responsible for enforcing strategic policies related to the spectrum.
- Delegation to this same authority of the duty to define these policies.

6.15. Public media are independent of the executive branch and have a mandate for public service, and access to their content is free of charge.

6.16. The news media are subject to rules of ethical conduct that are not imposed by the State but are the result of self-regulation.

**Verification Factors**
- Whether the media are subject to rules of ethical conduct imposed by the State.
- Whether the media are subject to rules of ethical conduct that they themselves have imposed (self-regulation schemes).

6.17. Laws exist that, clearly and precisely and following reasonable and appropriate criteria, transparently define the rules of the game for the allocation of official advertising or the distribution of any other state resource or benefit, so as to keep these from being used to reward or punish the media based on their news or editorial content.

**Verification Factors**
- Existence of transparent rules of the game to allocate official advertising or the distribution of any other state resource or benefit contemplated in the State's laws.
- Clarity and precision of these rules of the game.
- Incorporation into these rules of reasonable and appropriate criteria for the allocation of official advertising or other benefits.
- Prohibition on using these resources to reward or punish the media based on their news or editorial content, under the rules of the game.

**Dynamic Standards**

6.18. The States actively promote the inclusion of disadvantaged, minority, or currently marginalized groups in the communications process.

**Verification Factors**
- Actions taken by the State, during the established time frame, to promote the inclusion of disadvantaged, minority, or currently marginalized groups in the communications process.

6.19. Frequencies for radio and television and the new digital dividend spectrum are allocated according to the rules of the game established by law.

**Verification Factors**
- Allocations of frequencies for radio and television and the new digital dividend spectrum that ignored the rules of the game established by law.

6.20. Economic criteria are not the main factor in awarding radio or television frequencies.

**Verification Factors**
- Awarding of radio or television frequencies during the time frame.
- Awarding of radio or television frequencies, during the time frame, in which economic criteria were not the main factor.

6.21. The State offers guarantees so that those who operate broadcast licenses can do so without arbitrary interference related to content.

**Verification Factors**
- Arbitrary, content-related interference in the operation of broadcasting licenses that took place during the time frame.
- Guarantees offered by the State during the period to prevent this type of interference.

6.22. Antitrust laws are enforced to prevent the concentration of ownership and control of broadcast media.

**Verification Factors**
- Cases or decisions during the established time frame in which antitrust laws were enforced to prevent the concentration of ownership and control of broadcast media.

6.23. The authority for enforcement and oversight of broadcasting activity exercises its duties independently and carries out processes that are clear.

**Verification Factors**
- The authority for enforcement and oversight of broadcasting failed to exercise its duties independently during the established time frame.
- Situations in which the authority for enforcement and oversight of broadcasting carried out processes that were not subject to the principles of transparency and clarity, during the established time frame.

6.24. Procedures for the allocation of broadcasting licenses are controlled effectively by the judicial authorities.

**Verification Factors**
- Decisions taken by the judicial authorities in the framework of procedures to assign broadcasting licenses, during the established time frame.

6.25. Sanctions applied to penalize unauthorized broadcasting are of a civil and administrative nature, and in no case of a criminal nature.

**Verification Factors**
- Criminal procedures or sanctions applied to penalize unauthorized broadcasting, during the established time frame.

6.26. The public media are autonomous and independent of the government, are accountable, and have citizen participation.

**Verification Factors**
- The public media operating during the period in question acted in a way that was autonomous and independent of the government.
- The public media operating during the period were accountable and had citizen participation.

6.27. The various sectors of the media—commercial, public, community—have access to all available transmission platforms, as well as to new digital technologies.

**Verification Factors**
- Situations in which some sector of the media—commercial, public, community—has had its access restricted to available transmission platforms, new technologies, or the new digital dividend.

6.28. Public media programming is geared toward the public interest and toward reflecting society's political, social, geographic, religious, cultural, linguistic, and ethnic pluralism.

**Verification Factors**
- Public media programming during the established time frame was geared toward the public interest and toward reflecting society's political, social, geographic, religious, cultural, linguistic, and ethnic pluralism.

6.29. Public officials do not use official advertising, public treasury funds, tariffs, official credits, or the granting of frequencies, among other things, to reward or penalize media outlets or journalists based on the content they report or their editorial stances.

**Verification Factors**
- Cases in which public officials used official advertising, public treasury funds, tariffs, official credits, or the granting of frequencies, among other things, to reward media outlets or journalists based on the content they report or their editorial stances, during the established time frame.
- Cases in which public officials used official advertising, public treasury funds, tariffs, official credits, or the granting of frequencies, among other things, to penalize media outlets or journalists based on the content they report or their editorial stances, during the established time frame.

**7. Indirect Censorship or Abusive Use of State Power**

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.[1359]

**Dynamic Standards**

7.1. The State refrains from abusing public power in the control over newsprint, broadcasting frequencies, or equipment used in the dissemination of information, or in the use of other means tending to impede the communication and circulation of ideas and opinions.

**Verification Factors**

- Cases in which there was abuse of public power in the control over newsprint, broadcasting frequencies, or equipment used in the dissemination of information, or in the use of other means tending to impede the communication and circulation of ideas and opinions.
- Actions taken by the State and cases in which the State did not prevent such abuse, during the established time frame.

7.2. Agencies that regulate and oversee the media are independent of the executive branch and subject to due process and strict judicial control.

**Verification Factors**

- Agencies that regulate and oversee the media were independent of the executive branch during the established time frame.
- Agencies that regulate and oversee the media complied with due process during the established time frame.
- Agencies regulating or overseeing the media were subject to strict judicial control during the established time frame.

7.3. Beyond the scope of appropriate judicial settings, public officials do not publicly accuse critical media outlets or journalists of having committed crimes for simply expressing opposing ideas or opinions. Public officials do not make systematic and disproportionate statements that tend to create or increase a climate of hostility against particular media outlets or journalists that could lead to any infringement of their rights, due to their editorial stance or their coverage of the news.

**Verification Factors**

- Statements made by government officials—beyond the scope of appropriate judicial settings —accusing critical media outlets or journalists of having committed crimes, as a result of their simply having expressed opposing ideas or opinions, during the established time frame.
- Statements made by public officials that tended to create or increase a climate of hostility against particular media outlets or journalists that could lead to any infringement of their rights, due to their editorial stance or their coverage of the news, during the established time frame.

7.4. Public officials or public law enforcement agents do not arbitrarily confiscate or destroy the content or equipment of the news media or any content or equipment used to produce and disseminate information.

**Verification Factors**

- Arbitrary confiscation or destruction of the content or equipment of the news media or any content or equipment used to produce and disseminate information, carried out by public officials or public law enforcement agents within the period in question.

7.5. Public officials do not engage in sabotage, arbitrary searches, power shutdowns, or similar measures against media outlets.

**Verification Factors**

- Cases of sabotage, arbitrary searches, power shutdowns, or similar measures against media outlets.

[1359] See American Convention on Human Rights, Article 13.

# CHAPTER III

## ACCESS TO INFORMATION ON HUMAN RIGHTS VIOLATIONS

### The right of the victims of human rights violations to access information in State archives on such violations

1. The thesis advanced by the Inter-American Commission on Human Rights (hereinafter "the IACHR" or "the Commission") and its Special Rapporteur, and which is set forth in this document – using documents previously drafted by these offices – is that under any circumstances, but especially in processes of transition to democracy, victims and their relatives have the right to know with regard to information on serious violations of human rights in the archives of the State. This is the case even if the archives in question pertain to the security agencies or military or police agencies. Furthermore, the IACHR has maintained that the obligation of access to information in such cases generates a set of affirmative obligations. This chapter explains the reasons that both the IACHR and the Special Rapporteur have in various reports maintained this thesis and lays out the state obligations stemming from it, while discussing the incorporation of this in the most recent verdict of the Inter-American Court on the matter, in the case of *Gomes Lund et al (Guerrilha do Araguaia).*[1]

2. This document is divided into four parts. First, it sets forth the most important arguments by virtue of which the IACHR has found that it is possible to maintain that the victims of serious violations of human rights and their relatives have the right to know the information on such violations even when it is to be found on military or police premises (i). Second, it describes the special obligations that correspond to the State in order to make this right truly effective (ii). Third, and very briefly, it indicates the characteristics necessary for a legal regime to satisfy the right of access to information in these matters, in accordance with international standards (iii). Finally, it sets forth the way in which the Inter-American Court responded to this doctrine, in the aforementioned verdict in the case *Gomes Lund et al (Guerrilha do Araguaia)*.[2]

### 1. Do the victims of serious human rights violations or their relatives have the right to access information on such violations when it is in the archives of State security forces?

3. The right of access to information is a fundamental right protected by Article 13 of the American Convention. The Inter-American Court has established that said article, by expressly stipulating the rights to "seek" and "receive" "information", protects the right of any person to access information under the control of the State, with the provisos permitted under the strict regime of restrictions established in said instrument.[3] It is a particularly important right for the consolidation, functioning and preservation of democratic systems, and has therefore received a large amount of attention, both from the member States of the OAS[4] and from international doctrine and jurisprudence.

---

[1] I/A Court H.R., *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Exception, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219.

[2] I/A Court H.R., *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Exception, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219.

[3] 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 and 78.

[4] The General Assembly of the OAS recognizes the right of access to information as "an indispensable requirement for the very functioning of democracy." In this regard, all the member States of the OAS "have the obligation to respect and ensure respect for access to public information for all persons and promote the adoption of legislative provisions or of another kind that are necessary to ensure its recognition and effective application." General Assembly of the OAS. Resolution 1932 (XXXIII-0/03) "Access to Public Information: Strengthening of Democracy." June 10, 2003. See also resolutions of the General Assembly of the OAS 2057 (XXXIV-O/04), 2121 (XXXV-O/05), 2252 (XXXV-O/06), 2288 (XXXVII-O/07), and 2418 (XXXVIII-O/08).

4. However, one of the exceptions to the right of access applies when permitting access to a particular item of information could endanger national defense or security. In some cases, States have recurred to this exception to maintain as classified or secret, even vis-à-vis the judicial authorities of the State itself, information that would make it possible to clarify serious violations of human rights, such as the forced disappearance of persons.

5. It is true that in some cases there is national security information that should remain reserved. However, there are at least three strong arguments according to which the State can, in no case, maintain the secrecy of information on serious human rights violations – especially that related to the forced disappearance of persons – and prevent access to such information by the authorities in charge of investigating said violations, or even by the victims and their relatives.

6. Indeed, the Inter-American Court of Human Rights (hereinafter "the Court") has held that victims of grave human rights violations and their relatives, as well as society as a whole, have the right to know the truth about atrocities committed in the past. In this respect, the Court has reaffirmed the established case law, according to which, "the next of kin of the victims and society as a whole must be informed of everything that has happened in connection with said violations."[5,6] Therefore, and given the fact that the right to know the truth about what happened is established not only in Article 13 but also in Articles 8 and 25 of the Convention,[7] a State agency may never refuse to provide state-held information that might help establish the facts surrounding such violations to the authorities investigating human rights violations. Second, as the Court has stated, denying the relatives of victims of forced disappearance information about the fate of their loved ones contributes to subjecting them to cruel, inhuman or degrading treatment, and therefore is absolutely prohibited under international law. In fact, if the information contained in state records contributes to overcoming such extreme suffering, the government has the obligation to turn it over. Finally, under any circumstance, but especially in processes of transition to democracy, the argument that it is necessary to maintain confidentiality with respect to past atrocities in order to protect present "national security" is inadmissible. No democratic idea of "national security" is compatible with this theory. Each one of the three arguments mentioned will be explained in more detail in the paragraphs below.

**First argument: intelligence agencies cannot reserve from judges and entities in charge of historical clarification, such as Truth Commissions, information that makes it possible to clarify serious human rights violations**

7. According to this first argument, the State cannot deny access to information about to serious human rights violations to judges and autonomous investigation agencies (such as, for example, the public prosecutor or a truth commission).[8] In this regard, in the case *Myrna Mack Chang v.*

---

[5] *Cfr. I/A Court H.R., Case of the 19 Tradesmen v. Colombia. Merits, Reparations and Costs.* Judgment of July 5, 2004. Series C No. 109, para. 261; *Case of Carpio-Nicolle et al. v. Guatemala. Merits, Reparations and Costs.* Judgment of November 22, 2004. Series C No. 117, para. 128; and *Case of Myrna Mack-Chang v. Guatemala. Merits, Reparations and Costs*. Judgment of November 25, 2003. Series C No. 101, para. 274.

[6] I/A Court H.R., *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Exception, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219, para. 200.

[7] On this point, the Court has stated: "The case law of the Inter-American Court has considered the content of the right to know the truth, in particular in cases of forced disappearance. Ever since the *Case of Velásquez Rodríguez,* the Court has affirmed the existence of the "right [of the victim's relatives] to know what happened to him and, if appropriate, where his remains are located." The Court has recognized that the right of the relatives of victims of grave human rights violations to know the truth is included within the right of access to justice. The Court has also considered the duty to investigate as a form of reparation, given the need to redress the violation of the right to know the truth in the specific case. Similarly, in this case, the right to know the truth is related to the Ordinary Action filed by the next of kin, which is tied to access to justice and to the right to seek and receive information enshrined in Article 13 of the American Convention." (citations omitted). I/A Court H.R., *Case of Gomes Lund et al.* (Guerrilha do Araguaia) v. Brazil. Preliminary Exception, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 201.

[8] "Truth commissions" are one of the most-used mechanisms in comparative perspective by the countries that have to face a past with mass human rights violations. According to the International Center for Transitional Justice (ICTJ), "truth commissions" are non-judicial and independent investigation panels established generally for the purpose of establishing the facts

Continued…

*Guatemala,*[9] the Inter-American Court found it proven that the Ministry of National Defense had refused to provide documents related to the functioning and structure of the Presidential Military Staff that were necessary to advance with the investigation on an extrajudicial execution. The Public Prosecutor and the judges repeatedly requested the information, but the Ministry of National Defense denied the delivery by invoking the state secrecy exception governed by Article 30 of the Guatemalan Constitution[10] and the alleged incineration of the corresponding documents.[11] In the view of the Inter-American Court:

> "[I]n 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."[12]

8. In this regard, the Inter-American Court adopted the considerations of the IACHR, which had alleged before the Tribunal:

> "In 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 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…'"[13]

---

…continuation
and the context of mass violations of human rights or of international humanitarian law committed in the past (definition of ICTJ, available at http://www.ictj.org). Among the countries that have used these mechanisms to clarify crimes committed in their past we can mention Argentina, Haiti, Guatemala, South Africa, Peru, East Timor, Ghana and Sierra Leone. See in this respect the entry on "Truth Commissions" in the Encyclopedia of Genocide and Crimes Against Humanity. Available at: http://www.ictj.org/static/TJApproaches/Truthseeking/macmillan.TC.eng.pdf

[9] 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 to 182.

[10] 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, para. 175. Article 30 of the Constitution of the Republic of Guatemala establishes: "Article 30. - Publicity of administrative acts. All the acts of the administration are public. Interested parties have the right to obtain, at any time, reports, copies, reproductions and certifications they request and the showing of the files they wish to consult, unless this involves military or diplomatic matters of national security, or data supplied by individuals under the guarantee of confidence."

[11] 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, para. 176. It should be underscored that the allegation of nonexistence of the documents requested is not an unusual practice among some States. In this regard, the Supreme Court of Moldova decided in the case *Tasca vs. SIS* that the authorities that alleged the supposed nonexistence of certain documents were obliged to: a) turn over to the person requesting the information an inventory of the total archive of the authority summoned and b) they should allow personal access by the applicant to the archives.

[12] 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, para. 180.

[13] 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, para. 181.

9. Following the above reasoning, it can be concluded that failing to grant the organs that investigate human rights violations State information that can facilitate the clarification of such events undermines public order and national security, the foundation of which is respect for human rights and application of the rule of law to public servants. It also compromises the possibility of clarifying the crimes committed and the right of the victims and their relatives to justice. Finally, it undermines the so-called "equality of arms", one of the central principles of due process, for if the agency denying access to information is the same one accused of actions or omissions in relation the aggressions committed, the victim of such aggressions finds it impossible to prove his or her arguments.

10. In particular, with respect to the importance of Truth Commissions as a mechanism for clarifying the right to know, the Court has stated: "The Court deems that the establishment of a Truth Commission - depending on its object, proceedings, structure and purposes - can help build and safeguard historical memory, clarify events, and determine institutional, social and political responsibilities in certain periods of time for a society."[14]

**Second argument: denying the relatives of victims of forced disappearance information is tantamount to keeping them in a situation of extreme suffering incompatible with international law**

11. The second argument to consider is that the Inter-American Court has stated on numerous occasions that "[t]he continued denial of the truth about the fate of a disappeared person is a form of cruel, inhuman and degrading treatment for the close family."[15] If States takes jurisprudence of the Inter-American Court seriously, they must understand that denying the relatives of the victims information, depriving them access to valuable information on the fate of their loved ones, is equivalent to keeping them in a situation that has been equated to torture, which is manifestly contrary to the American Convention and admits no contrary argument. In fact, the prohibition of torture and inhuman or degrading cruel treatment is absolute and admits no exceptions.

**Third argument: under all circumstances, but especially in processes of transition to democracy, the argument that it is necessary to maintain the secrecy of past atrocities to protect "national security" in the present is inadmissible**

12. The third argument that reinforces the thesis according to which information on serious human rights violations that resides in state archives should be turned over to the victims and their

---

[14] I/A Court H.R., *Case of Radilla-Pacheco v. Mexico.* Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, para. 74. I/A Court H.R., *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Exception, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219, para. 297.

[15] I/A Court H.R., *Case of Trujillo Oroza v. Bolivia*. *Reparations and Costs.* Judgment of February 27, 2002. Series C No. 92, para. 114. See also I/A Court H.R., *Case of Anzualdo Castro v. Peru*. *Preliminary Exception, Merits, Reparations and Costs.* Judgment of September 22, 2009. Series C No. 202, para. 113; I/A Court H.R., *Case of La Cantuta v. Peru*. *Merits, Reparations and Costs.* Judgment of November 29, 2006. Series C No. 162, para. 125. In relation to the suffering caused to the relatives of direct victims, see I/A Court H.R., *Case of Bámaca Velásquez v. Guatemala. Merits.* Judgment of November 25, 2000. Series C No. 70, para. 160; I/A Court of H.R., *Case of the "Street Children" (Villagrán Morales and others) v. Guatemala*. *Merits.* Judgment of November 19, 1999. Series C No. 63, para. 175 and 176; I/A Court H.R., *Case Blake v. Guatemala. Reparations and Costs.* Judgment of January 22, 1999. Series C No. 48, para. 114 and 116. See also case *Kurt v. Turkey*, ECHR, Judgment of May 25, 1998, Reports of Judgments and Decisions 1998-III para. 133 (in which the court considered the situation of a mother who had suffered the "anguish of knowing that her son had been arrested and that there was a complete lack of official information regarding his fate". By virtue of that, the European Court considered that the State of Turkey had violated Article 3 of the European Convention on Human Rights). In the same regard, see *Diana Kordon et al. Forced Disappearance: A Particular Form of Torture*, in James M. Jaranson & Michael K. Popkin (editors) Caring for Victims of Torture (1998) (in which it is maintained that the "scope of the phenomenon of disappeared persons made it into a paradigm of the repressive policies of the junta. In the light of its characteristics, we can consider that disappearance is a particular form of torture, a torture suffered by those disappeared which is extended to their family and friends. The disappeared person lives in a land without an owner, lives beyond life and death, without legal protection and at the mercy of his captors. The relatives had a high degree of mental suffering and a profound alteration of their daily life.") Finally, see also Brazil Report: *Nunca Mais*, pp. 65 and 66 (where it is maintained: "More torturous than a sad certainty is the perennial doubt that, every day, renews the pain and augments it. And that pain gains force and color when those tormented by it feel impotent to undo the knot of uncertainty that afflicts them.")

relatives refers to the conditions necessary for a true process of transition to democracy to be successful. In any transition, the right of access to information becomes an essential tool to further the clarification of atrocities of the past. That is why the IACHR has pointed out that in contexts of transition to democracy, freedom of expression and access to information acquire a structural importance. Indeed, it is on the basis of these rights that it is possible to reconstruct the past, recognize the errors committed, provide redress to victims and generate a vigorous public debate that contributes to democratic recovery and the reconstruction of the rule of law.[16] In particular, the right of access to information is fundamental in dissolving authoritarian enclaves that seek to survive the democratic transition.[17]

13. In some cases States have argued that publicizing information about the past could nonetheless endanger "national security." In this regard, it is essential to recall that the concept of "national security" cannot be interpreted at will. This concept should, in all cases, be interpreted from a democratic perspective.[18] It is therefore suprising that the secrecy of serious human rights violations committed by agents of the State during the authoritarian regime from which the State is transitioning should be considered an indispensable condition for maintaining the "national security" of the new order based on the rule of law. Indeed, from a democratic perspective, the concept of "national security" can never include the secrecy of criminal state activities such as torture or the forced disappearance of persons.

14. In this regard, it would be worth asking, as the European Court of Human Rights has done, what damage to the national security of a democratic State can be done by the dissemination of information on crimes of a past authoritarian regime whose legacy a nation seeks to overcome. The European Court of Human Rights had the opportunity to analyze this question in the context of the processes of "lustration" that were begun in Eastern Europe as the central element of the transition processes, after the fall of the Communist regimes in that region. In the case *Turek v. Slovakia*, the Court maintained the following:

> "[I]n proceedings related to the operations of state security agencies, there may be legitimate grounds to limit access to certain documents and other materials. However, in respect of lustration proceedings, this consideration loses much of its validity. In the first place, lustration proceedings are, by their very nature, oriented towards the establishment of facts dating back to the communist era and are not directly linked to the current functions and operations of the security services. Thus, unless the contrary is shown on the facts of a specific case, it cannot be assumed that there remains a continuing and actual public interest in imposing limitations on access to materials classified as confidential under former regimes. Secondly, lustration proceedings inevitably depend on the examination of documents relating to the operations of the former communist security agencies. If the party to whom the classified materials relate is denied access to all or most of the materials in question, his or her possibilities to contradict the security agency's version of the facts would be severely curtailed. Finally, under the relevant laws, it is typically the security agency itself that has the power to decide what materials should remain classified and for how long. Since, it is the legality of the agency's actions which is in question in lustration proceedings, the existence of this power is not consistent with the fairness of the proceedings, including the principle of equality of arms. Thus, if a State is to adopt lustration measures, it must ensure that the persons affected

[16] IACHR, Petition before the Inter-American Court of Human Rights in Case 11.324, *Narciso González Medina v. Dominican Republic*, May 2, 2010, para. 159.

[17] See, in this regard, Federal Commissioner for the Records of the State Security Service of the former German Democratic Republic ("Birthler Commission"), reports on activities of the years 1999, 2001, 2009, describing the contribution of the office of the Federal Commissioner to the convictions of guards and other persons involved in murders committed in the former borders of the German Democratic Republic. This commission has also facilitated the seeking of redress on the part of victims of arbitrary detention, political persecution, labor discrimination, illegal confiscation of property, etc. Between 1991 and 2009 more than 2.6 million persons consulted the archives kept by the Federal Commissioner. Information available at: www.bstu.bund.de

[18] See I/A Court H.R., *Case Molina Theissen v. Guatemala. Merits.* Judgment of May 4, 2004. Series C No. 106, para. 40.2 (in which the I/A Court H.R. recognized that the repression established in Guatemala toward the end of the 70s and beginning of the 80s was based on an interpretation of the concept of national security known as "doctrine of national security").

thereby enjoy all procedural guarantees under the Convention in respect of any proceedings relating to the application of such measures."[19]

15. Similar reasoning was applied in Brazil by the Federal Regional Court which resolved a remedy of appeal put forward by the State against a verdict that had ordered it to present, confidentially, all the documents containing information on military actions against the *Guerrilha do Araguaia.* In its appeal, the State argued that "by exposing strategic information, basic and indispensable elements for national security are violated (…), and years of services essential to the public interest are immediately destroyed by a decision that is the result of a disproportionate request, at this time of full normality in the country's democratic life."[20] The Brazilian court rejected these allegations and denied the remedy of appeal on this point. In the opinion of the Court, "the Union does not deny the existence of said documents, and all the signs indicate that these documents exist, since it is not credible that the Army should have got rid of all the registers of such an important episode in Brazil's recent history. The *Guerrilha do Araguaia* ended more than 30 years ago, and after so long there can be no possibility that the restricted release of documents about it should violate 'basic and essential elements of national security.'"[21] Finally, it added: "Although the classification of the documents questioned is in force, Article 24 of Law 8.159 grants the Judicial Branch, in any case, the power to order the production, in a limited manner, of any classified (secret) document, as long as it is indispensable for the defense of a person's rights or the clarification of the personal situation of the party.'"[22]

16. Once again, in transitional processes full respect for the right of freedom of expression and access to information contributes, as few other rights do, to guaranteeing the rights of the victims to truth, justice and reparation.[23] In particular, the right to know the truth on what occurred with regard to forced disappearances can only be satisfied if appropriate mechanisms of access to the corresponding information are adopted. Likewise, the right of access to information constitutes an indispensable guarantee to ensure the implementation of measures of non-repetition of the events of the past: knowledge of the atrocities committed is a necessary condition for preventing the abuses committed from being repeated, promoting accountability and transparency in public management, and forestalling corruption and authoritarianism.[24]

### 2. The positive obligations of the State in relation to access to information on mass human rights violations

17. If the victims of human rights violations have the right to access – directly or indirectly – information relative to said violations contained in military or intelligence archives, the next question is how to ensure that such information will not be concealed, removed or disappeared and thus denied to those who have the right to know it.

---

[19] European Court of Human Rights, *Case of Turek v. Slovakia (Application no. 57986/00).* Judgment of February 14, 2006, para. 115.

[20] Partial Remedy of Appeal of the Federal Union, dated March 24, 2006, against the decision of the 1st Federal Court of the Federal District, within the framework of Lawsuit 2001.39.01.000810-5. State Communication of September 4, 2007, Annex 7, para. 26. Free translation. Available at the case file of the case *Julia Gomes Lund et al.* before the Inter-American Commission on Human Rights, No. 11552.

[21] Decision of the Federal Regional Court of August 10, 2006 on the Appeal filed within the framework of Lawsuit 2001.39.01.000810-5. Free translation. Available at the case file of the case *Julia Gomes Lund et al.* before the Inter-American Commission on Human Rights, No. 11552.

[22] Decision of the Federal Regional Court of August 10, 2006 on the Appeal filed within the framework of Lawsuit 2001.39.01.000810-5. Free translation. Available at the case file of the case *Julia Gomes Lund et al.* before the Inter-American Commission on Human Rights, No. 11552.

[23] See in this respect United Nations, Commission on Human Rights, Updated set of principles for the protection and promotion of human rights by means of the fight against impunity, E/CN.4/2005/102/Add.1, February 8, 2005, principle 5.

[24] See IACHR, Report of the Special Rapporteur for Freedom of Expression, 2009. OAS/Ser.L/V/II.Doc.51, December 30, 2009, chap. IV, para. 5.

18. First, as both the IACHR and the Inter-American Court have reiterated, it cannot be left to the institution accused of committing mass human rights violations to decide whether or not the information exists, and whether or not to make it public. In this regard, the States should permit on-site visits to military and intelligence archives by judges, investigators and other independent investigation authorities whenever the existence of information crucial to their investigations has been denied and there are reasons to believe that the information may exist. A measure of this nature is not unprecedented: the United Nations High Commissioner for Human Rights on various occasions urged the Attorney General of Colombia to "verify […] the precision and objectivity of the information contained in military intelligence archives on human rights defenders and to make public the result of this work."[25] Similarly, a number of countries of Eastern Europe opened their intelligence archives as a means of confronting the crimes committed in the past.[26]

19. Second, the State cannot release itself from its obligations simply by alleging that the required information on mass human rights violations committed in the past was destroyed. On the contrary, the State has the obligation to search for such information by all possible means. In this regard, the Inter-American Court has stated that "every person, including the next of kin of the victims of grave violations of human rights, has the right to the truth. Therefore, the next of kin of the victims [or the victims themselves] and society as a whole must be informed of everything that has happened in connection with said violations."[27] To comply with this obligation, the State should make a substantive effort, in good faith, and contribute all the necessary resources to reconstruct the information that was supposedly destroyed. In Germany, for example, after the fall of the Berlin Wall, thousands of bags containing the remnants of documentation belonging to the intelligence services were discovered. The Birthler Commission, in charge of applying the law on Stasi Archives, determined that the documents of 6,500 bags could be salvaged, and since then the documents in over four hundred of the bags were manually reconstructed.[28] The Commission has considered that States should make significant efforts to find information that was supposedly destroyed; if it was possible in Germany to reconstruct documents that were literally in pieces, States in our region should carry out serious, committed and effective investigations to find copies of the information that has supposedly been lost.

20. Third, should the above efforts prove unsuccessful, the State has in any case the obligation to reconstruct the lost information. With this in mind, it should carry out good faith investigations to make it possible to clarify the events under investigation. In effect, the "Set of principles for the protection and promotion of human rights by means of the fight against impunity" of the United Nations establishes that States have the "duty to preserve archives and other evidence concerning violations of human rights and humanitarian law," including archives of "(a) national governmental agencies,

---

[25] United Nations High Commissioner for Human Rights, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, E/CN.4/2003/13, February 24, 2003, para. 161. See also IACHR, *Third Report on the Situation of Human Rights in Colombia,* OAS/Ser.L/V/II.102, February 26, 1999, chap. VII, para. 59-60, indicating that "independent authorities should be in a condition to have access to intelligence information and decide whether it can be kept secret" and describing as of "utmost importance" the announcement by then President of Colombia Ernesto Samper in the sense that "the Attorney General of the Nation would examine military intelligence files." See also, United Nations High Commissioner for Human Rights, *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia,* E/CN.4/2006/9, January 20, 2006, recommendation number 6, "The High Commissioner encourages the Government to promote legislation that adequately regulates the use of military intelligence archives, including the applicable procedure for their annual review by the Office of the Attorney General."

[26] One may cite, by way of example, the German Law on Stasi Records (Stasi Records Act) of 1990 (whose purpose was to facilitate access by individuals to personal data obtained by Stasi, protect the privacy of those individuals and assure a historical, political and juridical reevaluation of Stasi activities, see § 1 (1), para. 1 to 3); law No. III of 2003 of Hungary, known as the Disclosure Act; law No. 140 of 1996 of the Czech Republic, known as the STB Files Access Act; law No. 187 of 1999 of Romania, known as the Access to Personal Files Law; the Law of Rehabilitation of Victims of Political Persecution of Moldova; the Law for Access and Disclosure of Documents of Bulgaria of 2006. These laws establish legal frameworks tending to provide citizens' access to the archives of repressive and vigilance agencies of previous regimes.

[27] 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, para. 274.

[28] See, in general, Jefferson Adams, *Probing the East German State Security Archives*, 13 International Journal of Intelligence and Counterintelligence 21 (2000).

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."[29] In this regard, the investigations should be oriented toward the persons who could have had access to the information, if it was destroyed, or toward those who participated, at all levels, in the operations or the events under investigation.

21. In short, the obligations mentioned consist of the duty to carry out, in good faith, significant investigative efforts aimed at clarifying the human rights violations being examined. These efforts have to include the opening of archives so that the institutions investigating the event can conduct direct inspections; conducting searches of official installations and making inventories; advancing search operations that include searches of the places where the information could lie; and holding hearings and questioning those who could know where the information is or to those who could reconstruct what occurred; among other actions. A public call for those who have documents to turn them in is not sufficient to satisfy the abovementioned obligations.

### 3. The obligation to adapt States' normative framework to international obligations

22. Finally, in order to satisfy the right of victims of human rights violations to access the information in state archives that makes it possible to clarify such crimes, it is necessary to adapt the legal regime to relevant inter-American standards.[30] In this regard, the legal framework regulating the right of access to information should contain at least the following obligations of the State.[31]

23. First, the State has the obligation to define precisely and clearly through a law in the formal and material sense, the grounds for restricting access to certain information.[32] The right of access is governed by the principles of good faith and maximum transparency, and therefore, in principle, the information in the power of the State should be public save the limited exceptions established by law.[33] In any event, exceptions such as "national security", "national defense" or "public order" should be defined and interpreted in accordance with the inter-American juridical framework and, in particular, with the American Convention on Human Rights.[34] In no case can the information on serious human rights violations imputed to the agencies of the State be kept secret and denied to the organs of administration of justice or of historical clarification.[35]

24. Moreover, the State has the obligation to guarantee appropriate and effective proceedings for the processing and resolution of requests for information that establish short timeframes for resolving and providing the information, and that are the responsibility of officials duly trained and

---

[29] UN Commission on Human Rights. Updated Set of principles for the protection and promotion of human rights through action to combat impunity. E/CN.4/2005/102/Add.1. February 8, 2005. Definitions and Principle 3.

[30] IACHR, Report of the Special Rapporteur for Freedom of Expression, 2009. OAS/Ser.L/V/II.Doc. 51 December 30, 2009, chap. IV, para. 52.

[31] To see more detailed development of each of these principles Cfr. IACHR, Report of the Special Rapporteur for Freedom of Expression, 2009. OAS/Ser.L/V/II.Doc. 51 December 30, 2009, chap. IV

[32] I/A Court H.R., *Case of Claude Reyes and et al. v. Chile. Merits, Reparations and Costs.* Judgment of September 19, 2006. Series C No. 151, para. 89. I/A Court H.R., *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Exception, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219, para. 197.

[33] 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. I/A Court H.R., *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Exception, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219., para. 199.

[34] IACHR, Report of the Special Rapporteur for Freedom of Expression, 2009. OAS/Ser.L/V/II.Doc. 51 December 30, 2009, chap. IV.

[35] I/A Court H.R., *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Exception, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219, paras. 196-202.

subject to legal obligations.[36] This information should be supplied without requiring from the person a direct or personal interest or the reasons for which s/he has requested the information, except when one of the permissible exceptions is involved.[37] The person who has received the information has the right to disseminate and publish it through any means.[38]

25. In addition, the State should have a simple, rapid and effective judicial remedy which, in the cases in which a public authority denies information, determines whether an infringement of the right to information of the applicant took place and, if so, orders the corresponding institution to deliver the information.[39] The judicial authorities should be able to access the information *in camera* or on visits *in loco* to determine either if the arguments of State agencies are legitimate or to verify whether purportedly nonexistent information is indeed so.

26. Fourth, the State has the obligation to adopt well-founded written decisions in the cases in which the information is denied. Such a decision should make it possible to understand the motives and norms on which the authority based its decision not to deliver the information or part of it and determine whether such a restriction is compatible with the parameters provided for by the Convention.[40]

27. In addition, the State should adopt norms, policies and practices that make it possible to conserve and administer the information appropriately. In this regard, the 2004 Joint Declaration of the rapporteurs for freedom of expression of the UN, OAS and OSCE explains that "public authorities should be required to meet minimum record management standards," and that "systems should be put in place to promote higher standards over time."[41]

28. Finally, the State has the obligation to produce, recover, reconstruct or capture the information it needs in order to comply with its duties under international, constitutional or legal norms. In this regard, for example, if information that it should safeguard was destroyed or illegally removed and such information was necessary to clarify human rights violations, the State should, in good faith, make every effort within its reach to recover or reconstruct said information, in the terms already described.[42]

29. In any case, when the response to the applicant is that the information is nonexistent, the State should indicate all the procedures carried out to try to recover it or reconstruct it in such a way that said procedures may be subject to judicial review.[43] In this regard, the Court indicated that in cases in which a punishable act is being investigated, the decision to maintain the confidentiality or deny delivery of information or to establish whether it exists or is nonexistent, cannot depend on the state organ to whose members the commission of the event being investigated is attributed.[44]

---

[36] Idem, para. 163.

[37] I/A Court H.R., *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Exception, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219, para. 197.

[38] 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. I/A Court H.R., *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Exception, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219, para. 199.

[39] Idem, para. 137.

[40] Idem, para. 122.

[41] Joint Declaration of the Rapporteurs for Freedom of Expression of the UN, OAS and OSCE, (2004). Available at: http://www.cidh.org/relatoria/showarticle.asp?artID=319&lID=1.

[42] IACHR, Report of the Special Rapporteur for Freedom of Expression, 2009. OAS/Ser.L/V/II.Doc. 51, December 30, 2009, chap. IV, para. 83.

[43] I/A Court H.R., *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Exception, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219, para. 211.

[44] I/A Court H.R., *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Exception, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219, para. 202.

30. With regard to violations of human rights, the Court has established that "every person, including the next of kin of the victims of grave violations of human rights, has the right to the truth. Therefore, the next of kin of the victims and society as a whole must be informed of everything that has happened in connection with said violations."[45]

31. Particularly in transitional justice processes, States should adopt novel, effective and reinforced measures to allow the victims and their relatives access to information on human rights violations committed in the context of the past regime.

32. Indeed, to offer true guarantees of non-repetition, the transition should break from the culture of authoritarianism in which secrecy in public management predominates, particularly regarding human rights violations.[46] This opacity in State proceedings is fertile ground for the renewed commission of serious human rights violations. Maintaining secret enclaves under the control of institutions accused of committing the violations of the past is of no use to the transitional process and hinders full consolidation of the democratic system by maintaining enclaves of authoritarianism. For this reason, we insist that transitional processes should incorporate special guarantees to protect the right of access to information on human rights violations, as mechanisms to strengthen the establishment of genuine rule of law on the basis of acknowledgment of the atrocities committed in the past and adoption of the necessary measures to prevent them in the future. This is a fundamental debt to all those persons whose unjust suffering we were unable to avoid and whom today we have the duty to protect.

### 4. The Court's judgment in the case of *Gomes Lund et al (Guerrilha do Araguaia) v. Brazil* and the right of access to information

33. On November 24, 2010, in its verdict in the case of *Gomes Lund et al*, the Inter-American Court declared that the State of Brazil had violated its international obligations as a result of the military operations of the Brazilian army during the years 1973 and 1974, the result of which was the disappearance and death of the alleged members of the resistance group known as *Guerrilha do Araguaia*. The Court also found Brazil responsible for the absence of investigations, sanctions and suitable reparations to the victims of these operations. In its verdict, the Court found, *inter alia*, that the State had violated the right of access to information of the relatives of the victims of the military incursions by failing to provide them the information that existed on these operations in a timely manner.

34. In point of fact, one of the issues the Court had to resolve in the case was whether the State's refusal to turn over all the information available in military archives on the abovementioned military operations had violated the right of access to the information of the relatives of the victims who were disappeared and murdered. In the Commission's application to the Court and during the litigation of the case, the IACHR put forward the arguments set forth in the preceding paragraphs of this document. For the reasons set forth below and based on the standards cited in the paragraph immediately preceding, the Court found that despite the State's most recent efforts to deliver all the available information, the right of access to information of the victims and their relatives, enshrined in Article 13 of the American Convention, had been violated. Consequently, it ordered the State to continue implementing initiatives to search, archive and publish all the information on the *Guerrilha do Araguaia* as well as the information related to human rights violations during the military regime.[47] The Court further ordered Brazil to adopt all

---

[45] I/A Court H.R., *Case of the 19 Tradesmen v. Colombia. Merits, Reparations and Costs.* Judgment of July 5, 2004. Series C No. 109, para. 261; I/A Court H.R., *Case of Carpio Nicolle et al. v. Guatemala. Merits, Reparations and Costs.* Judgment of November 22, 2004. Series C No. 117, para. 128, and, 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, para. 274. I/A Court H.R., *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Exception, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219, para. 202.

[46] See IACHR, Report of the Special Rapporteur for Freedom of Expression, 2008. OAS/Ser.L/V/II.134.Doc 5 rev.1, February 25, 2009, chap. IV, para. 3.

[47] I/A Court H.R., *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Exception, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219, para. 292.

the legislative, administrative and other measures necessary to strengthen its normative framework on access to information, in accordance with inter-American standards.[48]

35. To support its position, the Court began by clarifying the scope of the right of access to information of the victims of grave human rights violations.[49] As mentioned in the previous paragraph, the Court found that victims have the right to access information on human rights violations in a direct and timely manner. In this respect, and based on the right of access to justice and access to information, the Court reaffirmed the obligation to satisfy the right of victims of grave human rights violations and their relatives, as well as of society as a whole, to know the truth.[50]

36. The Court indicated that the public official to define whether or not the authority delivers the information requested or establishes whether it exists cannot lie with the authority accused of violating human rights.[51] Likewise, the Court recognized that the right of access to information is not fully satisfied with a state response in which it is declared that the information requested is nonexistent.[52] When the State has the obligation to conserve information or to capture it and considers however that it does not exist, it should set forth all the steps it took to try to recover or reconstruct the lost or illegally removed information. Otherwise, the right of access to information is understood to be violated.[53] Finally, the Court understood that the right of access to information should be guaranteed by means of a suitable and effective remedy that is resolved within a reasonable time.[54]

37. The most important facts of the case in point regarding the right of access to information can be summarized in the following manner: on February 21, 1982, the relatives of the victims of forced disappearance of the military operations against the *Guerrilha do Araguaia*, filed a public civil action with the sole objective that all the information on these operations be turned over to them in order to know "the truth of what occurred." On June 30, 2003, 21 years after the action was initiated and after delays and conflicting decisions,[55] the verdict of first instance ordered the State to turn over the respective information to the victims and their relatives within a term of 120 days. The State, however, again filed a series of appeals that delayed the definitive judicial decision until October 9, 2007. Nonetheless, according to the Court, it was only in March 2009 that compliance with this judgment was actually ordered and the State began to execute acts tending to comply with the decision, which included, *inter alia*, the delivery of around 21,000 documents from the National Archive.

38. In its judgment, the Court recognizes the important advances made by the State of Brazil on this issue, but underscores three important facts. First, it calls attention to the fact that during the entire public access proceeding, the State alleged that the information did not exist and it was therefore impossible to deliver it, while in 2009 it delivered a considerable amount of information related to the issue in question. Second, the Court observes that the State had failed to provide the available information

---

[48] I/A Court H.R., *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Exception, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219, para. 293.

[49] Corte I.D.H. *Caso Gomes Lund y otros (Guerrilha do Araguaia) v. Brasil.* Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 24 de noviembre de 2010. Serie C No. 219, párr. 197.

[50] I/A Court H.R., *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Exception, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219, para. 200.

[51] I/A Court H.R., *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Exception, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219, para. 202.

[52] I/A Court H.R., *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Exception, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219, para. 202.

[53] I/A Court H.R., *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Exception, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219, para. 211.

[54] I/A Court H.R., *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Exception, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219, para. 219-225.

[55] I/A Court H.R., *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Exception, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219, para. 222.

notwithstanding the fact that the first judicial requests were made in 2003. Finally, the Court calls attention to the fact that the definitive judgment and its subsequent execution were delayed unjustifiably for decades. These three facts, and the consideration that the victims had the right to access the information requested and to a remedy that would protect this right within a reasonable time, led the Court to declare the international responsibility of the State for the violation of the right of access to information enshrined in Article 13 of the American Convention.

39. In one of its most important paragraphs, the Court indicates: "The State cannot defend itself by citing the lack of evidence of the existence of the requested documents. Rather, it should justify the failure to provide them by demonstrating that it has adopted all the measures within its reach to prove that the information requested indeed did not exist. It is essential, in order to guarantee the right to information, that the public authorities act in good faith and diligently carry out the actions necessary to ensure the effectiveness of this right, especially when it is a question of knowing the truth of what happened in cases of serious human rights violations such as the forced disappearances and extrajudicial execution in the present case."[56]

40. Consequently, as has been indicated, the Court ordered the State to continue implementing initiatives to search, archive and publish all information on the *Guerrilha do Araguaia* as well as the information relating to human rights violations that occurred during the military regime.[57] It further ordered Brazil to adopt all the legislative, administrative and other measures necessary to strengthen its normative framework on access to information, in accordance with inter-American standards.[58]

[56] I/A Court H.R., *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Exception, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219, para. 211.

[57] I/A Court H.R., *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Exception, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219, para. 292.

[58] I/A Court H.R., *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Exception, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219, para. 293.

# CHAPTER IV

## JUDICIAL BEST PRACTICE WITH RESPECT TO ACCESS TO INFORMATION IN THE AMERICAS

### A. Introduction

1. The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) presents this second report on best judicial practice with respect to access to information in the Americas[1]. This document is the result of numerous academic and civil society gatherings held during 2010 in various countries of the hemisphere, in which meetings were held with judges, academics, and representatives of state entities and civil organizations in order to share national experiences concerning the right of access to information.[2]

2. In recent years, this right has developed notably in the countries of the region, as evidenced by the incorporation into their legal systems of constitutional provisions recognizing this right, as well as the bodies of law developing it, such as by the transparency and access to information laws enacted in various countries in the hemisphere.[3]

3. The growing importance of national judges in guaranteeing human rights—a trend that includes the right of access to information—is also beyond question. Indeed, the content of this fundamental right is fast-developing, and is enriched by the court decisions that require its enforcement and protection in specific situations. In this way, they put the provisions of the international instruments, constitutional norms and national laws into practice.

4. Accordingly, the Office of the Special Rapporteur has put every effort into preparing this second report to present some of the court decisions that constitute best practices with respect to the protection and guarantee of the fundamental right of access to information. The report is divided into two parts: the first addresses the concept of best practice, and the second includes the selected cases and court decisions.

5. In the first part, the Office of the Special Rapporteur discusses the concept of best judicial practice with respect to human rights and access to information, with the aim of establishing parameters to define the selection of the court decisions and the elements that make it possible to consider them to be best practices.

6. The second part presents a chapter on cases that compiles judgments from different countries in the region, organized thematically according to the inter-American standards on access to information and reviewed in a manner that makes it easy to understand how each decision constitutes a local development of those regional standards.

7. Some countries in the region have given specialized, non-judicial bodies the responsibility of guaranteeing the right of access to information, as is the case of Mexico's Federal Institute for Access to Information and Protection of Data [*Instituto Federal de Acceso a la Información y Protección de Datos de Mexico*] (IFAI) or the Chilean Council for Transparency [*Consejo para la Transparencia*]. The decisions of these specialized bodies are enormously important, and have resulted

---

[1] IACHR. Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter IV: The Right of Access to Information. Available at: http://www.cidh.org/pdf%20files/Annual%20Report%202009.pdf

[2] The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights gratefully acknowledges the Swiss Confederation and the organization Transparency for Colombia (*Transparencia por Colombia*), for their support of the International Seminar on the Right of Access to Information, held in the city of Bogotá (Colombia) on November 25, 2010. This report is based on the discussions and working groups that took place during that seminar.

[3] The countries of the region that have laws on access to information are: Antigua and Barbuda, Belize, Canada, Colombia, Chile, Ecuador, El Salvador, the United States, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Peru, the Dominican Republic, Trinidad and Tobago, and Uruguay.

in notable progress in the protection of the right of access to information in their respective countries. The examination of these bodies' work, in particular that of the IFAI, which has been operating for nearly eight years,[4] would be worthy of a separate volume. Nevertheless, given that in most of the States the protection of this right continues to be incumbent upon national judges, this report shall be limited to the discussion of court decisions, with some important exceptions—especially in the case of Chile, given the recent implementation of the law and the importance of underscoring, for that very reason, the decisions of the Council.

8. Finally, it should be noted that the purpose of preparing a report on judicial best practice is to publicize those decisions that properly illustrate the scope and content of the right of access to information, enriching the doctrine and the body of case law, while incorporating new developments and raising regional standards. The dialogue between the bodies of the inter-American system and the national legal systems is thus solidified, and this benefits the citizens of the hemisphere and contributes to the guarantee and protection of their rights, the effective exercise of citizenship, and the oversight of government authority. In turn, the democratic system in the region is strengthened.

**B. Judicial best practice with respect to human rights**

9. The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) classifies this study of court decisions under the heading of "best practices," and therefore considers it appropriate to define the concept of best judicial practice with respect to human rights and access to information, in order to make clear the criteria by which the judgments reviewed in the second part were selected.

10. The expression "best practice" has its origin in the English language, in which the term *good* or *best practices* is used to indicate those examples of actions that are particularly successful, original, or innovative in any field of human endeavor. The importance of best practice is that it provides indicators to identify, find, and evaluate specific decisions, and to promote the dissemination of these model behaviors.[5]

11. In the area of human rights, best practice consists of State conduct that involves institutionalized and sustainable objectives, with levels of coordination and harmonization, aimed at the creation of public policies with verifiable results with respect to the guarantee and protection of individual rights.[6]

12. In the opinion of the Office of the Special Rapporteur, a best judicial practice with respect to access to information is a court decision that has tangible and measurable repercussions in terms of citizens' greater access to information, and which can serve as a model for other judges to learn about and adapt to their own situations. The determination of a best judicial practice is based on an objective criterion consisting of the adherence of the court decision to a specific normative perspective, which in the case of this report is that of the inter-American standards on the right of access to information.

13. In addition to the elements of the concept of best judicial practice with respect to access to information, the Office of the Special Rapporteur finds it relevant to consider that best practices, by having a tangible effect, also allow for a change in institutional culture at two levels: i) in the government

---

[4] See: Federal Institute of Information Access and Data Protection [*Instituto Federal de Acceso a la Información y Protección de Datos*], available at: www.ifai.org.mx

[5] Cabrera Cabrera, Pedro José. *¿Qué es una Buena Práctica?* Ministry of Labor and Social Affairs. European Parliament Office in Spain, 2004.

[6] IACHR. Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter IV: The Right of Access to Information, par. 91. Available at: http://www.cidh.org/pdf%20files/Annual%20Report%202009.pdf

that moves away from secrecy and opts for proactive transparency and the dissemination of information in the public interest; and ii) in the judiciary that, knowing the manner in which other judges have decided difficult cases, renders decisions fostering greater respect, increased guarantees, and the protection of the right of access to information.

14. It is important to clarify that another strong point of best practices is that they are not inimitable experiences; on the contrary, by having an objective and common reference such as the inter-American standards on access to information, they can be followed by other judges from the same country or other countries in the region.[7] That is precisely the origin of this report—a dialogue among the hemisphere's countries about their experiences, their challenges, and their best judicial practices with respect to access to information.

15. The process for identifying best judicial practice with regard to access to information is above all a process of study and observation, in which best practice and its transformational capacity was identified by its originality and in accordance with the previously mentioned criteria. The Office of the Special Rapporteur underscores that this power to create change is the greatest strength of best practice.[8] It is a constant, constructive cycle that leads to greater protection of the rights of citizens, increased transparency, the progressive shedding of secrecy, and the awareness that democracies are anything but hidden power that conceals and is concealed—and that, on the contrary, openness, transparency, and visibility are the essence of democracy.[9]

16. Finally, the Office of the Special Rapporteur emphasizes in this report the role that is played by national judges at all levels and ranks of authority in guaranteeing and protecting the fundamental right of access to information. It also highlights the existence of court decisions that develop and raise the standards on access to information. Nevertheless, a study of all the decisions rendered on the issue of access to information is beyond the scope of this report. Therefore, the Office of the Special Rapporteur shall refer solely to those court decisions of which it has become aware and which reflect best judicial practice with respect to access to information according to the previously mentioned criteria.

### C. National Decisions that Constitute Judicial Best Practice with respect to Access to Information

17. The right of access to information has been recognized in Article 13 of the American Convention on Human Rights, as well as in some of the constitutions of the region's countries, and it has been developed by national laws on transparency and access to information. The Inter-American Court of Human Rights has issued decisions on its content and scope on several occasions, and the Inter-American Commission on Human Rights recently prepared a document entitled "The right of Access to Information in the Inter-American Legal Framework"[10]. As such, it is possible to identify a body of rules and set of standards that specify its scope and content.

18. This report on best judicial practice is an analysis that aims to provide elements on which the judges of the region's countries can base decisions that broaden the guarantee of the right of access to information. It is an effort that the Office of the Special Rapporteur has undertaken in order to

---

[7] Rioseco Ortega, Luís. *Buenas Prácticas para la Erradicación de la Violencia Doméstica en la Región de América Latina y el Caribe*. Serie Mujer y Desarrollo, CEPAL, Santiago de Chile, 2005. Available at: http://www.eclac.cl/publicaciones/xml/4/22824/lcl2391e.pdf

[8] Rueda-Catry, Marleen and Vega Ruíz, María Luz. *Buenas Prácticas de relaciones laborales in the Americas. Oficina Internacional del Trabajo – Oficina Regional para América Latina y el Caribe*, No. 199, p. 12. Available at: http://www.oit.org.pe/WDMS/bib/publ/doctrab/dt_199.pdf

[9] Bobbio, Norberto. *O Futuro da Democracia*. 8ª ed., Trans. Marco Aurelio Nogueira. Paz e Terra, Río de Janeiro, 2002, p. 107.

[10] IACHR. Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter IV: The Right of Access to Information, par. 11. Available at: http://www.cidh.org/pdf%20files/Annual%20Report%202009.pdf

determine the levels of protection of this right and the characteristics of each level of protection, and thereby to seek an increase and an improvement in its guarantee.

19. Presented below are some of the most important decisions that in the opinion of the Office of the Special Rapporteur constitute best practice with respect to access to information.[11] They are organized according to the principal standard developed therein, and identified so that they can be consulted in their entirety.

### 1. Case law on the nature and scope of the right of access to information as a fundamental autonomous right

20. Various courts in the region have held that the right of access to information is fundamental and autonomous. Thus, for example, in ruling on a writ of constitutional protection (*amparo*) filed upon the refusal of an Education Board to provide information relating to its financial balance sheets, the Constitutional Chamber of the Supreme Court of Costa Rica, in a January 15, 2003 decision[12], emphasized the importance of access to information as a mechanism of citizen oversight of government. As such, bearing in mind the nature of the entity that controlled the information, as well as its status as a public entity, the Court ordered that the information be provided.

21. The court stated that "[…] the Constitution guarantees free access to 'administrative departments for purposes of information on matters of public interest,' a fundamental right which legal scholars have called the right of access to government archives and records; however, the more accurate name is the right of access to government information, given that access to the physical or virtual files of governments is the instrument or mechanism for accomplishing the proposed aim, which is for public citizens to determine the information being held therein."[13]

22. In the same vein, the Constitutional Chamber established that "the content of the right of access to government information is truly broad, and consists of a bundle of entitlements held by the individual exercising the right, such as the following: a) access to government departments, agencies, offices and buildings; b) access to physical or automated (electronic database) archives, records, files, and documents; c) entitlement of the citizen to have knowledge of the stored personal or nominative data that affect him in some way; d) entitlement of the citizen to correct or eliminate those data if they are erroneous, incorrect or false; e) the right to know the content of the physical or virtual documents or files; and f) the right to obtain, at his own expense, certifications or copies of such documents or files."[14]

23. In further developing the issue, the Constitutional Chamber of the Supreme Court of Costa Rica, in a judgment handed down on September 5, 2008[15], identified the right of access to

---

[11] It is important to note that this report examines only those aspects of the court decisions that relate to the right of access to information and the rules that have been established in that respect by the courts mentioned herein.

[12] Constitutional Chamber of the Supreme Court of Costa Rica, Case: 02-002774-0007-CO, Decision: 2003-00136, January 15, 2003. Available at: http://scij.org.poder-judicial.go.cr/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=1&nValor1=1&nValor2=224837&strTipM=T&lResultado=2

[13] Constitutional Chamber of the Supreme Court of Costa Rica, Case: 02-002774-0007-CO, Decision: 2003-00136, January 15, 2003. Available at: http://scij.org.poder-judicial.go.cr/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=1&nValor1=1&nValor2=224837&strTipM=T&lResultado=2

[14] Constitutional Chamber of the Supreme Court of Costa Rica, Case: 02-002774-0007-CO, Decision: 2003-00136, January 15, 2003. Available at: http://scij.org.poder-judicial.go.cr/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=1&nValor1=1&nValor2=224837&strTipM=T&lResultado=2

[15] Constitutional Chamber of the Supreme Court of Costa Rica, Case: 02-002774-0007-CO, Decision: 2003-00136, January 15, 2003. Available at: http://scij.org.poder-judicial.go.cr/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=1&nValor1=1&nValor2=224837&strTipM=T&lResultado=2

information as a public, subjective, and special right. In this case the court decided the petition for a constitutional remedy filed by a journalist from the newspaper *La Nación,* alleging the violation of the right of access to information and the right of petition following the refusal of the Ministry of the Treasury to provide the journalist with information concerning the acquisition of Costa Rican public debt by the People's Republic of China. The Ministry asserted that it was prohibited from disclosing the requested information because of legal regulations on stock exchange secrecy.

24. The court held that "[…] the right to information is considered an indispensable legal guarantee that enables citizens to exercise, to a greater or lesser extent, their participation in public undertakings. From this point of view, it is a public and subjective right. It is a public right insofar as it requires the participation of the State to obtain information on the activities conducted by government bodies. It is also a subjective right, because it assumes a legal capacity, subject to regulation under the legal system. That right to information, furthermore, is special in that it is considered to guarantee a constitutional interest: the formation and existence of a free public opinion. This guarantee is particularly important because, given that it is a necessary prior condition for the exercise of other rights inherent in the proper functioning of a democratic system, it in turn becomes one of the pillars of a free and democratic society."[16]

25. In a decision issued on September 11, 2009 (Judgment No. 48), the Trial Court of Mercedes, Uruguay (Second Rotation), also upheld the right of access to information of the director of a newspaper, after the president of the Departmental Board refused to provide the requested information on advertising expenses and the names of the media outlets, programs, or journalists to whom the Board had given advertising contracts.

26. In that case, the judge stressed that the right to information is fundamental, stating that it "[…] is a basic right, inherent in the human personality […], the right of access to public information emanates from it […]. The right of access to public information is one of the third-generation rights, given that it is an individual right as well as a collective right of society as a whole, and it is related to transparency in government, to the need to investigate, analyze, and inform the public of the content of public documents […]."[17]

27. For its part, in a decision dated May 28, 2010[18], the Second Chamber of the Constitutional Court of Peru ordered a university to provide information that had been requested on the following matters: the selection and grading methods used for its admissions examination; the number of administrative complaints filed against the institution relating to academic quality and the entry exam method; and the existence of some type of national or international accreditation system by which the institution was accredited.

28. In this case, the Court made reference to the fundamental nature of the right of access to information, as well as to the national and international recognition that right enjoyed. It stated that "the fundamental right of access to public information is recognized not only in Article 2(5) of the Constitution of 1993 but also in Article 13 of the American Convention on Human Rights, having been developed by

---

[16] Constitutional Chamber of the Supreme Court of Costa Rica, Case: 02-002774-0007-CO, Decision: 2003-00136, January 15, 2003. Available at: http://scij.org.poder-judicial.go.cr/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=1&nValor1=1&nValor2=224837&strTipM=T&lResultado=2

[17] Trial Court of Mercedes, Uruguay (Second Rotation), Judgment No. 48, September 11, 2009. Available at: http://www.informacionpublica.gub.uy/sitio/descargas/jurisprudencia-nacional/sentencia-juzgado-letrado-de-2do-turno-de-mercedes.pdf

[18] Second Chamber of the Constitutional Court of Peru, Case N.º 04146-2009-PHD/TC, May 28, 2010. Available at: http://www.tc.gob.pe/jurisprudencia/2010/04146-2009-HD.html

the Inter-American Court of Human Rights in its judgment in the *Case of Claude Reyes v. Chile* of September 19, 2006, paragraph 77 of the operative part."[19]

29. In a judgment handed down on January 29, 2003 the same Court granted the writ of *habeas data* filed by the petitioner seeking the complete and accessible disclosure of requested information pertaining to expenses incurred by former president Alberto Fujimori and his retinue during the more than 515 days he spent out of the country while in office. In that respect, the petition requested that the following specific information be disclosed: a) the amount allocated for travel expenses; b) the amount allocated for representation expenses; c) the airfare costs of each trip taken; d) the fuel and operating expenses of the presidential aircraft; and e) the amount allocated for the expenses of the presidential retinue, among other things.

30. In protecting the right of access to information, the Court maintained: "the right of access to public information clearly is closely related to one of the subject matters protected by freedom of information. And just as in the case of the latter, it must be noted that the right of access to public information has a dual dimension. On one hand, it is an individual right, in the sense that it guarantees that no person shall be arbitrarily prevented from accessing information that is stored, maintained, or prepared by the various agencies and bodies of the State, without limitations other than those provided for as constitutionally legitimate. This right enables persons, individually, to be able to delineate their life plans, but also to fully exercise and enjoy other fundamental rights. From this perspective, in its individual aspect, the right of access to information is a prerequisite or means for the exercise of other fundamental freedoms, such as the rights of investigation, opinion, or expression, to name a few."[20]

31. In the same respect, the Constitutional Court of Colombia has on multiple occasions underscored the autonomous character of the right of access to information. For example, in Judgment T-1029 of 2005, the Court ordered the Municipality of Bogotá to disclose within forty-eight hours all of the bids submitted in a government contracting process, which had been denied to a citizen on the argument that they were confidential according to the rules of an international entity that was participating in the process.

32. In the Colombian Court's opinion, the right of access to information is based on the constitutional, participatory, and pluralist model, which adopts citizen oversight of government activity as one of its postulates, and for which knowledge of public documents is essential.

33. The consequence of the existence of an autonomous fundamental right of access to information is that citizens are authorized to "[…] consult and reproduce public documents, with the exception of those excluded by law […]."[21] In addition, its violation is grounds for a writ for the protection of constitutional rights (*acción de tutela*) to seek the effective protection of this fundamental constitutional right.

34. For its part, the Civil and Commercial Appeals Court of Asunción, Paraguay (Third Rotation) also spoke to the autonomous nature of the right of access to information. The case leading to this judgment involved a request made by Mr. Picco Portillo to the Mayor of the City Lambaré, in which he asked for "a copy of the Budget approved for the year 2007, projects involving the payment of royalties to the Municipality, and the number of employees appointed and hired, detailed by department and position held." The mayor refused to provide that information, so Mr. Picco Portillo filed a petition for a

[19] Second Chamber of the Constitutional Court of Peru, Case N.º 04146-2009-PHD/TC, May 28, 2010. Available at: http://www.tc.gob.pe/jurisprudencia/2010/04146-2009-HD.html

[20] Constitutional Court of Peru. Judgment in Case N° 1797-2002-HD/TC, January 29, 2003. Available at: http://www.tc.gob.pe/jurisprudencia/2003/01797-2002-HD.html.

[21] Constitutional Court of Colombia. Judgment T-1029/05. Case T-1050774. Bogotá, Colombia, October 13, 2005. Available at: http://www.corteconstitucional.gov.co/relatoria/2005/t%2D1029%2D05.htm

constitutional remedy. His petition was not granted, and he then filed a motion for nullity against that ruling.

35. In ruling on the motion for nullity, the Civil and Commercial Appeals Court of Asunción, Paraguay (Third Rotation) affirmed in Judgment No. 51 of May 2, 2008 that the right of access to information "is based on the most general right, essential to deliberative and participatory democracies, to freely form opinions and participate responsibly in public affairs; it contributes to the formation of one's own opinion, and that of the public, which is closely tied to political pluralism. It is thus an essential instrument in matters of interest to civic and collective life, and determines participation in the handling of 'public' matters—that is, the system of relationships and inter-relationships that constitute the essential basis for democratic coexistence." Thus, the Court held that access to information was a fundamental right, essential to the formation and strengthening of a democratic system.[22]

**2. Case law on universal entitlement to the right of access to information**

36. The courts of the region have also addressed universal entitlement to the right of access to information. This characteristic implies, as the Inter-American Court of Human Rights has held, that it is not necessary to prove a direct interest or a personal stake in the matter in order to obtain information in the possession of the State.[23] Most of the judgments cited herein and in the previous annual reports underscore the universal nature of the right of access to information. Therefore, it suffices to mention only a few of the most important references to the issue.

37. The Constitutional Chamber of the Supreme Court of Costa Rica—ruling on a petition for a constitutional remedy filed by a citizen based on the obstruction of access to information under the control of an association of doctors and surgeons relating to the performance and professional accreditation of its members—reiterated that every person has the right to access information. In this respect, the Court established that "the right to information is one of the rights inherent to the human person, and refers to an individual public freedom for which the State itself must foster respect."[24] This tenet was reiterated, among other places, in the previously cited judgment of the same Court on the right of a journalist to obtain information on the purchase of Costa Rican public debt by the People's Republic of China. In that case, the court stressed that "the individual holder of the right enshrined in Article 30 of the Constitution is every person, or every citizen; as such, the purpose of the framers of the constitution was to reduce government secrecy to a minimum and to broaden government transparency and openness."[25]

38. In a 2003 judgment, the Supreme Court of Costa Rica ordered a Board of Education to provide information that had been requested of it with regard to its budget, without it being able to demand additional requirements.[26] In the Court's view, the information that the petitioner requested on

---

[22] Civil and Commercial Appeals Court of Asunción (Third Rotation), Judgment No. 51, May 2, 2008. Available at: http://www.idea.org.py/gfx/espanol/descargas/normativa_ambiental/jurisprudencia/nacional/Caso_Picco_Portillo_acceso_Informacion.pdf

[23] I/A Court H.R., *Case of Claude Reyes, et al.* Judgment of September 19, 2006. Series C No. 151, paras. 76 & 78.

[24] Constitutional Chamber of the Supreme Court of Costa Rica, Petition for Constitutional Remedy, Case: 07-012599-0007-CO, Decision No. 2007015343 October 23, 2007. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=7&nValor1=1&nValor2=396257&strTipM=T&lResultado=61&strTem=ReTem

[25] Constitutional Chamber of the Supreme Court of Costa Rica., Case: 08-003718-0007-CO, Decision: 2008-013658, September 5, 2008. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=5&nValor1=1&nValor2=419511&strTipM=T&lResultado=42&strTem=ReTem

[26] Constitutional Chamber of the Supreme Court of Costa Rica, Case: 02-002774-0007-CO, Decision: 2003-00136, January 15, 2003. Available at: http://scij.org.poder-judicial.go.cr/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=1&nValor1=1&nValor2=224837&strTipM=T&lResultado=2

the Board of Education's financial statements or balance sheets was "information that, insofar as it pertains to a public body and public funds, must be provided to the petitioner, without it being covered by any type of secrecy or restricted access. [In this respect] there is no reason for the petitioner to tell the Board of Education about the investigation referred to in the initial request, as that is not a condition for the full exercise and enjoyment of the right contained in Article 30 of the Constitution. For purposes of deciding this appeal, the fact that the petitioner was invited to a meeting with the members of the Board of Education to explain certain aspects of the timely requested information, and the fact that the petitioner declined to attend, is irrelevant; from the beginning they could have provided the information without the need for further explanation."[27]

39. In the judgment in which it ordered the disclosure of information concerning the educational quality of a university, the Second Chamber of the Constitutional Court of Peru also established that the right of access to information consists "of the capacity that every person has to request and access information that is in the possession, mainly, of state entities."[28] The court ruled similarly in the above-cited decision in which information was requested on the expenses that had been incurred as a result of the trips taken by a former president of that country and his retinue, noting that "[…] the right of access to information has a collective dimension, as it guarantees the right of all persons to receive necessary and timely information, so that a free and informed public opinion may be formed, as required in an authentically democratic society."[29]

40. Finally, the Civil and Commercial Appeals Court of Asunción, Paraguay (Third Rotation), in the above-referenced Judgment No. 51 of May 2, 2008, stated that in order to demand access to information it was not necessary to prove a specific interest in it; rather, any person is entitled to request information of public entities. In its opinion, to demand proof of interest in the information as a prerequisite for its disclosure is a demand that is "improper and inconsistent with the exercise of the right to information, since it exists and is justified in its own right, in accordance with the general purposes of participation and oversight in democratic life."[30]

41. Universal entitlement to the right of access to information is directly related to the premise that proof of direct interest in the requested information cannot be required. Accordingly, the courts have indicated that petitioners need not provide reasons for their requests for public information. On this point, in a decision handed down on September 3, 2009, the Constitutional Court of Peru admitted a complaint that had been ruled inadmissible by the Chiclayo Specialized Constitutional Law Chamber of the Superior Court of Justice of Lambayeque because, among other reasons, the plaintiff had not disproved the possible prejudice to an investigation that would result from the request for information.

42. The Court indicated with respect to this issue that the above argument "misrepresents the correct order and the burden of proof that exists in *habeas data* cases. First of all, requests for access to public information do not, on their face, have to provide any justification. The Constitution so specifies [when] it provides that information of a public nature may be requested 'without a statement of cause,' which is clearly based on the nature of the information; because it is public, the reasons for which such

---

[27] Constitutional Chamber of the Supreme Court of Costa Rica, Case: 02-002774-0007-CO, Decision: 2003-00136, January 15, 2003. Available at: http://scij.org.poder-judicial.go.cr/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=1&nValor1=1&nValor2=224837&strTipM=T&lResultado=2

[28] Second Chamber of the Constitutional Court of Peru, Case N.º 04146-2009-PHD/TC, May 28, 2010. Available at: http://www.tc.gob.pe/jurisprudencia/2010/04146-2009-HD.html

[29] Constitutional Court of Peru. Judgment in Case N° 1797-2002-HD/TC, January 29, 2003. Available at: http://www.tc.gob.pe/jurisprudencia/2003/01797-2002-HD.html

[30] Civil and Commercial Appeals Court of Asunción (Third Rotation), Judgment No. 51, May 2, 2008. Available at: http://www.idea.org.py/gfx/espanol/descargas/normativa_ambiental/jurisprudencia/nacional/Caso_Picco_Portillo_acceso_Informacion.pdf

information is desired need not be explained, unless it affects personal privacy, national security, or [some other exception] provided by law."[31]

43. Along the same lines, "if there is any doubt as to whether certain information is public in nature, it must be explained by the Government, which must prove that it falls within one of the exceptions to access to public information."[32]

### 3. Case law on the principle of maximum disclosure

44. The courts of the region have referred generally to the principle of maximum disclosure as a guiding principle, and specifically to the different spheres in which it should be applied. In this section, the Office of the Special Rapporteur reviews the most important court decisions that develop the principle of maximum disclosure, and in the following paragraphs it sets forth some of the fields in which the principle has been used to decide specific cases in favor the right of access to information.

45. Chile's Council for Transparency has stated in general terms that any exceptions to the disclosure of information that can be used as a basis to consider all government documents confidential are invalid. Such was the Council's assertion when it examined complaints concerning access to audits performed by the internal auditing units of various State bodies during 2008 and the first quarter of 2009, as well as copies of prior audits that had been concluded during that same period. Those requests were denied by all of the agencies to which they were submitted,[33] which claimed that revealing that information would cause irreparable harm to the auditing process, which is essential to the proper oversight and continuous improvement of the government's work. They further claimed that it would be an impediment to the determination of strategic measures they intended to design.

46. In the decision it issued in this case on September 4, 2009, the Council held that even if "a new set of decisions or decision-making processes arises from a final audit report" nothing guarantees that it will be so. Therefore, to accept that that argument is sufficient to keep the information confidential "would mean that every document in the Government's possession would be confidential in nature." It added that even in the event that it were demonstrated that the audit report is cause for the adoption of a specific policy, measure, or final decision, "it would likewise be public once it was adopted."[34] This decision of the Council for Transparency warns of the risk that such a broad exception to the principle of maximum disclosure could end up canceling it out entirely.

---

[31] Decision of the Constitutional Court of Peru, Case No. 03652-2009-PHD/TC, September 3, 2009. Available at: http://www.tc.gob.pe/jurisprudencia/2010/03652-2009-HD%20Resolucion.html

[32] Decision of the Constitutional Court of Peru, Case No. 03652-2009-PHD/TC, September 3, 2009. Available at: http://www.tc.gob.pe/jurisprudencia/2010/03652-2009-HD%20Resolucion.html

[33] The bodies from which this information was requested were the following: the Ministry of the Interior, the Ministry of the Economy, the Ministry of the Treasury, the Ministry of Mining, the Ministry of National Assets, the Ministry of Justice, the Ministry of Planning, the Office of the Under Secretary of Telecommunications, and the National Council of Culture.

[34] Chilean Council for Transparency. Complaint code A11-09, September 4, 2009. Available at: http://www.consejotransparencia.cl/data_casos/ftp_casos/A11-09/A11-09_decision_web.pdf. Similarly, see: Chilean Council for Transparency. Complaint code A21-09, September 4, 2009. Available at: http://www.consejotransparencia.cl/data_casos/ftp_casos/A21-09/A21-09_decision_web.pdf; Complaint code A22-09, September 4, 2009. Available at: http://www.consejotransparencia.cl/data_casos/ftp_casos/A22-09/A22-09_decision_web.pdf; Complaint code A23-09, September 4, 2009. Available at: http://www.consejotransparencia.cl/data_casos/ftp_casos/A23-09/A23-09_decision_web.pdf; Complaint code A24-09, September 4, 2009. Available at: http://www.consejotransparencia.cl/data_casos/ftp_casos/A24-09/A24-09_decision_web.pdf; Complaint code A25-09, September 4, 2009. Available at: http://www.consejotransparencia.cl/data_casos/ftp_casos/A25-09/A25-09_decision_web.pdf; Complaint code A26-09, September 4, 2009. Available at: http://www.consejotransparencia.cl/data_casos/ftp_casos/A26-09/A26-09_decision_web.pdf; Complaint code A27-09, September 4, 2009. Available at: http://www.consejotransparencia.cl/data_casos/ftp_casos/A27-09/A27-09_decision_web.pdf; Complaint code A43-09, September 4, 2009. Available at: http://www.consejotransparencia.cl/data_casos/ftp_casos/A43-09/A43-09_decision_web.pdf; Complaint code A44-09, September 4, 2009. Available at: http://www.consejotransparencia.cl/data_casos/ftp_casos/A44-09/A44-09_decision_web.pdf

47. Likewise, the Council for Transparency has indicated that restrictions to the disclosure of information, given that they are exceptional, must be interpreted narrowly and restrictively. It so stated in its decision on a request for access to a list—including amounts, dates of signature, and other parties involved—of all of the research contracts entered into by two entities within the Ministry General Secretariat of Government, beginning on March 11, 2006. This information had been denied by the requested bodies, which argued that the information was confidential pursuant to the final clause of Article 22 of the Transparency Act, which establishes that "the results of surveys or opinion polls conducted by the authorized Government bodies shall remain confidential until the end of the presidential term during which they were conducted, in order to safeguard the proper performance of those bodies' duties."

48. The Council for Transparency dismissed the argument of the Ministry General Secretariat of Government, specifying that the last paragraph of Article 22 of the Transparency Act refers to the results of the surveys and opinion polls, not to the contracts entered into with the parties that performed those studies. Therefore, the exclusions, because they are exceptional, must be interpreted narrowly and restrictively, and cannot be extended to the documents regarding which the information is requested.[35]

49. Below is a review of court decisions that ordered the application of the principle of maximum disclosure to different situations in which the broadest access to information must be pursued.

### 4. Case law on the application of the principle of maximum disclosure to order access to information on government advertising

50. As mentioned previously, the Second Trial Court of Mercedes (Uruguay) protected a journalist's right of access to information following the refusal of a Departmental Board to provide him with information concerning the media outlets with which it had entered into advertising contracts and the budget earmarked for the performance of such contracts. The court found that the requested information had to be provided, since "the advertising expenditures, as well as the names of the media outlets, programs, or journalists to whom the Board had given advertising contracts are not confidential information under the law […]."[36]

51. According to the judge, "[…] not only is the requested information not confidential but also [according to the applicable law on the dissemination of public information] public bodies, whether or not they are State bodies, must routinely disseminate: […] information on the allocation and execution of budgets, with the results of the audits appropriate to each case; […] Concessions, invitations to bid, permits, or authorizations granted, specifying the holders or beneficiaries thereof; […] All statistical data of general interest, in accordance with the objectives of each body."[37]

### 5. Case law on access to information regarding the funding of political parties

52. The Constitutional Chamber of the Supreme Court of Costa Rica addressed the issue of access to the financial information of political parties, and held that "[…] the funds contributed by the State—because of their origin and purpose—are subject to the constitutional principles of openness and transparency, and the same is true under the law and the Constitution with respect to private

[35] Chilean Council for Transparency. Complaint code A32-09, June 30, 2009. Available at: http://www.consejotransparencia.cl/data_casos/ftp_casos/A32-09/A32-09_decision_web.pdf

[36] Trial Court of Mercedes, Uruguay (Second Rotation), Judgment No. 48, September 11, 2009. Available at: http://www.informacionpublica.gub.uy/sitio/descargas/jurisprudencia-nacional/sentencia-juzgado-letrado-de-2do-turno-de-mercedes.pdf

[37] Trial Court of Mercedes, Uruguay (Second Rotation), Judgment No. 48, September 11, 2009. Available at: http://www.informacionpublica.gub.uy/sitio/descargas/jurisprudencia-nacional/sentencia-juzgado-letrado-de-2do-turno-de-mercedes.pdf

contributions, given that political parties are subject to a system of public law once they begin working and operating […]."[38]

53. In the opinion of the Costa Rican Court, the Constitution of that country does not allow any political party to shield itself with alleged financial or banking secrecy in order to prevent public knowledge of the origin and amounts of private contributions. According to the Court, "subjecting such contributions to the principle of publicity derives from the public interest nature of the information about them, given that the constitutional provision aims to ensure the legality, financial well-being, and transparency of the funds used to finance a political campaign by which the electorate designates the individuals who will hold publicly elected office, from where they will shape and adopt the major guidelines for the country's institutional policy."[39]

### 6. Case law on the right to know salaries or incomes paid from public funds

54. The Superior Administrative Court of the Dominican Republic, in a judgment handed down on September 1, 2010[40], ruled on a writ of constitutional protection (*amparo*) filed by a journalist who was partially denied information concerning the payroll of the House of Representatives of the Dominican Republic. Pursuant to the journalist's request, the Office of Access to Information of the House of Representatives forwarded information listing positions, accrued salaries, addresses, departments and units of the institution, and number of staff and employees, as well as the total gross amount of funds allocated to payroll. Nevertheless, the Office failed to send the names of the public servants, arguing that it was protecting their privacy.

55. In order to determine whether the information requested by the journalist was part of the private sphere of public employees, the court clarified what was understood as personal data, establishing that it is information about a person concerning his residence, telephone number, medical records, social or ethnic origin, physical, psychological or emotional characteristics, photographs, and all information pertaining to his person and his privacy. Accordingly, it held that although one's name is what identifies and distinguishes a person, the names of employees and staff on the payroll of a government enterprise are public information.[41]

56. Following this line of reasoning, the court held that according to the legal regulations on the issue, the list of employees, staff members, and lawmakers is information that is public in nature, and that its public disclosure does not affect a person's privacy or private life. As such, it held that the information requested cannot be understood to be an exception to the State's obligation to turn over information.[42]

---

[38] Constitutional Chamber of the Supreme Court of Costa Rica, Case: 08-003718-0007-CO, Decision No. 2008-013658, September 5, 2008. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=5&nValor1=1&nValor2=419511&strTipM=T&lResultado=42&strTem=ReTem

[39] Constitutional Chamber of the Supreme Court of Costa Rica, Case: 08-003718-0007-CO, Decision No. 2008-013658, September 5, 2008. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=5&nValor1=1&nValor2=419511&strTipM=T&lResultado=42&strTem=ReTem

[40] Cf. Superior Administrative Court of the Dominican Republic, Judgment # 089-2010 D/F 01-09-2010, September 1, 2010. Available at: http://issuu.com/o.p.d/docs/tribunal_superior_administrativo

[41] Cf. Superior Administrative Court of the Dominican Republic, Judgment # 089-2010 D/F 01-09-2010, September 1, 2010. Available at: http://issuu.com/o.p.d/docs/tribunal_superior_administrativo

[42] Cf. Superior Administrative Court of the Dominican Republic, Judgment # 089-2010 D/F 01-09-2010, September 1, 2010. Available at: http://issuu.com/o.p.d/docs/tribunal_superior_administrativo

57. In addition, the Constitutional Chamber of the Supreme Court of Costa Rica, in a June 11, 2010 decision[43] ruled to uphold the right of access to government information of the Union of Professionals, Technicians and Similar Occupations of the People's and Community Development Bank [*Banco Popular y de Desarrollo Comunal*], following the refusal of the bank's Director of Human and Organizational Development to provide in detail the information the union had requested with regard to: i) the total number of positions with fixed salaries and with base salaries plus bonuses; ii) the departments to which each one of those positions belonged; iii) the salary amounts for each bracket within the fixed salary and base salary plus bonuses categories. The requested authority indicated that the details of the salaries of each particular position could be disclosed provided that the employees gave their permission. The Court found that the petitioner's request had to be answered, since the information requested was public in nature.

58. On this point, the Constitutional Chamber held that "the requested authority is mistaken as to the scope of the petitioner's request, as what it is requesting is the base salary and the fixed salary for each category described in the table of reference, and not—as the authority understands—the individual salaries of the employees. As such, the requested information is clearly in the public interest and, to that extent, can legitimately be requested by any citizen. Accordingly, the verified denial at issue in this case constitutes an outward violation of the right of access to government information."[44]

### 7. Case law on the publicity of statistical data

59. The Constitutional Court of Guatemala issued a judgment on the scope of the publicity of information gathered by the National Statistics Institute. This judgment was rendered based on an advisory opinion requested by the President of the Republic, in which, among other things, the Court was asked whether the censuses conducted by the National Statistics Institute—which could be useful in helping to carry out social programs—are confidential.

60. In its decision of January 20, 2009, the Constitutional Court held that the information contained in "the censuses conducted by the National Statistics Institute, with the objective of supporting the implementation of the State's social programs, is confidential, unless the persons providing the information expressly authorize access to the information they give, or as determined under the legal provisions that allow for such access." Nevertheless, it also made clear that, "statistical results that do not individually identify the sources of information are not subject to this confidentiality," since they do not contain personal or family information.[45]

61. For its part, the Chilean Council for Transparency has had the opportunity to rule on the State's duty to provide statistical data. This opportunity arose based on a petition submitted to the National Statistics Institute requesting the disclosure of the results of an employment survey, information on the increase of employment (during the month and over 12 months), levels of employment in the national workforce by age and by sex, developments in salaried employment, self-employment, service personnel, employers, and non-remunerated family members, during the previous month and its variation as compared to previous months. The National Statistics Institute determined that it could not turn over the information as requested, claiming that it was impossible to provide monthly figures because the Institute works principally with quarterly periods.

---

[43] Constitutional Chamber of the Supreme Court of Costa Rica, Case: 10-006785-0007-CO Decision No. 2010010201, June 11, 2010. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=1&nValor1=1&nValor2=484001&strTipM=T&lResultado=4&strTem=ReTem

[44] Constitutional Chamber of the Supreme Court of Costa Rica, Case: 10-006785-0007-CO Decision No. 2010010201, June 11, 2010. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=1&nValor1=1&nValor2=484001&strTipM=T&lResultado=4&strTem=ReTem

[45] Constitutional Court of Guatemala. Advisory Opinion, Case 4185-2008, January 20, 2009. Available at: http://www.cc.gob.gt/siged2009/mdlWeb/frmConsultaWebVerDocumento.aspx?St_DocumentoId=809148.html

62. In its decision of July 7, 2009, the Council found that the relevant issue to be resolved in the case was the secrecy or confidentiality of the data on which the statistics generated by the National Statistics Institutes are based, specifically those concerning employment. According to the Council, that is public information because it is prepared with public funds. Therefore, it found that such information cannot be refused based on the assertion that the methodology used by the Institute is different from that requested in the petition. On this point, the Council for Transparency stated that "the law requires the requested party to turn over official statistics, and the fact that the requested information has not been processed according to the standards and methods used by that Service does not prevent any person from being able to request it […]; the authority to produce official statistics must not be confused with the confidentiality of the data on which it is based.[46]

### 8. Case law on access to personal information on the beneficiaries of social programs

63. In a judgment handed down on December 2, 2009, the Constitutional Court of Guatemala ruled on the appeal of a petition for a constitutional remedy filed by the Guatemalan Minister of Education, who had refused to disclose the identification numbers of persons who were the beneficiaries of a social program called "My Family Progresses" (*Mi Familia Progresa*). The information was requested by the Office of the Comptroller General for financial oversight purposes, which claimed that the beneficiaries' identities could not be known without their identity card numbers.

64. The Constitutional Court found that Article 232 of the Constitution[47] authorizes the Office of the Comptroller General to "supervise the revenue, disbursements, and in general every fiscal interest of the State," and therefore, "since the Office of the Comptroller General is requesting that the [Ministry of Education] provide the information necessary for it to perform its supervisory duties, it is admissible to grant the request." Accordingly, the Court ordered the Ministry of Education to provide the information requested by the Office of the Comptroller General.[48]

### 9. Case law on the principle of maximum disclosure as a guarantee of participation and citizen oversight in a democratic State

65. In the previously cited Judgment whereby the Constitutional Chamber of the Supreme Court of Costa Rica ordered a Board of Education to provide information concerning its financial statements or balance sheets, the Court stressed that, "[…] the right of access to government information is a mechanism of control in the hands of citizens, since it enables them to supervise the legality and timeliness, advisability or merit and, in general, the effectiveness and efficiency of the government duties performed by the various public entities."[49]

---

[46] Chilean Council for Transparency. Complaint code A19-09, July 7, 2009. Available at: http://www.consejotransparencia.cl/data_casos/ftp_casos/A19-09/A19-09_decision_web.pdf

[47] Article 232 of the Constitution of Guatemala states: "ARTICLE 232.- Office of the Comptroller General. The Office of the Comptroller General is a decentralized technical institution, with oversight functions over the revenues, disbursements, and treasury interests in general of all State bodies, the municipalities, decentralized and autonomous entities, as well as any person who receives funds from the State or collects funds on behalf of the State. Public works contractors and any other persons delegated by the State to invest or administer public funds are also subject to this oversight. Its organization, operation, and powers shall be determined by law."

[48] Constitutional Court of Guatemala. Appeal of interlocutory order, consolidated cases 4362-2009 & 4657-2009, December 2, 2009.

[49] Constitutional Chamber of the Supreme Court of Costa Rica, Case: 02-002774-0007-CO, Decision: 2003-00136, January 15, 2003. Available at: http://scij.org.poder-judicial.go.cr/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=1&nValor1=1&nValor2=224837&strTipM=T&lResultado=2. Similarly, see: Constitutional Chamber of the Supreme Court of Costa Rica, Petition for Constitutional Remedy, Case: 07-012599-0007-CO, Decision No. 2007015343 October 23, 2007. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=7&nValor1=1&nValor2=396257&strTipM=T&lResultado=61&strTem=ReTem; Constitutional Chamber of the Supreme Court of Costa Rica, Case: 08-003718-0007-CO, Decision No. 2008-013658, September 5, 2008. Available at:

Continued…

66. It likewise held that "in the context of social and democratic rule of law, each and every one of the public entities and bodies making up the respective government must be subject to the implicit constitutional principles of transparency and openness, which must be the rule for all administrative acts or functions. The collective organizations of Public Law—public entities—must be like glass houses, the inside of which all citizens must be able to view and supervise, in the light of day. Governments must create and foster permanent and fluid channels of communication or exchange of information with citizens and the collective media, in order to encourage greater direct and active participation in public administration and to put into practice the principles of evaluation of results and accountability currently incorporated into the text of our Constitution (Article 11 of the Constitution)."[50]

67. Accordingly, "efficient and effective governments are those that submit to public scrutiny and supervision, but there can be no citizen oversight without adequate information. Thus, there is a logical connection linking access to government information, knowledge and handling of such information, effective or timely citizen oversight, and efficient government. The right of access to government information is firmly based on several principles and values inherent to social and democratic rule of law, which operate in conjunction. Thus, direct and effective citizen participation in the administration and management of public affairs is inconceivable in the absence of a wealth of information on government services and competencies. Likewise, the democratic principle is strengthened when different social, economic, and political forces and groups participate in an active and well-informed manner in shaping and carrying out the public will."[51]

68. The same Constitutional Chamber of the Supreme Court of Costa Rica, in the judgment upholding the right to access information on the acquisition of the country's public debt, affirmed that "the right of access to government information is an indispensable tool, like so many others, for the full validity of the principles of government transparency and openness […]. In order for citizens to be able to freely form their opinions and participate responsibly in public affairs, they must be broadly informed so that they can form opinions, including contrary ones, and participate responsibly in public affairs. From this perspective, the right to information not only protects an individual interest but rather it entails the

---

…continuation http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=5&nValor1=1&nValor2=419511&strTipM=T&lResultado=42&strTem=ReTem

[50] Constitutional Chamber of the Supreme Court of Costa Rica, Case: 02-002774-0007-CO, Res: 2003-00136, January 15, 2003. Available at: http://scij.org.poder-judicial.go.cr/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=1&nValor1=1&nValor2=224837&strTipM=T&lResultado=2. Similarly, see: Constitutional Chamber of the Supreme Court of Costa Rica, Case: 08-003718-0007-CO, Decision No. 2008-013658, September 5, 2008. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=5&nValor1=1&nValor2=419511&strTipM=T&lResultado=42&strTem=ReTem; Constitutional Chamber of the Supreme Court of Costa Rica, Case: 10-006785-0007-CO Decision No. 2010010201, June 11, 2010. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=1&nValor1=1&nValor2=484001&strTipM=T&lResultado=4&strTem=ReTem

[51] Constitutional Chamber of the Supreme Court of Costa Rica, Case: 02-002774-0007-CO, Decision: 2003-00136, January 15, 2003. Available at: http://scij.org.poder-judicial.go.cr/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=1&nValor1=1&nValor2=224837&strTipM=T&lResultado=2. Similarly, see: Constitutional Chamber of the Supreme Court of Costa Rica, Case: 08-003718-0007-CO, Decision No. 2008-013658, September 5, 2008. Available at: Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=5&nValor1=1&nValor2=419511&strTipM=T&lResultado=42&strTem=ReTem; Constitutional Chamber of the Supreme Court of Costa Rica, Case: 03-012954-0007-CO Decision No. 2004-04637, April 30, 2004. Available at: http://scij.org.poder-judicial.go.cr/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=1&nValor1=1&nValor2=286387&strTipM=T&lResultado=3;; Constitutional Chamber of the Supreme Court of Costa Rica, Case: 10-006785-0007-CO Decision No. 2010010201, June 11, 2010. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=1&nValor1=1&nValor2=484001&strTipM=T&lResultado=4&strTem=ReTem

recognition and guarantee of a fundamental political institution, which is public opinion, inextricably linked to political pluralism, and therefore, collective in nature."[52]

69. For its part, in the oft-cited judgment ordering the disclosure of information regarding the expenses incurred by a former president of the country and his retinue on the trips taken during his administration, the Constitutional Court of Peru recalled that "information on the manner in which the *res publica* is managed ends up becoming an authentic public or collective good, which must be within the reach of any individual, not only to enable the full effectiveness of the principles of openness and transparency in government, on which the republican system is based, but also as a means of institutional control over the representatives of society; and also, of course, to encourage the supervision of those private individuals who possess the ability to induce or determine the conduct of other private individuals or—most seriously in a society such as the one in which we live—their very subordination."[53]

70. As such, the court noted in particular that "[…] the right of access to public information is intrinsic to a democratic system. Indeed, the right in question not only is a concrete realization of the principle of dignity of the human person […] but also is an essential component of the very demands of a democratic society, since its exercise enables the free and rational shaping of public opinion. Democracy, it has rightfully been said, is by definition the 'government of the public in public' (Norberto Bobbio). Hence, provisions […] of the Constitution […] are nothing but concretizations, in turn, of a more general constitutional principle, such as the principle of the publicity of state action."[54]

71. Therefore, "openness in the actions of state authorities is the general rule, and confidentiality, when supported by the constitution, is the exception. This is because, if a democratic rule of law assumes the separation of powers, respect for fundamental rights, and the periodic election of its governors, this certainly cannot be ensured if individuals are not able to exercise control over the activities of the representatives of the people. One of the possible ways to adhere to that principle and, therefore, to meet the demands of an authentic democratic society, is precisely to recognize the right of individuals to be informed with respect to the actions of government bodies and their representatives."[55]

### 10. Principle of maximum disclosure as a limit to banking and stock exchange secrecy when public funds are involved

72. In the aforementioned judgment of the Constitutional Chamber of the Supreme Court of Costa Rica, which upheld the right to access information related to the purchase of Costa Rica' public debt by the People's Republic of China, the Court held that stock exchange secrecy cannot be used as an impediment to access to public information when that information concerns public funds. In this case, the Treasury Minister refused to provide the requested information, asserting that because of stock exchange secrecy, he was required to maintain the confidentiality of the requested data, and that the investor had expressed its interest in having the information kept secret. In deciding the appeal, the Court

---

[52] Constitutional Chamber of the Supreme Court of Costa Rica, Case: 08-003718-0007-CO, Decision No. 2008-013658, September 5, 2008. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=5&nValor1=1&nValor2=419511&strTipM=T&lResultado=42&strTem=ReTem

[53] Constitutional Court of Peru, Judgment in Case No. 1797-2002-HD/TC, January 29, 2003. Available at: http://www.tc.gob.pe/jurisprudencia/2003/01797-2002-HD.html. Similarly, see: First Chamber of the Constitutional Court (Peru), Case No. 2579-2003-hd/TC, April 6, 2004. Available at: http://www.tc.gob.pe/jurisprudencia/2004/02579-2003-HD.html; First Chamber of the Constitutional Court (Peru), Case No. 0301-2004-HD/TC, March 5, 2004. Available at: http://www.tc.gob.pe/jurisprudencia/2004/00301-2004-HD.html

[54] Constitutional Court of Peru, Judgment in Case No. 1797-2002-HD/TC, January 29, 2003. Available at: http://www.tc.gob.pe/jurisprudencia/2003/01797-2002-HD.html. Similarly, see: First Chamber of the Constitutional Court (Peru), Case No. 2579-2003-hd/TC, April 6, 2004. Available at: http://www.tc.gob.pe/jurisprudencia/2004/02579-2003-HD.html

[55] Constitutional Court of Peru, Judgment in Case No. 1797-2002-HD/TC, January 29, 2003. Available at: http://www.tc.gob.pe/jurisprudencia/2003/01797-2002-HD.html. Similarly, see: First Chamber of the Constitutional Court (Peru), Case No. 2579-2003-hd/TC, April 6, 2004. Available at: http://www.tc.gob.pe/jurisprudencia/2004/02579-2003-HD.html

took into consideration the role of the right of access to information in democratic States as a guarantee of the principles of transparency and openness of government as well as the existing regulations on banking and stock exchange secrecy, and held that the law was not inconsistent with allowing access to information relating to investments and commitments of a public nature that must be assumed by collective society.

73. To arrive at its conclusion, the Court cited prior case law on banking and stock exchange secrecy relating to access to the budgetary information of political parties. According to the Court, "banking secrecy is the obligation imposed upon banks, whether public or private, not to disclose to third parties information about their clients that comes to their attention as a result of the legal relationships between them. It is a duty of silence with respect to facts concerning the persons with whom the banking institutions maintain business relationships, as well as a professional obligation not to disclose information and data of which they become aware by virtue of the activity in which they are engaged. Nevertheless, this rule has its exceptions, as this Court so determined in assessing banking secrecy with regard to the assets of political parties and the public disclosure of private contributions."[56]

74. The court indicated with regard to this specific case that "such a denial of information is contrary to the constitutional principles of administrative transparency and openness. Insofar as a constitutional limitation is placed upon stock exchange secrecy with respect to future public investments and financial commitments, that denial, in turn, is a violation of the right of access to public information as established under constitutional law. This is particularly relevant in a general context that tends to provide increasing protection to access to public information, and where there are already numerous international decisions protecting access to information as a particularly useful tool for ensuring the transparency of government activity."[57]

75. In this case, the Supreme Court based its decision on the Inter-American Democratic Charter, Articles 10 and 13 of the United Nations Convention against Corruption, the judgment of the Inter-American Court of Human Rights in the *Case of Claude Reyes et al. v. Chile,* and the Principles on the right of access to information, adopted by a resolution of the Inter-American Juridical Committee of the Organization of American States.[58]

### 11. Case law on the obligation to have a simple, prompt, and free administrative procedure for access to information

76. One of the standards of the right of access to information is the existence of an administrative procedure that is simple, prompt, and free of charge. On this topic, the Civil and Commercial Appeals Court of Asunción, Paraguay (Third Rotation), has underscored the importance of having a rapid means of demanding the right to information. As stated by this Court in Judgment No. 51 "the right to information, as a fundamental right, would not tolerate, because of its very nature, the delays arising from adversarial litigation."[59]

---

[56] Constitutional Chamber of the Supreme Court of Costa Rica, Case: 08-003718-0007-CO, Decision No. 2008-013658, September 5, 2008. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=5&nValor1=1&nValor2=419511&strTipM=T&lResultado=42&strTem=ReTem

[57] Constitutional Chamber of the Supreme Court of Costa Rica, Case: 08-003718-0007-CO, Decision No. 2008-013658, September 5, 2008. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=5&nValor1=1&nValor2=419511&strTipM=T&lResultado=42&strTem=ReTem

[58] Constitutional Chamber of the Supreme Court of Costa Rica, Case: 08-003718-0007-CO, Decision No. 2008-013658, September 5, 2008. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=5&nValor1=1&nValor2=419511&strTipM=T&lResultado=42&strTem=ReTem

[59] Civil and Commercial Appeals Court of Asunción (Third Rotation), Judgment No. 51, May 2, 2008. Available at: http://www.idea.org.py/gfx/espanol/descargas/normativa_ambiental/jurisprudencia/nacional/Caso_Picco_Portillo_acceso_Informacion.pdf

77. For its part, in the previously cited decision on writ of constitutional protection (*amparo*) that was filed against the Association of Doctors and Surgeons based on the association's requirement that citizens pay for access to requested information, the Supreme Court of Costa Rica held that: "[…] in this Court's opinion, this charge [$0.75 for information on each associated doctor] is an unreasonable and disproportionate limitation on obtaining information that is totally public, such as the list of associated physicians specializing in plastic surgery, in view of the rights and authority that this right [to information] confers upon individuals."[60]

78. In Judgment C-872 of 2003, the Plenary Chamber of the Constitutional Court of Colombia examined a constitutional challenge to Order 1799 of 2001, which issued rules on the personnel evaluations and classifications of Officers and Non-commissioned Officers in the Military Forces, and established that all documents pertaining to the evaluation process were confidential.

79. The Court found unconstitutional the provisions ordering that the documents and decisions pertaining to the evaluation process were confidential. In addition, it recalled the importance in democracies of citizens' ability to access information, which means that the State must respond to citizen requests in a clear, timely, accurate, up-to-date, and accessible manner.

80. In deciding the case, the Colombian Court made direct reference to Article 13 of the American Convention on Human Rights and to Advisory Opinion 5 of 1985 of the Inter-American Court of Human Rights, in order to conclude that "[…] effective citizen oversight of government actions not only requires that the State refrain from censoring information but also it demands positive action consisting of providing individuals with the means to access the files and documents in which the day-to-day activities of the State are recorded."[61]

81. In reference to the 2001 Annual Report of the Office of the Special Rapporteur for Freedom of Expression of the IACHR, and to the Declaration of Principles on Freedom of Expression, the Court held that those documents "[…] are guidelines for conduct directed at the States, and furthermore serve as auxiliary criteria for the interpretation of international human rights treaties."[62]

82. The Colombian Court concluded by reiterating the rule on the publicity of information and the exception of secrecy, and by establishing that the Colombian State and the public authorities have a constitutional duty to "[…] turn over, to whomever so requests, clear, complete, timely, accurate, and up-to-date information regarding any activity of the State."[63]

83. The Costa Rican Supreme Court heard a petition for a constitutional remedy alleging the violation of the right of petition based on the plaintiff's having received incomplete information after asking the program "State of the Nation" (*El Estado de la Nación*) for general information on consultancies, cooperation, and investigations it had conducted during the past five years. In that decision, the court underscored the obligation of the authorities that administer public information to provide it in a manner that is complete, prompt, and accessible. Thus, bearing in mind the nature of the requested information, as well as the recognition and scope the right of petition had been accorded within the Costa Rican legal

---

[60] Constitutional Chamber of the Supreme Court of Costa Rica, Petition for Constitutional Remedy, Case: 07-012599-0007-CO, Decision No. 2007015343, October 23, 2007. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=7&nValor1=1&nValor2=396257&strTipM=T&lResultado=61&strTem=ReTem

[61] Plenary Chamber of the Constitutional Court of Colombia. Judgment C-872/03. Case D-4537. Bogotá, Colombia, September 30, 2003. Available at: http://www.corteconstitucional.gov.co/relatoria/2003/C-872-03.htm

[62] Plenary Chamber of the Constitutional Court of Colombia. Judgment C-872/03. Case D-4537. Bogotá, Colombia, September 30, 2003. Available at: http://www.corteconstitucional.gov.co/relatoria/2003/C-872-03.htm

[63] Plenary Chamber of the Constitutional Court of Colombia. Judgment C-872/03. Case D-4537. Bogotá, Colombia, September 30, 2003. Available at: http://www.corteconstitucional.gov.co/relatoria/2003/C-872-03.htm

system, the Court ordered the director of the program to turn over the information requested by the plaintiff within a specific period of time.

84. The court held that "the case law of this Constitutional Chamber has clearly established that when a citizen makes a request for information before a public agency, that agency must at all times respect the established deadlines for responding to it, in accordance with Article 27 of the Constitution in relation to Article 32 of the Constitutional Jurisdiction Act."[64]

85. Along this line of reasoning, the Court found that the plaintiff's right of petition had been violated, establishing that in this particular case "the information requested by the plaintiff is plain and simply general information about consultancies, cooperation and investigations that the program *Estado de la Nación* has conducted over the past five years […]. On this point, although on its own initiative […] on October 7, 2009, it provided the petitioner with a response to that request, it failed to satisfy the requirements of the right, as it required the petitioner to extract from the attachments the names of those who have provided professional services to the defendant—with the aggravating factor that it failed to clearly specify the amounts paid to those consultants for their services, or the income tax withheld; only the fees corresponding to the proposals and coordination of the investigations were indicated."[65]

86. In addition, the Constitutional Court of Peru has held that, bearing in mind the content of the right to access information, as well as its importance in democratic systems, the information provided by the competent authorities must meet certain minimum requirements.[66]

87. According to the Court, "the constitutionally guaranteed content of the right of access to public information includes not just the mere possibility of accessing the requested information and the correlative obligation of public bodies to provide it. If that were the only content protected under the constitution, the risk would arise of making a mockery of this right and the aims pursued by its recognition when, for example, the public bodies turned over any type of information, regardless of its accuracy. In the Court's opinion, not only is the right of access to information adversely affected when its provision is denied without any constitutionally legitimate reasons for doing so, but also when the information provided is patchy, out-of-date, incomplete, imprecise, false, untimely, or erroneous. As such, in its positive aspect, the right of access to information imposes upon Government bodies the duty to inform; in its negative aspect, it requires that the information provided not be false, incomplete, patchy, indirect, or confusing."[67]

88. Accordingly, the Court held that "if the right in question guarantees access, knowledge, and oversight of public information for purposes of fostering greater and better citizen participation in public affairs, as well as the transparency of the acts and administration of government entities, then a minimum requirement for the accomplishment of these aims is that the information be accurate, current, and clear."[68]

---

[64] Constitutional Chamber of the Supreme Court of Costa Rica, Case: 09-015926-0007-CO Decision No. 2009018175, November 27, 2009. Available at: http://scij.org.poder-judicial.go.cr/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&nValor1=1&nValor2=468920&strTipM=T&strDirSel=directo

[65] Constitutional Chamber of the Supreme Court of Costa Rica, Case: 09-015926-0007-CO Decision No. 2009018175, November 27, 2009. Available at: http://scij.org.poder-judicial.go.cr/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&nValor1=1&nValor2=468920&strTipM=T&strDirSel=directo

[66] Constitutional Court of Peru, Judgment in Case No. 1797-2002-HD/TC, January 29, 2003. Available at: http://www.tc.gob.pe/jurisprudencia/2003/01797-2002-HD.html

[67] Constitutional Court of Peru, Judgment in Case No. 1797-2002-HD/TC, January 29, 2003. Available at: http://www.tc.gob.pe/jurisprudencia/2003/01797-2002-HD.html

[68] Constitutional Court of Peru, Judgment in Case No. 1797-2002-HD/TC, January 29, 2003. Available at: http://www.tc.gob.pe/jurisprudencia/2003/01797-2002-HD.html

### 12. Case law on access to information and the duty to create and maintain archives

89. The Office of the Special Rapporteur underscores the obligation of States to build systems that enable the storage and maintenance of information.[69] The requirement to create file systems entails not just the arbitrary storage of information; rather, it requires the implementation of physical and computer systems that systematize data, so that information can be searched and retrieved within a reasonable period of time, and complete and verifiable data can be obtained.

90. The Constitutional Court of Colombia addressed this obligation in Judgment T-216 of 2004, in which it decided the case of a citizen who requested access to records from labor conciliation proceedings, collective bargaining agreements, and other documents from a State enterprise. The request was denied, among other reasons, because there was no archive containing systematized information.

91. In the Colombian Court's view, it is clear that information is created rapidly, in large quantities, and that documents reproduce exponentially. Therefore, in the Court's view it is clear that the entities in charge of keeping information must create mechanisms of organization containing a rational document classification system.

92. An archive, according to the Court, "is not 'a pile of sacks' containing documents or the arrangement of pages and files in a physically 'ordered' manner";[70] rather, it is an information organization system meant to "[…] ensure that documents are in an archive and to design the means to duly maintain such documents, as well as to set parameters—compatible with constitutional law—for access to them."[71]

93. The Colombian Constitutional Court held that failure to comply with the duty to maintain documents—in addition to violating the right of access to information—can constitute a type of censorship that prevents access to documents that are not even subject to any kind of confidentiality.

94. The Court stressed that this special form of censorship can arise through subtle means, such as bureaucratic obstacles to accessing documents, or disorganization in archives that makes it impossible to find the documents or conceals their very existence.

### 13. Case law on the State's duty to justify any denial of a request for access to information

95. The Chilean Council for Transparency has said that State entities cannot fail to respond to a request for information based on the argument that the request does not meet the requirements provided for by law, unless they clearly specify what requirement has not been met. The Council so ruled on June 23, 2009, in a claim for information relating to the use of funds belonging to the National Fund for Regional Development during the years 2008 and 2009, specifically those related to the area affected by the emergency resulting from the Chaitén Volcano. The authority that received the request (the Regional Government of Los Lagos) had refused to provide the information, claiming—among other reasons—that the request was too general and failed to clearly identify the desired information.

96. In its decision, the Council for Transparency dismissed that argument, stating that the "specificity of a request is satisfied if it is limited to certain issues, if it specifies the parties to, or authors of, the information in question, and if it indicates the period of time covered by the request"—which

---

[69] IACHR. Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter IV: The Right of Access to Information, par 77. Available at: http://www.cidh.org/pdf%20files/Annual%20Report%202009.pdf

[70] Constitutional Court of Colombia. Judgment T-216/04. Case T-726171. Bogotá, Colombia, March 8 2004. Available at: http://www.corteconstitucional.gov.co/relatoria/2004/t%2D216%2D04.htm

[71] Constitutional Court of Colombia. Judgment T-216/04. Case T-726171. Bogotá, Colombia, March 8, 2004. Available at: http://www.corteconstitucional.gov.co/relatoria/2004/t%2D216%2D04.htm

occurred in this case. It also stated that to deny a request for access, "it is insufficient to invoke the argument that the request deals with a large number of administrative acts, or that it would entail the undue distraction of government employees", since it is necessary to prove those exceptions in addition to invoking them, and according to the Council, the Regional Government of Los Lagos failed to do so.[72]

97. Likewise, the Constitutional Court of Colombia, in Judgment T-1322 of 2000, held that a violation of the right of access to information occurs not only when the request is ignored but also when the response "is not in line with the request made—for example, because it is a vague response, or answers a question other than the one that was asked—or when it deviates from the constitutional and legal standards on the matter."[73]

98. The Colombian Court used this argument to order a company in which both public and private capital had been invested to publicly disclose the executive summary of the entity's management, which had been denied on the premise that it was the confidential information of a private company.

**14. Case law on the right of access in the event of a request for information that is especially burdensome to the State**

99. The Constitutional Court of Colombia, in Judgment T-527 of 2005, protected the right of access to information of a citizen who requested that the government provide him with all the information pertaining to the budget of a municipality over a three-year period, the investment and operational expenditures, and the corresponding ledgers.

100. The government denied the request because the citizen failed to assume the cost of having the documents copied. Although it stated that photocopies of the documents could be made, the government claimed that in order to do so it would be necessary to assign one to three employees from its office to the project for a period of one year.

101. In view of the citizen's inability to pay for the copies, he was offered the chance to view the information on site. The Constitutional Court considered that the citizen should be allowed to go to the entity's facilities in order to consult the information during business hours and following the consultation instructions provided to him.

102. The Court noted in particular that the nature of the information requested by the citizen was sufficiently consistent with the right of access to information as a tool for transparency and oversight of government activity, which undoubtedly includes knowing how the public budget and investments in the general interest are handled[74].

**15. Case law on access to personal information: definition of "personal information"**

103. In spite of the fact that in Guatemala there is no express recognition of the right of all persons to know, update, and correct personal information contained in databases, the Constitutional Court of Guatemala recognized, in its Judgment of October 11, 2006, that in order to protect the right to privacy in light of "current technology and the broadcasting of information through the mass media" the right of every individual to informational self-determination with respect to personal information should be recognized.

---

[72] Chilean Council for Transparency. Complaint code A1-09, June 23, 2009. Available at: http://www.consejotransparencia.cl/data_casos/ftp_casos/A1-09/A1-09_decision_web.pdf

[73] Constitutional Court of Colombia. Judgment T-1322/00. Case T-317327. Bogotá, Colombia, September 31, 2000. Available at: http://www.corteconstitucional.gov.co/relatoria/2000/t%2D1322%2D00.htm

[74] Constitutional Court of Colombia. Judgment T-527/05. Case T-1059221. Bogotá. Colombia, May 20, 2005. Available at: http://www.corteconstitucional.gov.co/relatoria/2005/t-527-05.htm

104. In view of the fact that there is no legal definition of "personal information" that would lead to an understanding of the scope of the exercise of this right, the Constitutional Court came up with its own definition, according to which that concept must be considered to refer to "all that [information] that allows for a person to be identified, and thereby enables the determination of an identity that can be considered that person's own." This decision ruled on the appeal of a judgment on a writ for a constitutional protection (*amparo*) filed by a citizen against a company that had published and disclosed personal information without the prior authorization of the owner of that information.[75]

105. In the same respect, the Constitutional Court of Guatemala again noted the importance of making access to information and privacy rights compatible. It did so in deciding a constitutional challenge to the law regulating the so-called National Registry of Persons, in a Judgment dated September 27, 2007. In that decision the Court held that "the importance of the operation of a public registry containing information that makes it possible to identify the inhabitants of the Republic—an essential function to be performed by the National Registry of Persons—is key to ensuring the scope of the objectives that the Constitution imposes upon the State, and underscores the important function of the National Registry of Persons; nevertheless, in the performance of its work, that institution must adhere to the specific guidelines that prevent the violation of rights inherent to the human person."[76]

106. On this same issue, in Judgment T-729 of 2002, the Constitutional Court of Colombia reviewed the case of a writ for the protection of constitutional rights in which a citizen had requested the protection of his right to privacy in light of a proactive transparency program in which two State offices (the Land and Real Estate Registry Office and the Superintendence of Health) were disclosing information on their websites through a public inquiry mechanism. The former was disclosing financial information on all properties registered in Bogotá, including details of those properties; and the latter was publishing private family information on persons affiliated with the social security health system.

107. In this case, the Colombian Court examined the relationship between the right to obtain access to information and the right of informational self-determination or *habeas data*. The Court held that although in certain cases the right of access to information may conflict with the right of *habeas data*, the manner in which those conflicts should be resolved must first and foremost consider the type of information sought. In the Court's opinion, if it is confidential or private information, the degree of access must be less than when it is semi-private or public information.[77]

108. The Court decided in this case to order that the transparency program be brought into line with the principles of shared responsibility and mutual obligations in order to prevent indiscriminate access to the information, which would infringe upon the privacy and *habeas data* rights of citizens.

109. In another case, the Constitutional Court of Colombia discussed the connection between access to information and personal data. In Judgment T-216 of 2004, the Court held that information should be categorized in order to determine potentially secret personal information.

110. The confidential personal information that is "contained in public documents will never be able to be disclosed and, therefore, the exercise of the right of access to public documents cannot be

---

[75] Constitutional Court of Guatemala. Appeal of the Judgment on a Petition for Constitutional Remedy, Case 1356-2006, October 11, 2006. Available at: http://www.cc.gob.gt/siged2009/mdlWeb/frmConsultaWebVerDocumento.aspx?St_DocumentoId=790410.html&St_RegistrarConsulta=yes&sF=1356-2006

[76] Constitutional Court of Guatemala. Judgment of unconstitutionality, Case 2101-2006, September 27, 2007. Available at: http://www.cc.gob.gt/siged2009/mdlWeb/frmConsultaWebVerDocumento.aspx?St_DocumentoId=814248.html&St_RegistrarConsulta=yes&sF=fraseabuscar

[77] Constitutional Court of Colombia. Judgment T-729/02. Case T-467467. Bogotá, Colombia, September 5, 2002. Available at: http://www.corteconstitucional.gov.co/relatoria/2002/t%2D729%2D02.htm

claimed with respect thereto."[78] If the public documents in question contain private and semi-private personal information, "the exercise of the right of access to public documents is exercised indirectly, through administrative or judicial authorities (as appropriate) and within the respective government processes."[79]

111. Also in Judgment T-837 of 2008, the Constitutional Court of Colombia examined a writ for a constitutional protection (*amparo*) in which four individuals requested medical information on their relatives, who were unable to authorize the disclosure of their clinical histories because they were either deceased or in an unconscious state. In this case, the Court acknowledged that even though this type of information is confidential and can only be disclosed with the consent of its owner, relatives may be able to gain access to it in some special cases, provided that certain conditions are met to ensure family privacy.

112. In the Colombian Court's opinion, it is clear that "relatives have the right to consult the clinical history of their deceased or gravely ill relative when there is a fundamental legal interest in the request."[80] The Court understands "relatives" to mean parents, siblings, children, and spouses or life partners, who must agree to maintain the confidentiality of the medical information with respect to all matters not strictly necessary for the exercise of their fundamental rights.

113. In turn, in the previously cited judgment of the Constitutional Chamber of the Supreme Court of Costa Rica that upheld the right to access stock exchange information relating to the purchase of the country's public debt, the Court held as follows with regard to the rights of the investors: "There will be situations in which the information of a private individual in the possession of a public body or entity may have—above all when articulated with that of other private individuals—a clear public dimension and calling, circumstances that must be progressively and casuistically identified by this Constitutional Court."[81]

### 16. Case law on access to public records and archives containing the requester's information

114. The Court of First Instance for the Review of Administrative Acts (Uruguay), in Judgment No. 36, of October 23, 2008, ruling on a writ of *habeas data*, ordered the National Defense Ministry to turn over certified testimony pertaining to the administrative investigation of a military squad in which the person filing the request was under investigation. The decision was affirmed by the Civil Appeals Court (Fifth Rotation), in Judgment No. 124 of November 14, 2008.

115. According to the judge, "the law […] establishes that the protection of the personal information of individuals is one of the factors inherent to the protection of human rights. […] With the prioritization and assessment of human rights, the right to information concerning the subject himself acquires far-reaching importance, as in the final analysis it is a matter of protecting the individual and the rule of law of the republic."[82]

---

[78] Constitutional Court of Colombia. Judgment T-216/04. Case T-726171. Bogotá, Colombia, March 8, 2004. Available at: http://www.corteconstitucional.gov.co/relatoria/2004/t%2D216%2D04.htm

[79] Constitutional Court of Colombia. Judgment T-216/04. Case T-726171. Bogotá, Colombia, March 8, 2004. Available at: http://www.corteconstitucional.gov.co/relatoria/2004/t%2D216%2D04.htm

[80] Constitutional Court of Colombia. Judgment T-837/08. Cases T-1823051, T-1836309, T-1908845 y T-1919472. Bogotá, Colombia, August 26, 2008. Available at: http://www.corteconstitucional.gov.co/relatoria/2008/t%2D837%2D08.htm

[81] Constitutional Chamber of the Supreme Court of Costa Rica, Case: 08-003718-0007-CO, Decision No. 2008-013658, September 5, 2008. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=5&nValor1=1&nValor2=419511&strTipM=T&lResultado=42&strTem=ReTem

[82] Court of First Instance for the Review of Administrative Acts (Uruguay), Judgment No. 36, October 23, 2008. Available at: http://www.redipd.org/documentacion/jurisprudencia/common/uruguay/sentencia-jca3.pdf

116. The Peruvian Court, in a Judgment that granted the writ of *habeas data* filed against the National Council of the Judiciary [*Consejo Nacional de la Magistratura*] to obtain information on the process by which the Council decided not to approve the position held by the petitioner, examined whether the restriction to the right of access to information was consistent with the law.

117. The court examined the content of the provision that limited the right of access to that information, and examined the reasonableness of the measure, bearing in mind the nature of the restricted right.

118. The Court studied the provision of the Internal Regulations of the National Council of the Judiciary based on which the Council justified the confidentiality of the requested information and prohibited the issuance of certifications or information of any kind to private citizens or authorities with respect to the data contained in the registry, except as provided in Article 96 of the Constitution or by court order.

119. The Court then examined whether the information available in the registry in question was public. Accordingly, it studied the provisions of the Transparency and Access to Public Information Act, according to which "[...] any type of documentation funded by the State budget that serves as the basis for an administrative decision is considered public information."[83]

120. Accordingly, the Constitutional Court stressed that, "[…] the requirement that the documentation be financed by public funds is unreasonably restrictive in defining what should be considered 'public information.' The truly important factor for purposes of determining what can be considered 'public information' is not its funding, but rather its possession and use by public bodies in the making of administrative decisions—except, of course, if the information has been declared confidential by law."[84]

121. Along the same lines, "[…] it is not constitutionally admissible for a declaration of confidentiality to be legitimate solely because it finds support in the law. Constitutional rights, under the rule of law, do not have value in the context of laws; rather, the inverse is true: laws have value in the context of fundamental rights [Herber Krüger]; thus, if the exercise of a fundamental right is restricted through a law, that restriction must necessarily be based on a constitutionally valuable aim, in addition to being presented as a measure that is strictly necessary and appropriate to the accomplishment of the aims pursued."[85]

122. Bearing in mind that in this specific case the person requesting the information is the same person who was subjected to the confirmation process, the Court decided not to examine whether the general restriction is constitutionally justifiable. However, it stressed that according to an appropriate interpretation of the provision, the restriction of access to the information in question does not extend to the person who is the subject of the confirmation process.

123. The Court thus concluded that the denial of information about the petitioner's case was arbitrary; therefore, it ordered that the requested information be provided to the petitioner within a specific period of time.

---

[83] First Chamber of the Constitutional Court (Peru) Case No. 2579-2003-hd/TC, April 6, 2004. Available at: http://www.tc.gob.pe/jurisprudencia/2004/02579-2003-HD.html

[84] First Chamber of the Constitutional Court (Peru) Case No. 2579-2003-hd/TC, April 6, 2004. Available at: http://www.tc.gob.pe/jurisprudencia/2004/02579-2003-HD.html

[85] First Chamber of the Constitutional Court (Peru) Case No. 2579-2003-hd/TC, April 6, 2004. Available at: http://www.tc.gob.pe/jurisprudencia/2004/02579-2003-HD.html

### 17. Case law on the right of access to information on individuals who are or have been government employees

124. The Constitutional Chamber of the Supreme Court of Costa Rica, in a decision dated April 22, 2009[86], ruled on a writ for a constitutional protection (*amparo*) alleging the violation of the right of petition and the right to obtain a prompt decision by the head of human resources at the University of Costa Rica, who had refused to provide information requested by the plaintiff. The requested information was related to the supporting documents that an official at that University had submitted with regard to her work history, position, working day, schedule, and length of time worked. The Constitutional Chamber determined that because the requested information concerned the performance of a public servant—and therefore is public in nature—it must be provided by the competent authority.

125. On this occasion, the Court held that "[…] although access to the personnel files of public servants is prohibited, except for by the express authorization of that employee or by a court order, part of the information contained therein can in fact be requested by any interested person. That is, even without exactly having access to the personnel file of a public servant, any interest party may request to know, for example, the type of position that person holds, the duties assigned to that position, the requirements for the position and whether the employee meets those requirements. Those are all aspects that in no way jeopardize the right to the public servant's privacy, because they are matters of public interest."[87]

126. According to the Court, "the requested information […] related to the position, working day, schedule, and length of employment of an employee of the University of Costa Rica […] is public, and of general interest, as it concerns the proper oversight and management of public funds, as well as the relevance of the public services the university provides. Therefore, […] the requested information about an employee of that university—which is part of the public education system—cannot be considered to be personal employee information. Furthermore, given the duty of transparency that must characterize government employment, […] the Administration cannot deny access to information that is in the public interest, unless it concerns State secrets, confidential information, or information that could seriously affect the general interest if disclosed, which has not been demonstrated in this case."[88]

### 18. Case law on restrictions to the right of access to information: general system of limitations to the right of access to information

127. In Judgment T-920 of 2008, the Constitutional Court of Colombia indicated that the importance of the right of access to information means that under Colombian law any restriction to this right is subject to the following requirements in order to pass constitutional muster: "i) the restriction must be authorized by law or the Constitution; ii) the provision establishing the limitation must be clear and precise in its terms, so that it does not allow for arbitrary or disproportionate acts by public servants; iii) the public servant who decides to invoke confidentiality in order to refuse to provide information must provide a well-founded, written explanation of his decision, citing the legal or constitutional provision on which it is based; iv) the law must establish a time limit on the confidentiality; v) there must be adequate systems in place for the safekeeping of information; vi) there must be administrative and judicial

---

[86] Constitutional Chamber of the Supreme Court of Costa Rica, Case: 09-005097-0007-CO, Decision No. 2009-006024, April 22, 2009. Available at: http://scij.org.poder-judicial.go.cr/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&nValor1=1&nValor2=463890&strTipM=T&strDirSel=directo

[87] Constitutional Chamber of the Supreme Court of Costa Rica, Case: 09-005097-0007-CO, Decision No. 2009-006024, April 22, 2009. Available at: http://scij.org.poder-judicial.go.cr/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&nValor1=1&nValor2=463890&strTipM=T&strDirSel=directo

[88] Constitutional Chamber of the Supreme Court of Costa Rica, Case: 09-005097-0007-CO, Decision No. 2009-006024, April 22, 2009. Available at: http://scij.org.poder-judicial.go.cr/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&nValor1=1&nValor2=463890&strTipM=T&strDirSel=directo

supervision of confidential decisions or proceedings; vii) the confidentiality must operate with respect to the content of a public document, but not with respect to its existence; viii) the confidentiality is binding upon the public servants involved, but it does not prevent journalists who access such information from being able to publish it; ix) the confidentiality must strictly adhere to the principles of reasonableness and proportionality; x) there must be judicial actions or appeals available for challenging the decision to maintain the confidentiality of specific information."[89]

128. These requirements must be observed with "extreme care" by government authorities, who can only deny access to documents or judicial proceedings when those conditions are met. For them to act otherwise, in the opinion of the Colombian Court, is a clear violation of a fundamental right.

129. On this same issue, the Supreme Court of Costa Rica, in the judgment upholding the right of access to information following the denial of the Ministry of the Treasury to turn over information relating to the acquisition of Costa Rican public debt, the court underscored that any limits to the right in question must be exceptional.

130. According to the Court "[…] administrative secrecy or confidentiality is an exception that is justified solely under qualified circumstances when constitutionally relevant values and interests are thereby protected. There are various mechanisms for attaining greater levels of government transparency in a particular legal system, such as requiring legal explanations for administrative acts, the forms in which they are communicated—publication and notice—the processing of public information for the drafting of regulations and regulatory plans, participation in administrative procedures, government contracting processes, and so on. Nevertheless, one of the most precious tools for achieving that objective is the right of access to government information."[90]

131. The Court likewise found that, while "Article 30 of the Constitution refers to free access to 'administrative departments,' unrestricted access to the physical facilities of government offices or agencies would be useless and insufficient for achieving the aim of having citizens who are informed and knowledgeable about public administration. Therefore, a an axiological or finalist interpretation of the constitutional provision must lead to the conclusion that citizens or individuals can access any information in the possession of the respective public entities and bodies, regardless of its format, whether it is documentary—files, records, archives, indexes—electronic or computer—databases, electronic files, automated indexes, diskettes, compact disks—audiovisual, tape recordings, and so on."[91]

132. Accordingly, "State secrets, insofar as they are an exception to the constitutional principles or values of the transparency and openness of public authorities and their administration, must be interpreted and applied, at all times, restrictively."[92]

---

[89] Constitutional Court of Colombia. Judgment T-920/08. Case T-1919557. Bogotá, Colombia, September 19, 2008. Available at: http://www.corteconstitucional.gov.co/relatoria/2008/t%2D920%2D08.htm

[90] Constitutional Chamber of the Supreme Court of Costa Rica, Case: 08-003718-0007-CO, Decision No. 2008-013658, September 5, 2008. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=5&nValor1=1&nValor2=419511&strTipM=T&lResultado=42&strTem=ReTem. Similarly: Constitutional Chamber of the Supreme Court of Costa Rica, Case: 10-006785-0007-CO Decision No. 2010010201, June 11, 2010. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=1&nValor1=1&nValor2=484001&strTipM=T&lResultado=4&strTem=ReTem

[91] Constitutional Chamber of the Supreme Court of Costa Rica, Case: 08-003718-0007-CO, Decision No. 2008-013658, September 5, 2008. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=5&nValor1=1&nValor2=419511&strTipM=T&lResultado=42&strTem=ReTem

[92] Constitutional Chamber of the Supreme Court of Costa Rica, Case: 08-003718-0007-CO, Decision No. 2008-013658, September 5, 2008. Available at: http://200.91.68.20/scij/busqueda/jurisprudencia/jur_repartidor.asp?param1=XYZ&param2=5&nValor1=1&nValor2=419511&strTipM=T&lResultado=42&strTem=ReTem

133. For its part, the First Chamber of the Constitutional Court (Peru) in a decision dated April 6, 2004[93], granted the writ of *habeas data* filed by the petitioner against the National Council of the Judiciary seeking access to the report of the Permanent Evaluation and Confirmation Commission on the conduct and suitability of the petitioner in his position as a Regular Superior Judge of the Judicial District; a copy of the personal interview he submitted to the Commission; and a copy of the Minutes of the Plenary Session of the National Council of the Judiciary containing the decision not to confirm him for the aforementioned position.

134. The Council affirmed that the decision to refuse access to the aforementioned information was based on a provision of the Internal Regulations of the National Council of the Judiciary, according to which "it is prohibited to issue certifications or information of any kind to private individuals or authorities with respect to the data contained in the registry; with the exception of the provision set forth in Article 96 of the Constitution, or a court order."[94]

135. In the Court's opinion, "the expansive interpretation of a provision restricting the exercise of a constitutional right, such as in the instant case, is implicitly prohibited by the general principle derived [from] […] the Constitution, and developed by the […] Civil Code; likewise, it is specified, in an even better form, and categorically, by […] the Transparency and Access to Public Information Act, according to which limitations to the right of access to public information 'must be interpreted restrictively insofar as they limit a fundamental right.'"[95]

[93] Chamber One (1) of the Constitutional Court (Peru) Case No. 2579-2003-hd/TC, April 6, 2004. Available at: http://www.tc.gob.pe/jurisprudencia/2004/02579-2003-HD.html

[94] Chamber One (1) of the Constitutional Court (Peru) Case No. 2579-2003-hd/TC, April 6, 2004. Available at: http://www.tc.gob.pe/jurisprudencia/2004/02579-2003-HD.html

[95] Chamber One (1) of the Constitutional Court (Peru) Case No. 2579-2003-hd/TC, April 6, 2004. Available at: http://www.tc.gob.pe/jurisprudencia/2004/02579-2003-HD.html

### 19. Case law on the requirements that limitations be set forth by law

136. In a decision handed down on June 19, 2002, the Constitutional Court of Guatemala examined the petition for a constitutional remedy filed by an individual who was denied access by a court to a certified copy of a recording of oral arguments before that court. The Court held that so long as the requirements set forth in the Constitution for accessing information from the judicial authorities were met, "[the court] has no choice but to turn over the requested certification, and in this case, that order shall be complied with by turning over a cassette recording to the petitioner."[96] In another case, decided on September 28, 2006, the same court held that when the refusal to turn over information is based on a reason other than the ones set forth in Article 30 of the Constitution of Guatemala[97], the requested information must be turned over, since there is no basis for the denial of such request.[98]

### 20. Case law on the requirement that the confidentiality of information be set for limited and reasonable periods of time

137. In Judgment T-414 of 2010, the Constitutional Court of Colombia found that in order to decide the case at hand, it had to examine the concept of the confidentiality of information. It held that in all cases "[…] confidentiality must be temporary. The period of time established must be reasonable and proportionate to the legally protected interest sought to be protected by the confidentiality […]."[99] The Court concluded by establishing an additional rule according to which, during the term of confidentiality, the information must be duly safeguarded and maintained for purposes of enabling its subsequent release.

138. The same Constitutional Court of Colombia, in Judgment T-511 of 2010, established rules governing confidential information in its decision on the petition of two relatives of victims of forced disappearance who requested information on the police patrols that had been on duty in the same area in which their relatives had been detained.

139. In that case, the Colombian Court stated: "Confidentiality may operate with respect to the content of a public document, but not with respect to its existence. The confidentiality must be temporary. Its length must be reasonable and proportionate to the constitutional interest it seeks to protect. It must be lifted at the conclusion of such time period. Confidentiality may be challenged by citizens, but it may not become a barrier to intra- or inter-organizational, legal, or political oversight of the government decisions and proceedings that are the subject of the confidential information. Confidentiality may operate only with respect to information that jeopardizes fundamental rights or constitutionally relevant interests, but not with respect to the entire government process that serves as the context of such information."[100]

---

[96] Constitutional Court of Guatemala. Appeal of Judgment on Petition for Constitutional Remedy, Case 567-2002, June 19, 2002. Available at: http://www.cc.gob.gt/siged2009/mdlWeb/frmConsultaWebVerDocumento.aspx?St_DocumentoId=797523.html&St_RegistrarConsulta=yes&sF=567-2002

[97] Article 30 of the Constitution of Guatemala states that: ""All acts of government are public. Interested parties have the right to obtain, at any time, the reports, copies, reproductions, and certifications that they request, and to access the files they wish to consult, except in cases involving military or diplomatic matters of national security, or information provided by individuals under the guarantee of confidentiality."

[98] Constitutional Court of Guatemala. Appeal of Judgment on Petition for Constitutional Remedy, Case 1211-2006, September 28, 2006. Available at: http://www.cc.gob.gt/siged2009/mdlWeb/frmConsultaWebVerDocumento.aspx?St_DocumentoId=807525.html&St_RegistrarConsulta=yes&sF=1211-2006

[99] Constitutional Court of Colombia. Judgment T-414/10. Case T-2469460. Bogotá, Colombia, May 27, 2010. Available at: http://www.corteconstitucional.gov.co/relatoria/2010/t%2D414%2D10.htm

[100] Constitutional Court of Colombia. Judgment T-511/10. Case T-2.395.898. Bogotá, Colombia, June 18, 2010. Available at: http://www.corteconstitucional.gov.co/relatoria/2010/t%2D511%2D10.htm

140. These rules on the treatment of confidential information were set forth by the Constitutional Court of Colombia in Judgment C-491 of 2007, which examined the constitutionality of the law regulating classified spending. In that case, the Plenary Chamber of the Colombian Court established the following constitutionally legitimate aims that justify confidentiality: "[…] (1) to guarantee the defense of the fundamental rights of third parties who could be disproportionately affected by the public disclosure of the information; (2) the need to maintain secrecy in order to guarantee national defense and security; (3) the need to ensure the effectiveness of government criminal, disciplinary, customs, or currency exchange investigations; (4) to protect commercial and industrial trade secrets. In any case, any restriction must be reasonable and proportionate to the aims pursued."[101]

### 21. Case law on proof of harm and the need to perform a strict proportionality test when the confidentiality of information is invoked

141. Various courts in the region have ruled on the need to apply a strict proportionality test when the confidentiality of information is invoked.

142. The Constitutional Court of Peru, in the judgment that ordered the disclosure of information on the expenses incurred by a former president of the country and his retinue on the trips taken during his administration, referred to the criteria of reasonableness and proportionality, which must be taken into account when limiting the right of access to information, as well as the presumption of unconstitutionality of laws that restrict that right.

143. According to the Court, "[…] when the exercise of the right of access to public information contributes to the shaping of a free and informed public opinion, it has the status of a preferred freedom […]. Nevertheless, in the case of legislative intervention with respect to a preferred freedom, that status means that the oversight of provisions and acts affecting it are not only subject to more intense judicial supervision, in view of the principles of reasonableness and proportionality, but also that such supervision must take into consideration that such acts or provisions affecting that freedom lack, *prima facie*, the presumption of constitutionality."[102]

144. In this respect "this presumption of the unconstitutionality of a law that […] restricts [the right of access to information] translates into the requirement that the State and its agencies must prove that there is a compelling public interest for the secrecy or confidentiality of the requested information and, in turn, that only by maintaining such secrecy can the constitutional interest that justifies it be served effectively. Thus, if the State cannot demonstrate the existence of a compelling public interest for denying access to information, the presumption that attaches to the provision or act must prevail and, to that extent, its unconstitutionality must be affirmed; however, it also means that the burden of proof with respect to the need to restrict access to information must be, exclusively, on the State."[103]

145. For its part, the Supreme Court of Mexico has held that not every publication of information considered confidential can be prohibited by the State; rather, each specific case must be examined, and it must be determined case-by-case whether the prohibition against making the information public is justified. This was the Court's ruling in its decision on a constitutional challenge relating to the use of the electromagnetic spectrum. In that decision, which was handed down on January 15, 2007, the Court ruled on the scope of specific information that was considered confidential. Under the Federal Transparency and Access to Government Information Act, court files in which final judgments

---

[101] Plenary Chamber of the Constitutional Court of Colombia. Judgment C-491/07. Case D-6583. Bogotá, Colombia, June 27, 2007. Available at: http://www.corteconstitucional.gov.co/relatoria/2007/c%2D491%2D07.htm

[102] Constitutional Court of Peru, Judgment No. 1797-2002-HD/TC, January 29, 2003. Available at: http://www.tc.gob.pe/jurisprudencia/2003/01797-2002-HD.html. Similarly, see: First Chamber of the Constitutional Court (Peru), Case No. 2579-2003-hd/TC, April 6, 2004. Available at: http://www.tc.gob.pe/jurisprudencia/2004/02579-2003-HD.html

[103] Constitutional Court of Peru, Judgment No. 1797-2002-HD/TC, January 29, 2003. Available at: http://www.tc.gob.pe/jurisprudencia/2003/01797-2002-HD.html

have not been entered, as well as the opinions, recommendations, or points of view that form part of the deliberative process of public servants, so long as a final decision is not made, shall be confidential.

146. The Supreme Court's decision limits this general rule, stating that it is not absolute. It held that in those cases in which the dissemination of the information "would result in benefits to society that outweigh the harm its disclosure could cause, an exception to the general rule must be made in favor of the transparency and dissemination of the respective information."[104] In this decision the Court noted that it took into account the potential for harm as a reason to justify the confidentiality of information—which means that when such risk is not present, there is no longer a reason to prevent the disclosure of the information.

147. In the same respect, the Constitutional Court of Colombia, in Judgment C-872 of 2003, used a strict proportionality test to determine whether the confidentiality of evaluations of members of the Military Forces was constitutionally valid. In addition to reiterating that limitations on access to information can only be imposed by the legislature, the Court recalled that the legislature does not have discretionary authority, since every restriction concerning a public document must pursue a legitimate aim and must be proportionate and necessary.

148. In this case, the Court used a strict proportionality test whereby it examined the constitutional legitimacy of the aims pursued by the confidentiality, the proportionality, and the reasonableness in a democratic society of the measures taken by the legislature as an exception to the principle of openness[105].

149. The Chilean Council for Transparency has in turn used the proportionality test and the weighing of interests as criteria for determining whether specific information should be disclosed or kept confidential. One of the cases in which it has employed this criterion arose from a request for information on the selection process used to create the position of Chief of Collections and Bankruptcies at the General Treasury of the Republic and, specifically, the results of the petitioner's evaluation in the process and the evaluation results of the person who ended up being appointed to the position.

150. When it decided this case on August 11, 2009, the Council ruled in favor of the claimant, based on two arguments: first, it affirmed that the confidentiality of the information on the selection process ended at the end of the process; and second, it applied the proportionality test *stricto sensu.* The Council called this test the "harm test", which consists of "striking a balance between the interest in withholding the information and the interest in disclosing it, so as to determine whether the resulting public benefit of knowing the requested information is greater than the harm its disclosure could cause." After applying this harm test to this specific case, the Council concluded that the interest in the disclosure of the information was greater than the possible harm it could cause. Accordingly, it ordered the release of the information on the selection process for the position of Chief of Collections and Bankruptcies at the General Treasury of the Republic.[106]

151. It should be noted that in a prior decision issued on July 28, 2009, the Council for Transparency had stated that the need to weigh the benefits of disclosing the information against the harm that would be cause if the information were public is a decision criterion that has been adopted by the Inter-American Court of Human Rights. Thus, the case law of the Inter-American Court is the source for establishing this interpretive criterion.[107]

---

[104] Supreme Court of Mexico. Record No. 170722. Excerpt from Supreme Court Decision Number 45 of 2007, January 15, 2007. Available at: http://www2.scjn.gob.mx/ius2006/UnaTesislnkTmp.asp?nIus=170722&cPalPrm=45/2007,&cFrPrm=

[105] Plenary Chamber of the Constitutional Court of Colombia. Judgment C-872/03. Case D-4537. Bogotá, Colombia, September 30, 2003. Available at: http://www.corteconstitucional.gov.co/relatoria/2003/C-872-03.htm

[106] Chilean Council for Transparency. Complaint code A29-09, August 11, 2009. Available at: http://www.consejotransparencia.cl/data_casos/ftp_casos/A29-09/A29-09_decision_web.pdf

[107] Chilean Council for Transparency. Complaint code A45-09, July 28, 2009. Available at: http://www.consejotransparencia.cl/data_casos/ftp_casos/A45-09/A45-09_decision_web.pdf

152. In Judgment C-872 of 2003, the Plenary Chamber of the Constitutional Court of Colombia held that the exceptions to access to information are admissible only if their purpose is to protect a fundamental right or some interest of special importance, such as national security. For that purpose, it must be proven that "[…] such rights or interests would be seriously affected if the particular information were disseminated, which makes it necessary to maintain confidentiality."[108]

153. Thus, the Constitutional Court of Colombia requires that when the secrecy of a document is invoked on grounds that making it public would affect national security, it is necessary to prove that the disclosure of that information would in fact harm the interest sought to be protected by keeping it secret.

154. For its part, the Chilean Council for Transparency has addressed the obligation to prove the harm that could arise from the disclosure of information as a necessary requirement for denying access to that information. The case in question involved a request for information with respect to the *Costanera Center*. The information was not provided by the requested entity (the Municipality of Providencia), based on the argument that making it public could adversely affect the rights of third parties.

155. The Council decided this case on September 22, 2009, stating that since it was alleged that third party rights would be violated as a result of the publication of certain information, it must be proven through the application of a "public interest test" that such violation would in fact occur. Such test must evaluate whether "the public benefit of knowing the information outweighs the interest in keeping it secret." In applying this mechanism to the specific case at hand, the Council concluded that the third party "has failed to reliably prove the harm, nor does it quantify such harm"; on the contrary, "the public disclosure of the required background is essential in order for there to be citizen oversight of the awarding of building permits by the Municipal Works Departments […], [since it makes it possible to identify] whether the permit was properly granted." Therefore, the Council granted the request.[109]

### 22. Case law on the restrictive application of the concept of national security

156. With respect to the application of the concept of national security, in a March 8, 2005 judgment, the Constitutional Court of Guatemala ruled on the public nature of contracting by the Guatemalan Army. In that case, the Court was asked to render an advisory opinion as to whether, in light of Article 30 of the Constitution of Guatemala,[110] administrative acts relating to procurements and contracting done by the Guatemalan Army were exempt from public disclosure. The Constitutional Court ruled in the negative, since the exception to publicity relating to national security "refers to those matters that are part of the State's policy to protect the physical safety of the Nation and its territory, in order to protect all of the elements of the State from any aggression on the part of belligerent foreign or domestic groups," and since the Army's procurement of supplies is not such a matter, it cannot be considered confidential information.[111]

157. For its part, the Chamber for the Review of Land, Labor, Administrative and Tax Matters of the Supreme Court of the Dominican Republic, in a judgment handed down on May 21, 2008 (Judgment # 164. D/F 21-05-2008), ruled on writ for a constitutional protection (*amparo*) filed after the

---

[108] Plenary Chamber of the Constitutional Court of Colombia. Judgment C-872/03. Case D-4537. Bogotá, Colombia, September 30, 2003. Available at: http://www.corteconstitucional.gov.co/relatoria/2003/C-872-03.htm

[109] Chilean Council for Transparency. Complaint code A115-09, September 22, 2009. Available at: http://www.consejotransparencia.cl/data_casos/ftp_casos/A115-09/A115-09_decision_web.pdf

[110] Article 30 of the Constitution of Guatemala establishes that: "All acts of government are public. Interested parties have the right to obtain, at any time, the reports, copies, reproductions, and certifications that they request, and to access the files they wish to consult, except in cases involving military or diplomatic matters of national security, or information provided by individuals under the guarantee of confidentiality."

[111] Constitutional Court of Guatemala. Advisory Opinion, Case 2819-2004, March 8, 2005. http://www.cc.gob.gt/siged2009/mdlWeb/frmConsultaWebVerDocumento.aspx?St_DocumentoId=790423.html&St_RegistrarConsulta=yes&sF=2819-2004

Transportation Reorganization Office refused to provide a journalist with information on construction plans for the Santo Domingo subway system. The entity claimed that according to legal regulations the obligation to inform was limited because of predominant public interests, and therefore the confidentiality of certain information was allowed in order to protect scientific, technological, communications, industrial, commercial or financial strategies and projects, the disclosure of which could be detrimental to national interests. Therefore, in the opinion of the requested entity, the information in question was confidential and its publication would jeopardize the safety of subway users and be detrimental to national interests.

158. The Court ordered that the information be turned over in this case, holding that democratic States must be governed in their public undertakings by the principles of openness and transparency, guaranteeing that their citizens are able to exercise political oversight. The Court thus held that the information requested by the journalist was not secret information, in that its confidentiality was not established in a prior law as required under Article 13 of the American Convention on Human Rights. In this respect, the Court determined that the disclosure of the requested information guaranteed national security and public safety, as citizens have a legitimate interest in knowing whether, prior to initiating the project in question, the appropriate studies were conducted to ensure its viability and safety. As such, the Court concluded that the refusal to provide the information in question violated the fundamental right of access to information.[112]

### 23. Case law on access to information contained in documents directly related to the commission of violations of human rights and international humanitarian law

159. Several courts in the region have ruled on the importance of access to information in guaranteeing the rights to truth and justice for the victims of human rights violations.

160. First, the Constitutional Court of Guatemala, in a decision handed down on March 15, 2006, had occasion to address the duty of the President of the Republic to best protect and guarantee the conditions for safeguarding and maintaining information that could be useful in establishing the facts in criminal cases.

161. This judgment arose from a writ for a constitutional protection (*amparo*) that challenged an order issued by the President of the Republic providing for the transfer of the documents of the Presidential Military Staff and the Vice-Presidential Military Staff to the Office of the Adjutant General of the Army, which would be responsible for them.[113] The petitioners in the case alleged that in the past, the Presidential Military Staff had set up a military intelligence body that was accused of committing different human rights violations—some of which were under criminal investigation—and that transferring those documents to the Office of the Adjutant General of the Army could jeopardize the safety of those documents.

162. In this case, the Constitutional Court of Guatemala granted the writ for a constitutional protection (*amparo*), since "by assuming the existence of information that is useful and necessary for the establishment of the facts in criminal cases that are under investigation or could be under investigation in the future […], it should have been ordered that those documents be turned over to other state organizations in whose custody, given the issue at hand, the conditions for the maintenance and safekeeping of those documents would be best preserved and guaranteed—that is, bodies within the regular court system that are in charge of overseeing criminal investigations," in order to "prevent the risk

[112] Supreme Court of the Dominican Republic, Chamber for the Review of Land, Employment, Administrative and Tax Matters, Judgment # 164. D/F 21-05-2008, May 21, 2008. Available at: http://www.suprema.gov.do/consultas/consultas_sentencias/detalle_info_sentencias.aspx?ID=117040016

[113] See: Government Order seven hundred eleven (711) of two thousand three (2003), of November 12, 2003, Article 4 of which states: "all records and archives of regular or classified documents belonging to the Presidential General Staff and the Vice-Presidential General Staff shall be transferred, in an orderly fashion that will enable their easy location, to the Office of the Adjutant General of the Army, which shall be responsible for them until and unless the National Defense Ministry provides otherwise, provided that such arrangement guarantees the best conditions for the safeguarding and security of those documents."

that those documents could be altered, destroyed, invalidated, concealed, or be otherwise affected in such a manner that the determination of the facts or the investigation thereof would be adversely affected."[114]

163. For its part, in the previously cited Judgment C-872 of 2003, in which the Plenary Chamber of the Constitutional Court of Colombia examined the confidentiality of evaluations of members of the Military Forces, the Court established the duty of the Colombian State to preserve and maintain documents directly related to mass and systematic violations of human rights and international humanitarian law.

164. On that occasion, the Colombian Court held that "[…] the latest trends in international human rights law and international humanitarian law closely link the fundamental right of access to public documents to the rights of victims of crimes against humanity, genocide, and war crimes, with respect to justice, reparations, and—especially—to know the truth."[115]

165. In the Court's opinion, the duties of States to respect and guarantee human rights include the duty to investigate, prosecute, and convict the perpetrators of such violations, and to provide redress to the victims, which in most cases entails access to information that can lead to the appropriate attributions of liability and fight against the impunity that threatens the right to the truth.

166. The right to the truth—according to the Court—has both individual and collective connotations. The latter refers to the "right of every people to know its history, to know the truth about events that have taken place, [and] the circumstances and reasons that led to the commission of massive and systematic violations of human rights and international humanitarian law."[116]

167. One of the guarantees of the collective aspect of the right to truth is precisely the ability to access public records, which requires the assumption that the State has a policy for the protection of documents whereby "[…] precautionary measures [are taken] to prevent the destruction, tampering, or forgery of files that record the violations committed […]."[117]

168. The Court held that with respect to this type of information confidentiality or reasons of national defense cannot be invoked to keep courts or victims from consulting it.

169. Finally, the Colombian Court found that the individual aspect of the right to the truth—understood as the right of victims, their relatives, and their loved ones to know the circumstances under which the violations occurred, and in cases of murder or forced disappearance, the victim's location—entails the ability of those individuals to gain access to records containing information on the commission of those crimes.

170. In a recent case, the same Constitutional Court of Colombia (Judgment T-511 of 2010) ordered that the National Police turn over information to two citizens concerning patrols that were assigned to a specific area, the work they performed, and the personnel on duty. The information was requested in order to investigate the kidnapping and death of a person who was traveling in the same area at the same time.

---

[114] Constitutional Court of Guatemala. Direct Petition for Constitutional Remedy, Case 2226-2003, March 15, 2006. Available at: http://www.cc.gob.gt/siged2009/mdlWeb/frmConsultaWebVerDocumento.aspx?St_DocumentoId=807114.html&St_RegistrarConsulta=yes&sF=2226-2003

[115] Plenary Chamber of the Constitutional Court of Colombia. Judgment C-872/03. Case D-4537. Bogotá, Colombia, September 30, 2003. Available at: http://www.corteconstitucional.gov.co/relatoria/2003/C-872-03.htm

[116] Plenary Chamber of the Constitutional Court of Colombia. Judgment C-872/03. Case D-4537. Bogotá, Colombia, September 30, 2003. Available at: http://www.corteconstitucional.gov.co/relatoria/2003/C-872-03.htm

[117] Plenary Chamber of the Constitutional Court of Colombia. Judgment C-872/03. Case D-4537. Bogotá, Colombia, September 30, 2003. Available at: http://www.corteconstitucional.gov.co/relatoria/2003/C-872-03.htm

171. The Court found that the right of access to information had undergone a transformation, and that it is now considered "an essential tool for the satisfaction of the right of victims of arbitrary acts and human rights violations, and to guarantee society's right to historical memory."[118]

172. The Colombian Court concluded by recalling the importance of access to information in democratic societies, summarizing the key international instruments on access to information, the inter-American standards on this fundamental right, and the recommendations made by the Office of the Special Rapporteur for Freedom of Expression in its annual reports.

173. Also, in Judgment T-049 of 2008, the Constitutional Court of Colombia examined the publicity of court proceedings being conducted in the so-called "Justice and Peace" cases in that country, which deal with the attribution of criminal responsibility to some of the illegal armed groups that demobilized in 2004.

174. The Court had to review a petition filed by victims of the crimes committed by the illegal groups, who requested that the hearings conducted in the corresponding criminal cases be broadcast via radio, Internet, and television. In rendering its decision, the Court examined the content of the right of access to information and arrived at the following conclusions: "[…] ii) the criminal investigations phase is confidential with respect to the general public, but not with respect to the victims; they are entitled to have knowledge of the proceedings investigating the truth of the events, in the interest of the effective justice of the State and; iii) administrative and judicial decisions preventing the victims from having knowledge of the voluntary testimony provided in the Justice and Peace cases may be inconsistent with the victims' fundamental rights to truth, justice, and redress enshrined in the Constitution and in different international instruments that form part of our body of constitutional law."[119]

175. Regarding the request for television broadcasting, the Court held that "i) the hearings in which voluntary testimony is given by individuals seeking to avail themselves of Act 975 of 2005 are confidential with respect to the general public, but not with respect to the victims; ii) the voluntary testimony proceedings may be broadcast by the mass media with a delay, provided that the competent authority gives its permission and constitutional rights and guarantees are not adversely affected; iii) the victims may have knowledge of the voluntary testimony of the demobilized individuals, but they are required to maintain the confidentiality of their content."[120]

176. The Court concluded by stressing the importance of the right of access to information so that victims of serious human rights violations may seek the comprehensive redress of their rights, including truth, justice, and guarantees of non-repetition.

---

[118] Constitutional Court of Colombia. Judgment T-511/10. Case T-2.395.898. Bogotá, Colombia, June 18, 2010. Available at: http://www.corteconstitucional.gov.co/relatoria/2010/t%2D511%2D10.htm

[119] Constitutional Court of Colombia. Judgment T-049/08. Case T-1705247. Bogotá, Colombia, January 24, 2008. Available at: http://www.corteconstitucional.gov.co/relatoria/2008/t%2D049%2D08.htm

[120] Constitutional Court of Colombia. Judgment T-049/08. Case T-1705247. Bogotá, Colombia, January 24, 2008. Available at: http://www.corteconstitucional.gov.co/relatoria/2008/t%2D049%2D08.htm

## CHAPTER V

## PRINCIPLES ON THE REGULATION OF GOVERNMENT ADVERTISING IN THE INTER-AMERICAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS

1. There are various ways to unlawfully affect freedom of expression, ranging from the extreme of radical suppression through acts of prior censorship to less evident mechanisms that are more subtle and sophisticated. Article 13.3 of the American Convention on Human Rights refers specifically to those indirect mechanisms "tending to impede the communication and circulation of ideas and opinions." Indeed, that article 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.

2. Indirect means of restriction are hidden behind apparently legitimate actions that, nevertheless, are taken for purposes of placing conditions on the exercise of freedom of expression of individuals. When that happens, it results in the violation of Article 13.3 of the Convention. As the Inter-American Court of Human Rights (hereinafter "Inter-American Court" or "Court") has held, "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"[1] violates freedom of expression.

3. The organs of the inter-American system have addressed the "indirect" means of censorship prohibited by Article 13.3 of the American Convention. Interpreting the above-cited Article 13.3, Principle 5 of the Declaration of Principles on Freedom of Expression adopted by the Inter-American Commission on Human Rights (hereinafter "IACHR"), 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." Principle 13 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."[2]

4. These means of restriction were also examined by the IACHR's Office of the Special Rapporteur for Freedom of Expression, which called attention in its 2003 Annual Report to those "obscure, quietly introduced obstructions [that] do not compel investigation, nor do they receive […] widespread censure."[3] This Office also addressed the issue in its 2008[4] and 2009 Reports.[5]

---

[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. 55.

[2] In the same manner, Principle 7 of the Declaration of Chapultepec (adopted by the Hemispheric Conference on Free Speech held in Mexico City on March 11, 1994) explicitly establishes that: "Tariff and exchange policies, licenses for the importation of paper or news-gathering equipment, the assigning of radio and television frequencies and the granting or withdrawal of government advertising may not be used to reward or punish the media or individual journalists." Although it is not legally binding, the Declaration is a statement of intent and support by numerous leaders for the right to freedom of expression.

[3] IACHR, *2003 Annual Report.* OEA/ Ser. L/ V/ II.118. Doc. 70, December 29, 2003. Volume III: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*, Chapter V (*Indirect Violations of Freedom of Expression: Discriminatory Allocation of Official Publicity*), para. 1.

5. The case law of the Inter-American Court has on several occasions condemned the adoption of government measures that constitute indirect means of restriction on freedom of expression. Accordingly, for example, it has condemned the mandatory requirement that journalists be members of a professional association,[6] the arbitrary use of the regulatory powers of the State when they have been used to intimidate the directors of a media outlet, or to revoke the citizenship of the director of a medium as a result of the editorial slant of the programs it broadcasts.[7] It has also questioned the statements of government officials when, given the context, those statements may 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 [dissemination] of their thoughts."[8] The Inter-American Court has further held that the disproportionate or discriminatory access to "accreditations or authorizations for the written media to participate in official events"[9] would be an indirect restriction.

6. In the same vein, the IACHR has explained that a single government act may simultaneously be a limitation on freedom of expression contrary to the requirements of Article 13.2 of the American Convention, as well as an indirect or subtle means of restricting freedom of expression. For example, the imposition of criminal penalties for certain expressions that are contrary to the interests of the government—which is a direct limitation to this freedom according to Article 13 insofar as it is unnecessary and disproportionate—is also an indirect limitation of this right; its "chilling" and silencing effects on future expressions, which restrict the circulation of information, produce the same results as direct censorship.[10] Along the same lines, the IACHR has stated that the prosecution of persons, including journalists and members of the media, for the mere act of investigating, writing, and publishing information in the public interest violates freedom of expression by discouraging public debate on matters of interest to society. The simple threat of being criminally prosecuted for critical expressions concerning matters of public interest may give rise to self-censorship, given its "chilling effect."[11]

7. The UN, OSCE and OAS Rapporteurs on Freedom of Expression have also addressed the issue of indirect restrictions on freedom of expression by State authorities. For example, in their 2002 Joint Declaration they stated 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

---

…continuation

[4] IACHR, *2008 Annual Report*. OEA/Ser.L/V/II.134. Doc. 5, February 25, 2008. Volume II: *Annual 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. 86 *et seq.* and 129 *et seq.*

[5] IACHR, 2009 Annual Report. OEA/SER.L/V/II. Doc.51, December 30, 2009. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter III (Inter-American Legal Framework Regarding the Right to Freedom of Expression), paras. 97 *et seq.* and 157 *et seq.*

[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. 76.

[7] I/A Court H.R., *Case of Ivcher-Bronstein v. Peru*. Judgment of February 6, 2001. Series C No.74, paras. 158-163.

[8] 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; 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.

[9] 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. 346; 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. 375.

[10] IACHR. Arguments before the Inter-American Court in the *Case of Herrera Ulloa v. Costa Rica*. Transcribed 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. 101.2.a), 101.2.e) & 101,2.k); IACHR. Arguments before the Inter-American Court in the *Case of Ricardo Canese v. Paraguay*. Transcribed in: I/A Court H.R., *Case of Ricardo Canese v. Paraguay.* Judgment of August 31, 2004. Series C No. 111, para. 72.i).

[11] IACHR, Arguments before the Inter-American Court in the *Case of Palamara Iribarne v. Chile*. Transcribed 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 in the *Case of Herrera Ulloa v. Costa Rica*. Transcribed in: I/A Court H.R., *Case of Herrera-Ulloa v. Costa Rica***.** Judgment of July 2, 2004. Series C No. 107, para. 101.2).

should be based on market considerations." Although the bodies of the inter-American system have not issued any express decisions to date on the issue of media regulation and the requirements that must be met in order not to violate freedom of expression, the 2003 Joint Declaration of the UN, OSCE and OAS Rapporteurs on Freedom of Expression addressed this issue specifically, condemning "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."

8. Finally, it should be noted that indirect restrictions may arise from the acts of private persons—for example, when there is a monopoly on materials such as newsprint that are essential to the operation of the industry, or when private persons block and hinder the distribution of printed media. In this regard, the Inter-American Court has held that Article 13.3 imposes an obligation upon the States to guarantee this right in the context of dealings among private individuals that could give rise to indirect limitations to freedom of expression: "Article 13(3) of the [American] Convention imposes of 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."[12] Read in conjunction with Article 1.1 of the American Convention, this implies, in the Court's judgment, that the Convention is violated not only when the State imposes, through its agents, indirect restrictions on the circulation of ideas or opinions but also when it allows the establishment of private controls that give rise to a restriction of freedom of expression.[13]

### A. The case of government advertising

9. The arbitrary and discriminatory allocation of government advertising was one of the first mechanisms of indirect censorship addressed by the inter-American system. Indeed, the Office of the Special Rapporteur for Freedom of Expression devoted a special chapter in its 2003 Annual Report to the examination of the phenomenon, and concluded that "indirect obstruction through distribution of official publicity acts as a strong deterrent to freedom of expression."[14] As the Office of the Special Rapporteur stated at that time:

> "[…] this topic merits special attention in the Americas, where media concentration has historically promoted the abuse of power by governments in the placement of their advertising revenue."[15]

10. The arbitrary placement of government advertising, like other means of indirect censorship, operates based on different types of *needs* that the communications media have in order to function and *interests* that can affect them. It is a form of pressure that acts as a *reward* or *punishment,* the purpose of which is to place conditions on the editorial slant of a media outlet according to the will of the party exerting the pressure.

11. As mentioned previously, mechanisms of indirect censorship are often hidden behind the apparently legitimate exercise of state authority, and many such mechanisms are exercised by government employees in a discretionary manner. These forms of indirect censorship are therefore particularly difficult to detect, as there is often no clear line between the legitimate exercise of a power and the unlawful restriction of a right. From this point of view, a legitimate State power can be a violation

---

[12] 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. 367; 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. 340.

[13] 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.

[14] IACHR, *2003 Annual Report.* OEA/ Ser. L/ V/ II.118. Doc. 70, December 29, 2003. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression,* Chapter V *(Indirect Violations of Freedom of Expression: Discriminatory Allocation of Official Publicity)*, para. 13.

[15] IACHR, *2003 Annual Report.* OEA/ Ser. L/ V/ II.118. Doc. 70, December 29, 2003. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression,* Chapter V (*Indirect Violations of Freedom of Expression: Discriminatory Allocation of Official Publicity)*, para. 2.

of the right to freedom of expression if (a) the exercise of such power was motivated by the editorial position of the affected party, and (b) the purpose of exercising such power was to place conditions on the free exercise of the right to freedom of thought and expression. In the case of the allocation of government advertising, a case of indirect censorship occurs when such allocation is done with discriminatory aims according to the editorial position of the media outlet included in or excluded from such allocation, and with the purpose of imposing conditions on its editorial position or line of reporting.

12. In order to determine whether the exercise of those powers has resulted in a violation of freedom of expression, it is necessary to examine the context. Indeed, the Inter-American Court has held 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."[16] Following the same reasoning, it has held that "the restrictive method set forth in Article 13.3 is not exhaustive nor does it prevent considering 'any other means' or indirect methods of new technologies (…). In order for there to be a violation to Article 13.3 of the Convention it is necessary that the method or means effectively restrict, even if indirectly, the communication of ideas and opinions."[17]

13. Years after the initial assessment this Office made with respect to the issue of government advertising, the problem still persists in many of the region's countries. Although progress has been made with some legal reforms and best practices, the inadequate regulation in most countries of the Americas tends to favor discretion in the allocation of state advertising budgets, which in some cases are measured in millions of dollars. Various civil society organizations from the region noted this at a hearing held before the IACHR on October 29, 2010 in Washington D.C.[18] It was indicated at that time that the lack of adequate regulation is the main reason advertising budgets can be used to influence the content of the communications media.

14. The absence of legal provisions regulating the allocation of advertising was noted by the Supreme Court of Argentina in the case of *Editorial Río Negro S.A. v. Provincia de Neuquén,* in which the Court held that the Province of Neuquén had violated the freedom of expression of a newspaper when it withdrew government advertising as a consequence of critical coverage. The Supreme Court held that the Province of Neuquén had to establish an appropriate legal framework to limit the discretion of public servants and prevent this type of arbitrariness.[19]

15. Likewise, the Supreme Court of Chile ruled on a claim filed by *Punto Final* magazine against the allocation of government advertising by some ministries. In that case, the Court found that the Chilean legal system grants government employees "a wide margin of discretion" and recommended that investments in government advertising be made "according to transparent and non-discriminatory criteria."[20] In addition, in 2006, the Chilean National Congress created a Special Investigative Commission on Government Advertising, which recommended the establishment of a legal regime with

---

[16] I/A Court H.R., *Case of Ivcher-Bronstein v. Peru*. Judgment of February 6, 2001. Series C No.74, para. 154. Similarly, see: 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.

[17] Cf. 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. Cf. also 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. 340.

[18] IACHR. Public hearing held on October 29, 2010 in Washington D.C. on "Indirect Censorship and Government Advertising in the Americas." The hearing was requested by the Open Society Justice Initiative, the *Asociación por los Derechos Civiles* (Argentina); the *Centro de Archivos y Acceso a la Información Pública* (Uruguay) and the *Grupo Medios y Sociedad* (Uruguay); the *Fundación para la Libertad de Prensa* (Colombia); the *Instituto Prensa y Sociedad* (Peru); Article 19 (Mexico); the *Fundación Pro Acceso* (Chile); the *Centro de Análisis e Investigación Fundar* (Mexico) and the *Instituto de Prensa y Libertad de Expresión* (Costa Rica).

[19] See: Supreme Court of Argentina, *Case of Río Negro,* Judgment of September 5, 2007.

[20] See: Supreme Court of Chile, Appeal 9148/09, Judgment of April 22, 2010.

clear rules determining criteria and mechanisms for the allocation of government advertising. Finally, in Mexico the National Human Rights Commission (CNDH) said that the state enterprise *Petróleos Mexicanos* had suspended government advertising in the magazine *Contralínea* as a result of an investigation into possible cases of corruption there. The CNDH asserted that it is necessary for the state enterprise "to have objective, clear, transparent, and non-discriminatory criteria for the granting and placement of government advertising in the different communications media, both online and in print."[21]

16. In addition, at the hearing before the IACHR, the requesting organizations indicated that in the countries of the region the State is, on many occasions, one of the main—if not the only—advertiser in the market, which gives it a disproportionate weight and enormously increases the potential for government advertising to place conditions on the media.

17. One of the countries in the region that has a regulatory framework worth examining is Canada. Although it was established through regulations to the Financial Administration Act, the *Communication Policy* of the Government of Canada defines the objective of government communication and establishes criteria for the planning and allocation of government advertising. Indeed, the regulations establish that State communication must aim to "meet the information needs of the public" and to inform citizens, with due regard for "freedom, openness, security, caring and respect."[22] The regulations provide that the institutions covered by them must provide information free of charge when it is needed by individuals to access public services; when the information explains the rights, entitlements, and obligations of individuals; when it consists of personal information requested by the individual whom it concerns; and when it is necessary in order for citizens to understand changes to laws, policies, programs, or services.[23] It further establishes that the duty to inform includes the duty to do so effectively, which means that the information must be presented in a way that is clear and easy to understand, and it must be objective, relevant, and useful.[24] The regulations also provide that communications and advertising campaigns must be planned within the framework of each entity's annual plan of activities;[25] they also suspend advertising during general elections and prohibit advertising campaigns that disseminate the messages of political parties.[26]

18. Peru has also had a law in place to regulate government advertising since August of 2006.[27] The aim of the law is, among other things, to establish general criteria for the use of funds budgeted for government advertising. The law requires that campaigns be planned, and that the selection of media outlets for such campaigns be justified on technical grounds. In addition, the law prohibits the earmarking of public funds to support a political party or a candidate for elected office. It also prohibits those government employees in charge of the agencies conducting the advertising campaigns from appearing in the ads that are disseminated in the media. Finally, the law contains transparency provisions and penalties for government employees who fail to comply with the duties and obligations prescribed therein.

19. Similar provisions can be found, for example, in Spain and the United Kingdom. In Spain, Act 29 on Institutional Communication and Advertising, enacted in December 2005, establishes a

---

[21] National Human Rights Commission, Recommendation 57/2009 of September 14, 2009.

[22] Communication Policy of the Government of Canada, August 1, 2006, available at, http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12316&section=text#cha1.

[23] Communication Policy of the Government of Canada, August 1, 2006, section 2.

[24] Communication Policy of the Government of Canada, August 1, 2006, section 3.

[25] Communication Policy of the Government of Canada, August 1, 2006, section 13.

[26] Communication Policy of the Government of Canada, August 1, 2006, section 23.

[27] Act 28.874, Perú, enacted on August 14, 2006. Available at: http://www.censuraindirecta.org/web_files/download/articulos/adjuntos/Ley-28874-de-Publicidad-Estatal-pdf-1586.pdf. It should be noted that the law has not resulted in the elimination of discretion in the allocation of government advertising, in part because of the absence of regulations thereto.

regulatory framework that defines the objectives of government advertising. It establishes that such advertising cannot be used to "highlight administrative achievements"[28] and it prohibits government advertising during election periods.[29] In the United Kingdom, although there is no law regulating the institutional communication of the State, there is a regulatory framework in the so-called "Propriety Guides," which regulate the activities of the communications staff of different State agencies, including the promotion of advertising campaigns. These guidelines establish criteria for advertising campaigns carried out by the State, which must never be "political" in nature.

20. These regulatory frameworks—though not perfect—establish certain basic parameters that often tend to prevent institutional communication from being used for electoral purposes or as a means to exert pressure on journalists and the media. An adequate legal regime to address the placement of government advertising must necessarily decrease the discretion of public servants to place ads, so that public funds are not used in a manner that restricts freedom of expression.

21. With the exceptions of Peru and Canada, the countries of the hemisphere do not have specific laws addressing this issue.[30] As stated in the 2003 Annual Report of the Office of the Special Rapporteur, "Most OAS countries lack specific legislation on the issue of allocation of official publicity."[31] That report concluded that the absence of such regulation could "create the danger of an excessive discretionary power in decision-making bodies, which could give way to discriminatory allocations of official publicity."[32]

22. Although some jurisdictions have made progress toward legal reform in this area, no great strides have been made. In Chile, for example, the legal reform process began with a detailed study conducted by the Special Investigative Commission on Government Advertising, which was made public in 2008. The Special Commission found that the advertising budgets were allocated in a discretionary manner, which was possible due to the lack of clear rules defining the criteria and mechanisms of allocation. The Special Commission recommended the drafting of a bill "that regulates the official advertising of the administrative bodies of the State, including public enterprises and the Municipalities."[33]

23. In Colombia the issue has been addressed at the local level, in the city of Cartagena and in the department of Caldas. In Cartagena, for example, the municipality has made progress with the implementation of provisions issued in 2008 that created an official committee and established several criteria for the placement of government advertising.[34] At the departmental level, on April 6, 2009, the government of Caldas issued Order 0020, whereby mechanisms were established for the placement of

---

[28] Act 29/05 on Institutional Communication and Advertising, enacted on December 29, 2005, article 4.1.a, available in PDF format at http://www.boe.es/boe/dias/2005/12/30/pdfs/A42902-42905.pdf.

[29] Act 29/05 on Institutional Communication and Advertising, enacted on December 29, 2005, available in PDF format at http://www.boe.es/boe/dias/2005/12/30/pdfs/A42902-42905.pdf.

[30] The Peruvian law is Act 28.874, enacted on August 14, 2006, available at http://www.censuraindirecta.org/web_files/download/publicaciones/archivo/Ley-28-874-pdf-1589.pdf; Cabinet Office, Propriety Guidance, available at: http://tna.europarchive.org/20070807115016/http://www.cabinetoffice.gov.uk/government_communication/propriety/guidance.pdf.

[31] IACHR, *2003 Annual Report.* OEA/ Ser. L/ V/ II.118. Doc. 70, December 29, 2003. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*, Chapter V (*Indirect Violations of Freedom of Expression: Discriminatory Allocation of Official Publicity*), para. 56. See, in particular, paras. 24 *et seq.,* where it is explained that the few provisions regulating the issue in most of the countries of the region do not specifically aim to prevent government advertising from becoming a means of indirect censorship.

[32] IACHR, *2003 Annual Report*. OEA/ Ser. L/ V/ II.118. Doc. 70, December 29. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*, Chapter V (*Indirect Violations of Freedom of Expression: Discriminatory Allocation of Official Publicity*), para. 56.

[33] National Congress of Chile. Chamber of Deputies. Report of the Special Investigative Commission on Government Advertising, 2007, p. 134.

[34] IACHR, 2009 Annual Report. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere), para. 114.

advertising by the centralized and decentralized entities at the departmental level, and an advertising advisory committee was created.[35]

24. Finally, a bill was introduced in Uruguay proposing the regulation of the allocation of government advertising,[36] and in mid-2010 the government of José Mujica again took up the initiative and undertook to promote a bill drafted by the Ministry of Industry, Energy and Mining. At the time of this report's drafting, the bill remained pending.

25. The absence of adequate regulatory frameworks makes it possible for the previously mentioned abuses to be committed in the allocation of government advertising. In Honduras, for example, following the coup d'état of June 28, 2009, the *de facto* government stopped placing government advertising with media outlets that were unsympathetic to the coup.[37]

26. The absence of adequate regulatory frameworks has led to legal challenges to the arbitrary allocation of government advertising in several countries. As mentioned earlier, one of the principal precedents at the local level is the case of *Editorial Río Negro S.A. v. Provincia de Neuquén,* decided by the Supreme Court of Argentina in September 2007. That case dealt with a lawsuit filed by the Río Negro newspaper against the Province of Neuquén, which had suspended its placement of advertising in that paper as a consequence of an exposé on corruption that it had published. In that case, the Supreme Court held that if the State decides to place government advertising, it must do so based on two constitutional criteria:

> "1) [I]t cannot manipulate advertising, placing it with and withdrawing it from some media [based on] discriminatory criteria; 2) it cannot use advertising as an indirect means of affecting freedom of expression."[38]

27. The Court, citing this office's 2003 Annual Report, found that "The State cannot allocate advertising funds arbitrarily, based on unreasonable criteria,"[39] and it held that such arbitrary allocation "amounts to pressure that, far from preserving the integrity of public debate, places it at risk, unfairly and indirectly affecting freedom of the press and the legitimate interest that the *Río Negro* newspaper and its readers have in the conduct of the political officials of that province in the performance of their duties."[40]

28. The opinion expressed by the Supreme Court of Argentina in the *Río Negro* case was echoed by the IV Chamber of the Federal Court of Appeals for Administrative Matters of Argentina, which decided the case filed by *Editorial Perfil* against the national government based on its exclusion from the receipt of government advertising as a consequence of its critical stance. In that case, the judges of the IV Chamber held that "the government must prevent acts that are intentionally or exclusively aimed at limiting the exercise of freedom of the press, as well as those that lead indirectly to that result. In other words, it is sufficient for the government act to have such a motive in order for it to infringe upon that freedom. Accordingly, the financial constriction or bankruptcy of the newspaper is not necessary […]."[41]

---

[35] See: Medioslatinos, "*Gobernación colombiana reglamenta distribución equitativa de la publicidad oficial",* April 23, 2009, available at http://www.medioslatinos.com/modules/news/article.php?storyid=2336.

[36] IACHR, *2009 Annual Report.* OEA/Ser.L/V/II Doc.51, December 30, 2009. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression,* Chapter II *(Evaluation of the State of Freedom of Expression in the Hemisphere*), para. 503.

[37] IACHR, *2009 Annual Report*. OEA/Ser.L/V/II Doc.51, December 30, 2009. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*, Chapter II *(Evaluation of the State of Freedom of Expression in the Hemisphere),* para. 346.

[38] Supreme Court of Argentina, *Case of Río Negro,* Judgment of September 5, 2007, conclusion of law No. 11.e.

[39] Supreme Court of Argentina, *Case of Río Negro,* Judgment of September 5, 2007, conclusion of law No. 4.

[40] Supreme Court of Argentina, *Case of Río Negro,* Judgment of September 5, 2007, conclusion of law No. 9.

[41] IV Chamber of the Federal Court of Appeals for Administrative Matters. February 10, 2009. Case No. 18.639/2006: *Editorial Perfil S.A. y otro contra EN – Jefatura Gabinete de Ministros – SMC sobre amparo ley 16-986;* considerando 11; Asociación por los Derechos Civiles. February 11, 2009. *Caso Perfil: un fallo en contra de la censura indirecta.* Available at:

Continued…

These cases were preceded by detailed studies that documented, through requests for access to public information, the means by which government advertising was allocated.[42] This type of research is vitally important to identify the regulatory deficiencies or the arbitrary allocations by States that tend to indirectly influence the content of the media.

29. It is possible to find additional case law in countries such as the United States. In the case of *El Día v. Rossello*, the United States Court of Appeals for the First Circuit held that the withdrawal of government advertising from the *El Día* newspaper by Puerto Rico Governor Pedro Rossello's administration—as a consequence of the paper's criticism of the governor—was a clear violation of freedom of expression guaranteed by the First Amendment of the Constitution of the United States.[43] In that respect, the Court of Appeals found that "using government funds to punish political speech by members of the press and to attempt to coerce commentary favorable to the government [runs] afoul of the First Amendment."[44] The Court further held that "clearly established law prohibits the government from conditioning the revocation of benefits [in this case, State advertising] on a basis that infringes constitutionally protected interests."[45]

30. Likewise, in India, in the case of *Ushodaya Publications Private Ltd. v. Government of Andhra Pradesh and Others,* the High Court of the State of Andhra Pradesh held that, while it is not mandatory for the State to take out government advertising, it cannot allocate that budget in a discriminatory manner in the event that it decides to do so. Indeed, the Court found that a legal provision that gives absolute discretion in the placement of advertising to a single public servant "violates Article 14" of the Constitution, which guarantees the right to equality.[46] The Court recalled that the Supreme Court of India had held that the guarantee of freedom of expression would be infringed upon "either by placing restraint upon it directly or by placing restraint upon something which is an essential part of that freedom."[47]

31. An impartial and independent judiciary is fundamental to the prevention of abuses, and specific cases of discrimination in which advertising budgets are allocated with the aim of punishing critical expressions may be redressed before the courts; however, the structural response to this type of threat to freedom of expression must come from appropriate legal frameworks. In this respect, in the *Río Negro* case, the Supreme Court of Argentina ordered the Province of Neuquén to present to the Court an appropriate legal framework to regulate the allocation of government advertising. It is not enough for the judges to redress the harm caused; rather, it is necessary to demand that the governments that carry out this these types of discriminatory practices submit to clear rules so that the violations are not repeated. The ongoing jurisdiction of the judges who decide these cases, in order to promote and supervise the establishment of an appropriate legal framework, can be a fundamental tool in the furtherance of effective

---

…continuation
http://www.adc.org.ar/sw_contenido.php?id=513; Committee to Protect 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. *Satisface a la SIP fallo en Argentina sobre publicidad oficial.* Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4136&idioma=sp.

[42] See: *Una Censura Sutil*. *Abuso de la publicidad oficial y otras restricciones a la libertad de expresión en Argentina.* Asociación por los Derechos Civiles/Open Society Justice Initiative. Buenos Aires: Porter y Cía., 2005; & *El Precio del Silencio. Abuso de publicidad y otras formas de censura indirecta en América Latina*. Asociación por los Derechos Civiles / Open Society Justice Initiative. Buenos Aires: Porter y Cía., Colección Reformas Legales, 2008.

[43] *El Día, Inc. v. Rossello,* 165 F.3d 106 (1st Cir. 1999).

[44] *El Día, Inc. v. Rossello,* 165 F.3d 106, 109 (1st Cir. 1999).

[45] *El Día, Inc. v. Rossello,* 165 F.3d 106, 110 (1st Cir. 1999).

[46] Andhra Pradesh High Court, *Ushodaya Publications Private Ltd. v. Government of Andhra Pradesh and Others,* decision of October 10, 1980, para. 19.

[47] Andhra Pradesh High Court, *Ushodaya Publications Private Ltd. v. Government of Andhra Pradesh and Others,* decision of October 10, 1980, para. 8.

legal reform in this area.[48] Nevertheless, the best way to address the issue is for the legislative branch to draft an appropriate regulatory framework.

32. As explained previously, the State's improper use of regular powers for purposes of restricting fundamental rights is facilitated to the extent that government employees have an excessive degree of discretion. If such powers are duly regulated, exercised in a transparent fashion, and subject to adequate supervision, the potential for their use as a means of indirect restriction is significantly decreased. Below, the Office of the Special Rapporteur presents a series of basic principles that adequate regulations on the subject should follow. These principles, based on inter-American standards and on comparative experiences, set minimum criteria, the implementation of which would enable the deactivation of one of the principal mechanisms of State interference in the content of the media.

### B. Guiding principles on government advertising

33. Clear and transparent legal frameworks that prevent arbitrariness in decision-making are required to reduce the discriminatory or arbitrary earmarking of public funds. On this point, the Office of the Special Rapporteur has stated that "insufficiently precise laws and unacceptable discretionary powers constitute freedom of expression violations. [When] laws pertaining to allocation of official publicity are unclear or leave decisions to the discretion of public officials (…) there exists a legal framework contrary to freedom of expression."[49] The principles explained below further develop this doctrine.

#### 1. Establishment of specific, clear, and precise laws

34. States must adopt specific legal rules on government advertising at each level of government. The lack of a specific and adequate legal framework to define the objectives, allocation, placement, and oversight of government advertising allows for the arbitrary use of these funds to the detriment of freedom of expression.

35. Article 2 of the American Convention imposes upon the member States the general duty to bring its domestic laws into line with the Convention, and to adopt "such legislative or other measures as may be necessary to give effect to those rights or freedoms." The 2003 Annual Report of the Office of the Special Rapporteur for Freedom of Expression remarked that "the member States need to have a greater political will to carry out reforms in their legislation guaranteeing every society the full exercise of freedom of expression and information."[50] In the same report, and with respect to government advertising, the Office of the Special Rapporteur stated: "The multitude of alleged cases is evidence of the widespread nature of alleged indirect violations of freedom of expression. These possible indirect violations are promoted by the lack of legal regulations that provide adequate remedies for the discriminatory allocation of official publicity, as these legal voids give way to excessive discretionary power on behalf of the decision-making authorities."[51]

36. States therefore have the duty to adopt clear and specific legal guidelines as a comprehensive part of their duty to guarantee the exercise of freedom of expression. With regard to government advertising, this means adequate regulation of the mechanisms of production and allocation of government advertising with the objective of limiting the excessive discretion that allows for the violation of the right to freedom of thought and expression. Best practices, informal mechanisms, flawed

---

[48] This is, for example, what the Argentine Supreme Court did in the above-cited case of *Editorial Río Negro S.A. v. Provincia de Neuquén.*

[49] IACHR, 2003 *Annual Report.* Volume III: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter V. Para. 23.

[50] IACHR, *2003 Annual Report.* Volume III: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II, para. 18

[51] IACHR, *2003 Annual Report.* Volume III: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter V. Para. 86.

or dispersed regulations and—in general—the implementation of general rules on ad placement to reduce discretion and abuses in government advertising are not enough to prevent violations of freedom of expression.

37. These legal frameworks must define government advertising simply and inclusively. They must establish, for example, that government advertising includes any communication, announcement, or ad space purchased with public funds, in any media and in any format.

38. These regulations must cover the different stages associated with the production, placement, dissemination, and oversight of public or private sector advertising paid for with public money.

39. The specific legal rules on government advertising must incorporate the principles of public interest, transparency, accountability, nondiscrimination, efficiency, and the good use of public funds.

40. The legal framework must include an exhaustive description of its scope of application. This should include public bodies at all levels of government, including those belonging to the Executive, Legislative, and Judicial Branches; constitutional or statutory bodies; decentralized agencies; self-governing entities; business corporations capitalized with state funds, and any other legal entity that engages in advertising with money from public coffers, such as state enterprises.

41. The regulations should also include appropriate penalties for the violation of their provisions.

**2. Legitimate objectives of government advertising**

42. States should use government advertising to communicate with the public and to provide information through the media about the services they provide and the public policies they pursue, for purposes of meeting their goals and guaranteeing the right to information and the exercise of the rights of the beneficiaries of such policies or the community. Government advertising should consist of information in the public interest, the purpose of which is to meet the legitimate aims of the State, and it must not be used for discriminatory purposes, to violate the human rights of the public, or for electoral or partisan purposes.

43. In a democratic society the citizens have the right to know about—that is, to be informed of—official activities, the policies of the government, and the services provided by the State. The Office of the Special Rapporteur for Freedom of Expression has maintained that "the use of the media to transmit information is an important and useful tool for States."[52] As the Office of the Special Rapporteur stated in its 2009 Annual Report, the State must at least provide information regarding:

"(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 [complete], understandable, [simply written], and up to date. Also, given that significant segments of the population do not have access to new technologies, yet many of their rights [may] depend on obtaining information on how to [assert] them, in these circumstances the State must find [effective] ways to fulfill its obligation of [active] transparency."[53]

---

[52] IACHR *2003 Annual Report*. Volume III: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter V, para. 3.

[53] IACHR. *2009 Annual Report*. Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter IV (The Right of Access to Information*), paras. 32 et seq.

44. Therefore, the purpose of government advertising must be useful to the public, and the government must use the media, platforms, and formats that best guarantee access to and dissemination of information according to the purpose and characteristics of each campaign.

45. The information transmitted in government advertisements must be clear and cannot be deceptive; in other words, it must not lead its audience to error, or be used for purposes other than legitimate and non-discriminatory communication with the public. It must also not be easily confused with the symbols, ideas, or images used by any political party or social organization, and it must be identified as government advertising, with express mention of the sponsoring entity. State advertising may not be the veiled propaganda of those who control the government or of their interests, nor should it be used to stigmatize sectors of the population that oppose or are critical of the government.[54]

### 3. Criteria for the allocation of government advertising

46. The States must establish procedures for the contracting and allocation of government advertising that reduce discretion and prevent suspicion of political favoritism in its distribution. Advertising funds must be allocated according to pre-established criteria that are clear, transparent, and objective. Government advertising must never be allocated by the States as a reward or punishment for the editorial and reporting content of the media. Such use must be explicitly penalized. Decision-making responsibility for placing and allocating government advertising must not lie solely in the hands of political staff; rather, public servants with specialized technical backgrounds in the field should also participate.

47. Advertising funds must never be distributed with discrimination—whether positive or negative—based on the editorial slant of the media outlet. As principle 13 of the Declaration of Principles on Freedom of Expression holds, "The arbitrary and discriminatory placement of official advertising (…) 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."

48. In the same vein, 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, and the OAS Special Rapporteur on Freedom of Expression stated in a joint declaration 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." [55]

49. Although the media have no intrinsic right to receive advertising funds, the Office of the Special Rapporteur for Freedom of Expression has asserted that "when a state allocates [such funds] in discriminatory ways […] the […] right to freedom of expression is infringed."[56]

50. The awarding of government advertising is discriminatory and constitutes indirect censorship when it is based on the opinions issued by the media outlet or other reasons not justified by the objectives of the advertising in question, such as a personal or political affinity. In other words, as the

---

[54] There are studies demonstrating that during election periods there is an increase in the propagandistic use of government advertising, as well as its discriminatory allocation to strengthen sympathetic media. As such, it is necessary for the specific laws on the subject to establish mechanisms to prevent ad campaigns—which should serve the public interest—from being used as tools for garnering votes, as the use of public funds for such purpose would violate the principle of fairness and equality of conditions that must prevail in an electoral race. To this end, it would be possible to establish provisions regulating the suspension of advertising for a reasonable period of time during political campaigns and the elections, except in cases where there is a legal duty to inform or an emergency regarding which it is necessary to communicate a certain message.

[55] International Mechanisms for Promoting Freedom of Expression, December, 2002. See: Annex to the 2001 Report of the Office of the Special Rapporteur for Freedom of Expression, OEA/Ser.L/II.114, Doc. 5 rev. 1, April 16, 2002.

[56] IACHR. 2003 Annual Report. Volume III: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter V, para. 12.

Office of the Special Rapporteur for Freedom of Expression has maintained, a non-discriminatory decision is one based "on criteria 'substantially related' to the prescribed viewpoint-neutral purpose [of the advertising to be placed]." [57]

51. Campaigns must be decided upon based on clear, public allocation criteria established prior to the advertising decision. At the time of placing the ad, the State must provide a clear, written explanation of the parameters used, and the manner in which they were applied.

52. The allocation criteria must include and evaluate different factors, such as the profile of the campaign's target population, the prices, and the circulation or audience of the respective medium. In any case, the criteria must be clearly set forth in the relevant provision, together with a balancing mechanism that specifies how the different allocation variables are to be weighed, thus reducing the discretion of the participating government employee or body.

53. An overriding criterion of the State must be to consider the audience or target population of the advertising campaign. Government advertising forms part of the freedom of information of the public, which has the right to be adequately informed of the activities and services of the State. Therefore, government advertising should be oriented toward the effectiveness of the message. In other words, the message should be received by the audience that the campaign seeks to reach. The target population determines the range of eligible media; then, among other variables, the State must consider the size of the circulation or audience—which should be broad and comprehensive—and the price, which must never exceed the price paid by a private advertiser.

54. To the extent that the allocation criteria require measurements, the legal framework must guarantee that they are comprehensive measurements that encompass different types of media, and that they are performed using objective and reliable criteria. Accordingly, they could be performed by credible, impartial institutions. The measurements should include data on small, community, and local media, so that their use as a tool for awarding advertising contracts does not become an indirect barrier to the exercise of freedom of expression by excluding such media from receiving government advertising. From this perspective, discrimination in the distribution of advertising based on the model under which the media operate is unacceptable. In this respect, the exclusion of community or alternative broadcast media in the allocation of the advertising budget due to the mere fact that they operate under non-commercial criteria constitutes unacceptable discrimination under the American Convention. These media outlets must be included under equal conditions in the selection processes and allocation criteria in consideration of their coverage or audience.

55. Finally, the management of advertising funds should not be under the control of political appointees who report directly and solely to the executive authorities in power. That encourages excessive discretion and leads to favoritism in the allocation of such funds. Therefore, in addition to having pre-established criteria and procedures, it is necessary for technical specialists to share in the responsibility for handling and allocating advertising. Although it is reasonable for political staff to participate in the general shaping of campaigns, given that they deal with public policies, the design and handling of technical issues (planning, media plan, placement in the media, and other matters) should be left to technical staff specializing in those tasks.

---

[57] IACHR. 2003 Annual Report. Volume III: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter V, para. 11. Similarly, see: Supreme Court of Argentina, *Case of Río Negro,* Judgment of September 5, 2007, which states: "There is a right against the arbitrary allocation [of government advertising] or the indirect violation of freedom of the press through financial means. The first option for a State is whether or not to advertise, and this decision remains within the sphere of State discretion. If it decides to advertise, it must meet two constitutional criteria: 1) it cannot manipulate advertising, placing it with and withdrawing it from some media based on discriminatory criteria; 2) it cannot use advertising as an indirect means of affecting freedom of expression."

**4. Adecuate planning**

56. The regulatory provisions must require that the different State agencies plan government advertising adequately. The decision to grant public funds for government advertising must be made in a transparent and justified manner, and must allow for public oversight. It must be justified based on the existence of advertisements and campaigns that meet real and specific communication needs.

57. A lack of planning favors the abuse of government advertising by increasing the discretion exercised by the public servants who have the authority to distribute it.

58. States must make use of the funds earmarked for government advertising through specific and necessary campaigns, in accordance with the principle of the public utility of government advertising. Therefore, such campaigns should be specified within the appropriate plans.

**5. Contracting mechanisms**

59. States must allocate advertising funds through open, transparent, and non-discriminatory procedures, bearing in mind the characteristics of each jurisdiction. Only in exceptional cases, and in the event of fully justified emergencies or unforeseen events, may States avail themselves of closed or direct contracting systems.

60. States must purchase advertising spots in the media through pre-established procedures that prevent arbitrary decisions. All of the stages involved in the contracting process must be public, so that procedural oversight may be exercised by the bidders, the community, the supervisory bodies, and the public administration itself. Transparency in these contracting processes is fundamental so that they can be called into question if any irregularities surface. Accordingly, the law regulating them must provide for suitable and effective administrative and judicial appeals.

61. The design of the procedures must bear in mind the geographical and market conditions of each jurisdiction. The States must seek to comply with the principle of competitive bidding inherent in government contracting, barring exceptional situations listed exhaustively in the law.

62. The contracting mechanisms should be sufficiently flexible to address the different situations that may require a rapid response in terms of communication by the State. The direct hiring of sole suppliers must only be used in cases of emergency or extreme urgency, and those situations must be defined in the applicable provisions in order to prevent their abuse. In these cases, transparency requirements must be maximized.

63. The States must follow objective, predetermined, and transparent selection rules in choosing advertising agencies or other subcontractors involved in the process of producing or distributing government advertising. Likewise, States must guarantee that intermediary agents adhere to the principles and criteria set forth under the law for the contracting of government advertising. All contracts must be approved, at the final instance, by government employees with technical training whose conduct and decisions would pass administrative and judicial review.

64. The States can establish supplier registries or information systems, in which the media, programs, and intermediary agents can enroll. All of the information recorded in these databases must be considered public. Enrollment in the registries must be done for the exclusive purpose of facilitating the transparency and objectivity of the contracting process. The registration requirements must be those that are strictly necessary to successfully carry out an objective selection process. Disproportionate or discriminatory requirements are in no way admissible.

**6. Transparency and access to information**

65. Individuals have the right to know all of the information on government advertising that is in the State's possession. Therefore, the State must promote the transparency of information concerning government advertising in two ways. First, it must periodically publish all of the relevant information on contracting criteria, reasons for allocation, budgets, expenses, and advertising contracts. This must include the amounts spent on advertising, broken down according to media outlets, advertising campaigns, and contracting entities. Second, it must guarantee easy access to the information with respect to each request made by the general public.

66. All of the information on government advertising that is held by the State is public information. Therefore, the State has a positive obligation to provide the information on government advertising that is in its possession; correlatively, access to that information must be considered a fundamental individual right that the State is required to guarantee. The State has the obligation to provide the public with the maximum quantity of information on this subject voluntarily,[58] as well as the duty to provide individuals with an administrative procedure for accessing public information.[59] In addition, administrative and judicial appeal processes that are simple, effective, expedited, and not unduly burdensome must be available to challenge the decision of any authority who denies access to information in such cases.[60]

67. As the Office of the Special Rapporteur for Freedom of Expression has stated, "States must keep in mind 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." [61]

68. For purposes of enforcing the right of access to information held by the State, the entire public sector should be considered to be "the State." In this respect, "the 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,

---

[58] Cf. *2004 Joint Declaration of the UN, OSCE and OAS Special Rapporteurs for Freedom of Expression:* ("(…) Public authorities should be required to publish pro-actively, even in the absence of a request, a range of information of public interest. Systems should be put in place to increase, over time, the amount of information subject to such routine disclosure.); Inter-American Juridical Committee. Resolution 147 of the 73rd Regular Session: Principles on the Right of Access to Information. August 7, 2008, paragraph 4 ("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.").

[59] See: IACHR. 2009 Annual Report. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter IV (The Right of Access to Information), para. 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 [demand] 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.")

[60] See: IACHR. 2009 Annual Report. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter IV (The Right of Access to Information), para. 29 ("The remedy should […] (a) review the merits of the controversy to determine whether the right of access was inhibited, and (b) in the affirmative case, order the corresponding government body to turn over the information. In these cases, the [appeals] should be simple and quick, since the expeditious delivery of the information is indispensable for the fulfillment of the functions this right presupposes."). See also: I/A Court H.R., *Case of Claude Reyes, et al*. Judgment of September 19, 2006, Series C No. 151, para. 137.

[61] IACHR 2003 Annual Report. Volume III: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter V. Para. 90.

and bodies which operate with public funds or which perform public functions."[62] As the Office of the Special Rapporteur for Freedom of Expression maintained in its 2009 Annual Report, "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 [to] 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."[63]

69. Private entities must bear in mind that when they take part in contracting procedures for government advertising, certain information strictly related to the contracting process—which might otherwise be considered private—becomes public in nature. All information relating to the issue of government advertising must be public.

70. The type of information covered by the right of access to public information on government advertising must include, but is not limited to, "the 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 exercise of its functions."[64] Information considered relevant includes "all information, defined broadly to include everything which is held or recorded in any format or medium and which communicates or contains meaning."[65]

71. All information concerning the "what," "how," "why" and "how much" of a government advertisement or campaign must be public. As such, all of the following must be made transparent: the budgets approved for advertising, which must be published voluntarily and proactively; advertising expenses, which must be subject to detailed and periodic reports that break down expenses by entities, campaigns, headings, and media outlets; the strategic plans of the advertising campaigns which must be based on real communication needs and objectives. The contracting processes also must be transparent, and the public must be easily able to access specific data about them, including objectives, price, duration, media bids and media outlets in which ads are placed, advertising agencies involved, audience or circulation data, results in cases in which a subsequent evaluation is conducted, and so on.[66] The selection criteria that the State or intermediary agency used in choosing the media outlet for each government advertisement must especially be disclosed. The information must be presented in such a manner that it can be obtained completely, in an accessible and timely manner, and it should be easy to find.

### 7. External oversight of the allocation of government advertising

72. The States must establish mechanisms for external oversight by an autonomous body, thus enabling an exhaustive monitoring of the distribution of government advertising. Such controls must include periodic audits of the government's expenditures and practices with regard to the contracting of

---

[62] Inter-American Juridical Committee. Resolution 147 of the 73rd Regular Session: Principles on the Right of Access to Information. August 7, 2008. Paragraph 2.

[63] IACHR. *2009 Annual Report.* Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression,* Chapter IV (*The Right of Access to Information*), para. 19.

[64] IACHR. 2009 Annual Report. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter IV (The Right of Access to Information), para. 21.

[65] IACHR. *2009 Annual Report.* Volume II: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression,* Chapter IV *(The Right of Access to Information),* para. 22. Inter-American Juridical Committee. Resolution 147 of the 73rd Regular Session: Principles on the Right of Access to Information. August 7, 2008. Paragraph 3.

[66] For example, in Canada, this information is included in the "Annual Report", an exhaustive document containing details of expenditures by state bodies, expenditures by media type, suppliers contracted, and specific data on each important campaign, among other items. In Spain, Act 29/2005 requires the preparation of an Annual Report that includes the campaigns, their costs, the awardees of contracts entered into, and the corresponding media plans.

advertising, as well as special reports on the relevant practices of the State that have adequate legislative or parliamentary oversight. The States must establish appropriate penalties for failure to comply with the law, as well as appropriate remedies for identifying and disputing illegal allocations of government advertising.

73. The governments must provide a public accounting of their expenditures and the manner in which advertising funds are used. Accordingly, it is necessary to establish clear and public external oversight mechanisms that report on the legality and the appropriateness of state advertising. The controls should include periodic audits (annually, in principle) performed by administrative agencies or bodies that have the institutional, organizational, and functional guarantees to operate independently of the government in power and the economic or social powers that be.[67] In order to ensure the greatest transparency with regard to these types of controls, the reports of the supervisory bodies must also be public and available to all citizens through the Internet.

74. The States have a general auditing duty. In the case of public funds earmarked for advertising, certain specific controls must be in place. Essentially, given that state advertising can be used as an instrument to manipulate the media, the States must oversee the appropriate application of the award criteria at the time of allocating advertising contracts. Likewise, governments must demonstrate that they have met the various obligations provided for under the law, and must evaluate periodically the necessity, timeliness, and impact of advertising campaigns, correcting their practices pursuant to that evaluation.[68]

75. The States must establish certain negative consequences for noncompliance with the obligations set forth in provisions regulating government advertising. First, they must actively seek to bring their practices into line with the recommendations made in the audits. Second, failure to comply with the law must be penalized in a manner that is proportionate and appropriate to the infraction committed.[69]

76. The States must have multiple levels of oversight of government advertising. In this respect, the defenders of collective interests must be authorized to challenge inappropriate allocations, and private citizens must be able to call into question, through appropriate procedures, those campaigns they consider unlawful.

### 8. Media pluralism and government advertising

77. The States must establish policies and earmark funds to promote media diversity and pluralism through indirect assistance mechanisms or explicit and neutral subsidies differentiated from government advertising expenditures. Government advertising must not be considered a means of sustenance for the media.

78. Freedom of expression, in addition to protecting the individual right of the issuing party, guarantees the right of all other people to access the greatest quantity and diversity of information and

---

[67] The independence of the oversight bodies is essential in order for them to be able to perform their duties free from pressures of any kind. The mechanisms for guaranteeing that independence are multiple and varied, but we can mention, by way of example: the pre-established terms of mandate; the stability of positions except in cases of serious misconduct; technical suitability; appointments that require the prior approval of a collective body with plural representation; appropriate remunerations; and transparency of action, among other things.

[68] Some comparative laws, such as those of Canada, require the performance of subsequent technical evaluations to measure the results in the case of large campaigns (that exceed a certain amount). In that country, all institutions must include such subsequent evaluations as a comprehensive part of the planning of each campaign, in order to ensure that there are sufficient funds to finance them. Cf. *Legislación comparada sobre regulación de publicidad oficial*. ADC. August 2008, p. 14. Available at: http://www.censuraindirecta.org.ar/sw_seccion.php?id=26 [Query: January 2010].

[69] In Australia, for example, the legal system considers a public servant or Ministry to have used public funds inappropriately when such funds are used, or allowed to be used, for advertisements that are inconsistent with the common interest that must prevail in official communications, and it provides for a prison sentence with a pre-established maximum of seven years (*Government Advertising Bill 2005, prohibiting use of taxpayers' money on party political advertising*, A. 14).

ideas, which is necessary for the robust debate required for a democratic system to function properly. The Inter-American Court specifically underscored this dual dimension—individual and social—of freedom of expression,[70] and both the Court and the Inter-American Commission have held that the absence of pluralism in the sources of information and media is a serious obstacle to the effective exercise of this right.[71]

79. Under the parameters of the American Convention, and as the organs of the system have stated repeatedly, States have the duty to promote media pluralism. Accordingly, they must take measures so that the markets in which the media operate are open, plural, diverse, and not overly concentrated.[72]

80. Whether they use tax exemptions, competitive funding systems, assistance, or subsidies, or any other mechanism for promoting pluralism in the media, the allocation procedures must always be fair, open, and public. They must use criteria that are clear, transparent, and neutral with respect to the editorial position or political stance of the content, so as to prevent any kind of arbitrariness. States must never use government advertising as a subsidy, as they have different objectives.

81. In this respect, if the States were to decide to establish a subsidy mechanism to promote pluralism and diversity in the sphere of public communication, such subsidies must be granted in a transparent and non-discriminatory manner. They must be based on objective criteria related to the need

---

[70] "In its individual dimension, 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. […] In its social dimension, freedom of expression is a means for the interchange of ideas and information among human beings and for mass communication. It includes the right of each person to seek to communicate his own views to others, as well as the right to receive opinions and news from others." 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 5 (OC5/85) of November 13, 1985, Series A No. 5, paras. 30-33.

[71] According to the Inter-American Court of Human Rights, "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 (…)," (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). For its part, the Inter-American Commission on Human Rights has said that "the free circulation of ideas and news is inconceivable without multiple sources of information (…)." (IACHR complaint before the Inter-American Court of Human Rights in the *Case of Ivcher Bronstein,* March 31, 1999, p. 28). The IACHR's Office of the Special Rapporteur for Freedom of Expression has also weighed in on this point, establishing that: "freedom of expression also implies that the citizens are able to accede to diverse sources of information, including opinions and ideas, as well as a variety of forms and outlets for artistic and cultural expression (…)," (IACHR, *2004 Annual Report*. OEA/Ser.L/V/II.122. Doc.5, February 23, 2005. Volume III: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression.* Chapter V, *"Indirect Violations of Freedom of Expression,"* paras. 18 and 20). Principle 12 of the Declaration of Principles on Freedom of Expression, drafted by the Office of the Special Rapporteur and adopted by the Inter-American Commission in 2000 is particularly relevant in that it states: "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." The Office of the Special Rapporteur has stated that principle 12 "is based on the notion that if there were monopolies and oligopolies in the mass media, only a small number of individuals or social sectors could exercise control over the information that is made available to society. Accordingly, individuals could be deprived of the right to receive information from other sources," and that, in this respect, "the Office of the Special Rapporteur for Freedom of Expression of the OAS considers that this provision does not represent any limitation whatsoever on the duty of the state to guarantee, through its legislation, plurality in media ownership" (*Annual Report of the Office of the Special Rapporteur for Freedom of Expression* 2004, Chapter V, paras. 93 and 94). Consistent with this is the "Joint Declaration on Diversity in Broadcasting," issued in December, 2007 by the Inter-American Commision on Human Rights Special Rapporteur on Freedom of Expression, the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, and the ACHPR (African Commission on Human and Peoples' Rights) Special Rapporteur on Freedom of Expression and Access to Information, which underscores "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 (…)."

[72] Cf. I/A Court H.R., *Kimel v. Argentina.* Judgment of May 2, 2008. Series C No. 177, para. 57. "Given 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."

to foster a greater diversity of voices through the inclusion of minority and excluded voices representing disadvantaged groups in the marketplace of ideas. Subsidies or assistance of any kind can also become an indispensable mechanism of pressure or influence over the editorial slant, focus, or news coverage of a medium. Therefore, they must be subject to the principles established herein which are consistent with their nature.

82. In particular, they must: (i) be regulated through special, clear, and specific regulations; (ii) arise from legitimate, public, and transparent objectives; (iii) have objective and non-discriminatory distribution criteria; (iv) follow careful planning; (v) have clear, open, transparent, and non-discriminatory allocation criteria; and (vi) have independent and external audit and oversight mechanisms. This ensures that subsidies are not used to influence or place conditions upon the content of media that are in a weaker position financially, and therefore require affirmative action measures to be able to operate, as well as stronger guarantees to ensure independence and strength in the face of political power.

# CHAPTER VI

## CONCLUSIONS AND 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 24 media workers were murdered in the region in 2010, while two others were kidnapped and ultimately killed, for reasons that could be related to the practice of their profession. In the majority of these cases the investigations have not led to the identification of those responsible. In addition to these tragic events, there were dozens of 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 2010 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, as in previous years, 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 adequately investigated when they are committed with the aim of silencing the exercise of the right to freedom of expression of any other individual. With this in mind, States must adopt the necessary measures to achieve progress in the investigations, such as the creation of specialized units and special investigation protocols.

b. Bring to trial, before 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 such 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 journalists 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 promoting proportionality in the application of subsequent liability

5. Some Member States 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 issues criminal convictions against the journalists. 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 the practice of democracy.

b. Promote the modification of laws on criminal defamation with the objective of eliminating the use of criminal 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. Promote the modification of laws on insult to ideas or institutions with the aim of eliminating the use of criminal proceedings to inhibit free democratic debate about all issues.

d. 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 2010, the Office of the Special Rapporteur continued to receive information on statements made by high-ranking State officials discrediting the journalism work of some communicators and media outlets critical of their administration, accusing them of illicit acts based on the editorial slant of the media outlet or of the journalist. 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 prior condition that may imply censorship of freedom of expression, such as prior requirements of truthfulness, timeliness, or impartiality of information.

**E. Discriminatory distribution of government advertising**

12. The Office of the Special Rapporteur received complaints pertaining to distribution of government 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 government advertising or other indirect means aimed at impeding communication and the circulation of ideas and opinions. States should also regulate these matters in accordance with the inter-American standards laid out in this and other reports of the Office of the Special Rapporteur.

**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 into the domestic legal regimes of several States, either through the approval of special access to information laws or through decisions by their 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 and in the implementation of some laws.

15. With 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.

c. Encourage the effective and efficient implementation of norms on access to information, adequately training public employees and informing the citizenry in order to eradicate the culture of secrecy and provide citizens the tools to effectively monitor state activities, public administration and the prevention of corruption, all essential to the democratic process.

### 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 radio 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 observed the use of the State's regulatory and oversight powers in ways that contravened 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, 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 radio 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 radio electric 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 radio broadcasting, in a manner that will produce an equitable division of the spectrum and the digital dividend to community radio stations and channels. The allocation 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 equality, 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 debate.

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 especially recognizes 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 journalists who lost their lives defending the right of every person to freedom of expression and information. This text and all the efforts of the Office of the Special Rapporteur for Freedom of Expression are dedicated, with admiration and respect, to all of those who were murdered or harmed for exercising their right to freedom of expression.

# 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

### 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 DECLARATIONS

### 1. TENTH ANNIVERSARY JOINT DECLARATION: TEN KEY CHALLENGES TO FREEDOM OF EXPRESSION IN THE NEXT DECADE

**The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information,**

*Having met* in Washington, D.C. on 2 February 2010, with the assistance of *ARTICLE 19, Global Campaign for Free Expression* and the *Centre for Law and Democracy*;

*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, 12 December 2007, 10 December 2008 and 15 May 2009;

*Emphasising*, once again, the fundamental importance of freedom of expression - including the principles of diversity and pluralism - both inherently and as an essential tool for the defence of all other rights and as a core element of democracy;

*Recognising* that many important gains have been made over the last ten years since our first Joint Declaration was adopted in November 1999 in terms of respect for freedom of expression, including gains in respect for the right to information and considerable growth in access to the Internet;

*Concerned* that at the same time enormous challenges still exist in giving full effect to the right to freedom of expression, including restrictive legal regimes, commercial and social pressures, and a lack of tolerance of criticism on the part of the powerful;

*Noting* that some of the historic challenges to freedom of expression have still not been addressed successfully, while new challenges have arisen due to technological, social and political developments;

*Aware of* the enormous potential of the Internet as a tool for realising the right to freedom of expression and to information;

*Cognisant* of the efforts by some governments to restrict the Internet, as well as the failure to recognise the unique nature of this medium, and emphasising the need to respect freedom of expression and other human rights in any efforts to apply legal rules to it;

*Stressing* that, while the last ten years have witnessed impressive growth in global efforts to protect and promote freedom of expression, far more attention needs to be devoted to this effort, by governments and other official actors, by human rights and other civil society organisations, and in international cooperation;

*Welcoming* the impressive development of international standards regarding the promotion and protection of freedom of expression over the last ten years by international bodies and civil society actors;

*Adopt*, on 3 February 2010, the following Declaration on Ten Key Threats to Freedom of Expression:

1. <u>Mechanisms of Government Control over the Media</u>

Government control over the media, an historic limitation on freedom of expression, continues to be a serious problem. Such control takes many forms but we are particularly concerned about:

a) Political influence or control over public media, so that they serve as government mouthpieces instead of as independent bodies operating in the public interest.
b) Registration requirements for the print media or to use or access the Internet.
c) Direct government control over licensing or regulation of broadcasters, or oversight of these processes by a body which is not independent of government, either in law or in practice.
d) The abuse of State advertising or other State powers to influence editorial policy.
e) Ownership or significant control of the media by political leaders or parties.
f) Politically motivated legal cases being brought against the independent media.
g) The retention of antiquated legal rules – such as sedition laws or rules against publishing false news – which penalise criticism of government.

2. Criminal Defamation

Laws making it a crime to defame, insult, slander or libel someone or something, still in place in most countries (some ten countries have fully decriminalised defamation), represent another traditional threat to freedom of expression. While all criminal defamation laws are problematical, we are particularly concerned about the following features of these laws:

a) The failure of many laws to require the plaintiff to prove key elements of the offence such as falsity and malice.
b) Laws which penalise true statements, accurate reporting of the statements of official bodies, or statements of opinion.
c) The protection of the reputation of public bodies, of State symbols or flags, or the State itself.
d) A failure to require public officials and figures to tolerate a greater degree of criticism than ordinary citizens.
e) The protection of beliefs, schools of thought, ideologies, religions, religious symbols or ideas.
f) Use of the notion of group defamation to penalise speech beyond the narrow scope of incitement to hatred.
g) Unduly harsh sanctions such as imprisonment, suspended sentences, loss of civil rights, including the right to practise journalism, and excessive fines.

3. Violence Against Journalists

Violence against journalists remains a very serious threat with more politically motivated killings of journalists in 2009 than in any other year in the past decade. Particularly at risk are journalists reporting on social problems, including organised crime or drug trafficking, voicing criticism of government or the powerful, reporting on human rights violations or corruption, or reporting from conflict zones. Recognising that impunity generates more violence, we are particularly concerned about:

a) A failure to allocate sufficient attention and resources to preventing such attacks and to investigating them and bringing those responsible to justice when they do occur.
b) The lack of recognition that special measures are needed to address these attacks, which represent not only an attack on the victim but also an attack on everyone's right to receive information and ideas.
c) The absence of measures of protection for journalists who have been displaced by such attacks.

4. Limits on the Right to Information

Over the past ten years, the right to information has been widely recognised as a fundamental human right, including by regional human rights courts and other authoritative bodies. Laws giving effect to this right have been passed in record numbers and this positive trend continues, with some 50 laws having been passed in the last ten years. However, major challenges remain. We are particularly concerned about:

a) The fact that a majority of States have still not adopted laws guaranteeing the right to information.
b) The weak laws in place in many States.
c) The massive challenge of implementing the right to information in practice.
d) The lack of openness around elections, when the need for transparency is particularly high.
e) The fact that many intergovernmental organisations have not given effect to the right to information in relation to the information they hold as public bodies.
f) The application of secrecy laws to journalists and others who are not public officials, for example to impose liability for publishing or further disseminating information which has been leaked to them.

5. Discrimination in the Enjoyment of the Right to Freedom of Expression

Equal enjoyment of the right to freedom of expression remains elusive and historically disadvantaged groups – including women, minorities, refugees, indigenous peoples and sexual minorities – continue to struggle to have their voices heard and to access information of relevance to them. We are particularly concerned about:

a) Obstacles to the establishment of media by and for historically disadvantaged groups.
b) The misuse of hate speech laws to prevent historically disadvantaged groups from engaging in legitimate debate about their problems and concerns.
c) The lack of adequate self-regulatory measures to address:
    i) Underrepresentation of historically disadvantaged groups among mainstream media workers, including in the public media.
    ii) Inadequate coverage by the media and others of issues of relevance to historically disadvantaged groups.
    iii) The prevalence of stereotypical or derogatory information about historically disadvantaged groups being disseminated in society.

6. Commercial Pressures

A number of commercial pressures pose a threat to the ability of the media to disseminate public interest content, which is often costly to produce. We are particularly concerned about:

a) Growing concentration of ownership of the media, with serious potential implications for content diversity.
b) Fracturing of the advertising market, and other commercial pressures, leading to cost-cutting measures such as less local content, cheap, shallow entertainment and a decrease in investigative journalism.
c) The risk that the benefits from the switchover to digital frequencies will go largely to existing broadcasters, and other uses such as telecommunications, to the detriment of greater diversity and access, and public interest media.

7. Support for Public Service and Community Broadcasters

Public service and community broadcasters can play a very important role in providing public interest programming and in supplementing the content provided by commercial broadcasters, thereby contributing to diversity and satisfying the public's information needs. Both face challenges. We are particularly concerned about:

a) The increasingly frequent challenges to public funding support for public broadcasters.
b) The fact that many public broadcasters have not been given a clear public service mandate.
c) The lack of specific legal recognition of the community broadcasting sector in licensing systems which are based on criteria that are appropriate to this sector.
d) The failure to reserve adequate frequencies for community broadcasters or to establish appropriate funding support mechanisms.

8. Security and Freedom of Expression

The notion of national security has historically been abused to impose unduly broad limitations on freedom of expression, and this has become a particular problem in the aftermath of the attacks of September 2001, and renewed efforts to combat terrorism. We are particularly concerned about:

a) Vague and/or overbroad definitions of key terms such as security and terrorism, as well as what is prohibited, 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.
b) Abuse of vague terms to limit critical or offensive speech, including social protests, which do not constitute incitement to violence.
c) Formal or informal pressures on the media not to report on terrorism, on the grounds that this may promote the objectives of terrorists.
d) Expanded use of surveillance techniques and reduced oversight of surveillance operations, which exert a chilling effect on freedom of expression and undermine the right of journalists to protect their confidential sources.

9. 9.Freedom of Expression on the Internet

The significant potential of the Internet as a tool to promote the free flow of information and ideas has not been fully realised due to efforts by some governments to control or limit this medium. We are particularly concerned about:

a) The fragmentation of the Internet through the imposition of firewalls and filters, as well as through registration requirements.
b) State interventions, such as blocking of websites and web domains which give access to user-generated content or social networking, justified on social, historical or political grounds.
c) The fact that some corporations which provide Internet searching, access, chat, publishing or other services fail to make a sufficient effort to respect the rights of those who use their services to access the Internet without interference, for example on political grounds.
d) Jurisdictional rules which allow cases, particularly defamation cases, to be pursued anywhere, leading to a lowest common denominator approach.

10. Access to Information and Communications Technologies

While the Internet has provided over a billion people with unprecedented access to information and communications tools, the majority of the world's citizens have no or limited access to the Internet. We are particularly concerned about:

a) Pricing structures which render the poor unable to access the Internet.
b) A failure to roll out connectivity the 'last mile' or even further, leaving rural customers without access.
c) Limited support for community-based ICT centres and other public access options.

d) Inadequate training and education efforts, especially among poor, rural and elderly populations.

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

## 2. JOINT STATEMENT ON WIKILEAKS

***UN Special Rapporteur on the Promotion and Protection the Right to Freedom of Opinion and Expression***

***Inter-American Commission on Human Rights Special Rapporteur for Freedom of Expression***

December 21, 2010 – In light of ongoing developments related to the release of diplomatic cables by the organization Wikileaks, and the publication of information contained in those cables by mainstream news organizations, the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression and the Inter-American Commission on Human Rights (IACHR) Special Rapporteur for Freedom of Expression see fit to recall a number of international legal principles. The rapporteurs call upon States and other relevant actors to keep these principles in mind when responding to the aforementioned developments.

1. The right to access information held by public authorities is a fundamental human right subject to a strict regime of exceptions. The right to access to information protects the right of every person to access public information and to know what governments are doing on their behalf. It is a right that has received particular attention from the international community, given its importance to the consolidation, functioning and preservation of democratic regimes. Without the protection of this right, it is impossible for citizens to know the truth, demand accountability and fully exercise their right to political participation. National authorities should take active steps to ensure the principle of maximum transparency, address the culture of secrecy that still prevails in many countries and increase the amount of information subject to routine disclosure.

2. At the same time, the right of access to information should be subject to a narrowly tailored system of exceptions to protect overriding public and private interests such as national security and the rights and security of other persons. 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. Exceptions to access to information on national security or other grounds 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. In accordance with international standards, information regarding human rights violations should not be considered secret or classified.

3. Public authorities and their staff bear sole responsibility for protecting the confidentiality of legitimately classified information under their control. Other individuals, including journalists, media workers and civil society representatives, who receive and disseminate classified information because they believe it is in the public interest, should not be subject to liability unless they committed fraud or another crime to obtain the information. In addition, government "whistleblowers" 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. Any attempt to impose subsequent liability on those who disseminate classified information should be grounded in previously established laws enforced by impartial and independent legal systems with full respect for due process guarantees, including the right to appeal.

4. Direct or indirect government interference in or pressure exerted upon any expression or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law when it is aimed at influencing content. Such illegitimate interference includes politically motivated legal cases brought against journalists and independent media, and blocking of websites and

web domains on political grounds. Calls by public officials for illegitimate retributive action are not acceptable.

5. Filtering systems which are not end-user controlled – whether imposed by a government or commercial service provider – are a form of prior censorship and cannot be justified. Corporations that provide Internet services should make an effort to ensure that they respect the rights of their clients to use the Internet without arbitrary interference.

6. Self-regulatory mechanisms for journalists have played an important role in fostering greater awareness about how to report on and address difficult and controversial subjects. Special journalistic responsibility is called for when reporting information from confidential sources that may affect valuable interests such as fundamental rights or the security of other persons. Ethical codes for journalists should therefore provide for an evaluation of the public interest in obtaining such information. Such codes can also provide useful guidance for new forms of communication and for new media organizations, which should likewise voluntarily adopt ethical best practices to ensure that the information made available is accurate, fairly presented and does not cause substantial harm to legally protected interests such as human rights.

Catalina Botero Marino
Inter-American Commission on Human Rights Special Rapporteur on Freedom of Expression

Frank LaRue
UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression

## D. PRESS RELEASES

### 1. PRESS RELEASE Nº R02/10

### OFFICE OF THE SPECIAL RAPPORTEUR EXPRESSES CONCERN AT THE ATTACK SUFFERED BY A COMMUNITY RADIO STATION IN HONDURAS

*Washington D.C., January 11, 2010* – The Inter-American Commission on Human Rights' (IACHR) Office of the Special Rapporteur for Freedom of Expression expresses concern over the attack against community radio station Faluma Bimetu (Coco Dulce), which belongs to the Garifuna community in the Triunfo de la Cruz area of Atlántida department, Honduras. The Office of the Special Rapporteur urges the Honduran authorities to investigate this incident quickly and effectively, as well as to provide the communicators with adequate protection so that they can continue to operate free from attacks, threats, or intimidation of any kind.

According to the information obtained by the Office of the Special Rapporteur, sometime after 3:30 in the morning on Tuesday, January 6, a group of unknown individuals broke into the building from which radio station Faluma Bimetu (Coco Dulce) operates and removed equipment including the transmitter and two computers. They then set fire to the facility, though the fire only damaged part of the building thanks to the intervention of the neighbors. Since the June 2009 coup, radio Faluma Bimetu (Coco Dulce) has received several threats for its opposition to the coup and to several real estate developments in the region. For this reason, the radio station had informed the IACHR that it was at risk

The Office of the Special Rapporteur calls on the State of Honduras to investigate this incident, which constitutes a direct attack on the freedom of thought and expression of the population in general and of the Garifuna community in particular. Likewise, the Office of the Special Rapporteur requests that the State of Honduras take all necessary measures to guarantee that the exercise of the right to freedom of thought and expression be free from attacks, threats, and intimidation of any kind.

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."

## 2. PRESS RELEASE Nº R03/10

### OFFICE OF THE SPECIAL RAPPORTEUR EXPRESSES PROFOUND CONCERN AT THE MURDER OF ANOTHER JOURNALIST IN MEXICO

*Washington D.C., January 11, 2010* – The Inter-American Commission on Human Rights' (IACHR) Office of the Special Rapporteur for Freedom of Expression emphatically condemns the murder of Valentín Valdés Espinosa, a journalist with daily newspaper *Zócalo Saltillo* in the city of Saltillo, Coahuila state, Mexico. This is the second incident of its kind that has taken place inMexico in three weeks. The Office of the Special Rapporteur exhorts the Mexican authorities to expedite the strengthening of the investigative bodies dealing with solving these kinds of crimes and urges the Mexican state to create special protective mechanisms that adequately and effectively address the serious risks faced by Mexico's journalists, particularly near the northern border.

According to the information received by the Office of the Special Rapporteur, at around 11 PM on the night of Thursday, January 7, 2010, Valentín Valdés Espinosa, a journalist with daily newspaper *Zócalo Saltillo*'s local section, was traveling with two fellow reporters on the Venustiano Carranza Boulevard in the city of Saltillo. Unknown individuals riding in two sport utility vehicles intercepted them and forced them out of their car. Valdés Espinosa was kidnapped, along with another reporter who was freed several hours later after being beaten. Early Friday morning, Valdés Espinosa's lifeless body was found on Fundadores Boulevard, in front of the Marbella Motel, along with a message that has not yet been released by the authorities in charge of the investigation.

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 Valdés Espinosa murder and to capture and adequately punish those responsible.

The Office of the Special Rapporteur energically repeats its call for the MexicanState 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 (*Fiscala 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."

## 3. PRESS RELEASE Nº R07/10

### OFFICE OF THE SPECIAL RAPPORTEUR EXPRESSES DEEP CONCERN OVER THE MURDER OF JOURNALIST JOSE LUIS ROMERO

*Washington D.C., January 23, 2010* – The Inter-American Commission on Human Rights' (IACHR) Office of the Special Rapporteur for Freedom of Expression emphatically condemns the murder of José Luis Romero, a journalist with radio news show "Línea Directa," which is broadcast by Radio Sistema del Noroeste in the state of Sinaloa, Mexico. This is the second journalist murdered in Mexico so far this year. The Office of the Special Rapporteur once again exhorts the Mexican authorities to expedite the strengthening of the investigative agencies charged with solving these kinds of crimes and urges the Mexican State to create, without delay, special protective mechanisms to adequately, effectively, and in a timely fashion address the extremely serious risks faced by journalists in Mexico, particularly near the northern border.

According to the information received by the Office of the Special Rapporteur, José Luis Romero, a journalist covering the police beat, was kidnapped on December 30, 2009. On Saturday, January 16, 2010, his lifeless body was found by the side of a highway on the way to the city of Los Mochis, in Sinaloa state. According to the information, the autopsy indicated that Romero had been dead for more than 15 days by the time his remains were found. Once again, suspicion falls on the criminal organizations that control narcotics trafficking alongMexico's northern border with the United States.

In 2009, at least 10 journalists were murdered in Mexico for reasons related to the practice of their profession. These incidents were condemned time and again by the Office of the Special Rapporteur for Freedom of Expression, and each time it reiterated its urgent call for the Mexican authorities to investigate the crimes and punish those responsible. Likewise, the Office of the Special Rapporteur requested that the State take urgent measures to provide protection to social communicators due to the undeniable risks that they live with every day.

In this sense, the Office of the Special Rapporteur repeats its call for the MexicanState to move decisively forward with existing investigations into crimes against journalists and to adopt, as soon as possible, measures that are indispensable for protecting the press. Such measures include the strengthening of the Special Prosecutor, the classification of crimes against journalists as federal crimes, and the implementation of permanent and specialized measures of protection to guarantee the life and physical integrity of at-risk communicators.

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."

## 4. PRESS RELEASE Nº 08/10

## COMMISSIONER FOR VENEZUELAN AFFAIRS AND IACHR'S SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION REJECT THE CLOSING OF CABLE TELEVISION CHANNELS IN VENEZUELA

*Washington D.C., January 24, 2010* - The IACHR's Commissioner for Venezuelan Affairs, Paulo Sérgio Pinheiro, and Special Rapporteur for Freedom of Expression, Catalina Botero, expressed their emphatic rejection of the closing of cable television channels in Venezuela and requested that the guarantees of freedom of expression and due process be reestablished.

On January 23, 2010, Diosdado Cabello, Conatel director and Minister of Public Works and Housing, publicly urged companies that provide cable and satellite television subscription services to immediately remove from their programming lineups any television channels not in compliance with the Law of Television and Radio Social Responsibility. According to the Minister, the opinion of the service operator or of the government is sufficient for determining whether a channel is in violation of the law. He also warned that if the cable operators did not cease broadcasting the channels, "It will be they and not the channels who will be subject to an administrative procedure." At zero hour on January 24, 2010, at least six cable channels were taken off the air. *RCTV Internacional* and *TV Chile* were among them.

The decision to take a cable channel off the air for alleged non-compliance with the Law of Television and Radio Social Responsibility means, for all intents and purposes, the closure of a channel for not complying with this law. This decision therefore has enormous repercussions when it comes to freedom of expression, and as such must comply with all the guarantees consecrated in law, in the Venezuelan Constitution and in the international treaties to which the BolivarianRepublic of Venezuela is a party. In particular, in order for the closing of a media outlet to be legitimate, it is necessary that prior to the exhaustion of due process, an independent and impartial state body verify that the media outlet committed an offense clearly established by law and that the agency charged with enforcing the law adequately and sufficiently justifies the decision. These minimum guarantees of due process cannot be sidestepped on the pretext that the media outlet in question is a cable channel.

In this case, the channels that were so suddenly taken off the air did not have an opportunity to defend themselves during a due process before an impartial authority. These channels were punished summarily, without due process and without justification under Venezuelan law. With this decision, the right to freedom of expression in Venezuela is further eroded, as it blocks cable media outlets from operating independently and without fear of being silenced on account of the focus of their reporting or their editorial stance.

The IACHR's Commissioner for Venezuelan Affairs and Special Rapporteur for Freedom of Expression expressed their serious concern over these facts and urged the Venezuelan authorities to comply with the applicable legal provisions, in particular with the minimum guarantees of due process to which all the inhabitants of the Americas have a right. Commissioner Pinheiro and Special Rapporteur Botero reminded the Venezuelan authorities that the existence of free, independent, vigorous, plural, and diverse media is an indispensable condition for the proper functioning of a democratic society. Likewise, they noted that it is the State's duty to foster conditions under which democratic, plural, and uninhibited debate can exist. It is therefore necessary to reestablish the guarantee that the media may operate freely.

## 5. PRESS RELEASE Nº R16/10

### OFFICE OF THE SPECIAL RAPPORTEUR EXPRESSES DEEP CONCERN OVER LATEST MURDER OF A JOURNALIST IN MEXICO, THE THIRD IN 2010

*Washington, D.C., February 3, 2010*—The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its deep concern over the murder of journalist Jorge Ochoa Martínez, the editor of the weekly newspapers El Sol de la Costa and El Oportuno, in the state of Guerrero, Mexico. Ochoa is the third reporter to be murdered in Mexico so far in 2010. The Office of the Special Rapporteur reiterates its call to the Mexican State to provide full support to the agencies in charge of investigating this crime, so that those who are responsible can be prosecuted and duly punished.

According to the information received, Guerrero Ochoa's body was found in his car, with a bullet wound to the head, near midnight on Friday, January 29, in themunicipality of Ayutla de los Libres, Guerrero. Although the local authorities have stated that they do not know the motive for the crime, and it is not known whether the journalist had received threats, the Office of the Special Rapporteur calls on the authorities to determine whether the homicide was related to the exercise of his profession.

In 2009, at least ten journalists were killed in Mexico for reasons related to their work, and the state of Guerrero in particular—where three journalists were killed last year—has become one of the most dangerous places for practicing journalism, due to the actions of organized crime.

The Office of the Special Rapporteur again urges the Mexican State to conduct its existing investigations into crimes against journalists in an effective manner and to adopt, as soon as possible, essential measures to protect the free exercise of journalism. These include strengthening the Office of the Special Public Prosecutor, making crimes against journalist federal crimes, and implementing permanent protection measures to guarantee the life and physical 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."

## 6. PRESS RELEASE Nº R18/10

### TENTH ANNIVERSARY JOINT DECLARATION: TEN KEY CHALLENGES TO FREEDOM OF EXPRESSION IN THE NEXT DECADE

*Washington D.C., February 4, 2010* –The United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization of American States Special Rapporteur for Freedom of Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, and the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information issued a joint declaration on February 3, 2010, in which they identified the central challenges to freedom of expression over the next decade.

The Rapporteurs noted that many important gains have been made over the past ten years, but they also expressed their concern regarding the enormous challenges that still exist in ensuring the full enjoyment of the right to freedom of expression. They specifically emphasized the problems that arise from restrictive legal regimes, political, commercial and social pressures on media outlets, governments' lack of tolerance of criticism, and the need to implement and improve mechanisms that facilitate the participation of excluded sectors of society in the communicative process.

The most important challenges to freedom of expression, as mentioned in the Declaration, are the following: 1) mechanisms of government control over the media; 2) criminal laws that punish criticism; 3) increasing violence against journalists and social communicators; 4) the need to fully implement and strengthen the right to information; 5) discrimination in the enjoyment of the right to freedom of expression; 6) commercial pressures that limit freedom of expression; 7) the lack of an adequate legal framework that guarantees the existence, independence and funding of public and community broadcasters; 8) the unduly broad limitations on freedom of expression on national security grounds; 9) risks of interference with the use of new technologies, especially the Internet; and 10) the urgent need to guarantee all people access to the Internet.

Representatives of ARTICLE 19, the Global Campaign for Free Expression and the Centre for Law and Democracy took part in the meeting in which the Declaration was discussed.

## 7. PRESS RELEASE Nº R24-10

### OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION CONDEMNS MURDER OF JOURNALIST IN HONDURAS

*Washington, D.C., March 5, 2010*—The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of journalist Joseph Hernández Ochoa and the serious assault suffered by journalist Karol Cabrera in an attack that took place March 1 in Tegucigalpa, Honduras. The Office of the Special Rapporteur urges the Honduran authorities to investigate the crime promptly and effectively, find and punish those responsible, and determine whether the attack is related to the victims' professional activities.

According to the information received, on the night of Monday, March 1, Hernández Ochoa, of Channel 51, and Cabrera, of Radio Cadena Voces and the State-run Channel 8, were traveling in a vehicle that was attacked by several gunmen. The information indicates that Hernández Ochoa died from gunshot wounds, while Cabrera was shot three times but is recovering in a hospital. According to local press reports, Cabrera—who on several occasions reported having received threats—had police protection at her home and was the target of the attackers.

The Office of the Special Rapporteur calls on the authorities of the government of Honduras to investigate the crime, capture and appropriately punish those responsible, and determine whether the attack was motivated by the journalists' professional activities. The Office of the Special Rapporteur also urges the State of Honduras to promote a culture of respect and foster an atmosphere of social tolerance conducive to inhibiting attacks against journalists, regardless of their editorial stance.

The Office of the Special Rapporteur recalls 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."

## 8. PRESS RELEASE Nº R28/10

### OFFICE OF THE SPECIAL RAPPORTEUR STRONGLY CONDEMNS MURDER AND KIDNAPPING OF JOURNALISTS IN MEXICO

*Washington, D.C., March 15, 2010* — The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses deep concern over the extremely serious escalation of violence against the press in the city of Reynosa, in the Mexican state of Tamaulipas. The Office of the Special Rapporteur strongly condemns the recent kidnapping of several journalists and the possible murder of a reporter in circumstances that remain unclear. The Office of the Special Rapporteur exhorts the Mexican State to take the necessary measures to find the kidnapped persons, establish the cause of death of journalist Jorge Rábago Valdez and punish those responsible and adopt the necessary measures to guarantee the exercise of freedom of expression.

According to the information received, at least eight journalists were allegedly kidnapped in different circumstances during the last few weeks in the city ofReynosa. Five of them reportedly remain missing, two appear to have been released after being assaulted and forced to return to Mexico City, while Jorge Rábago Valdez, a journalist with the media outlets Radio Rey and Reporteros en la Red and the newspaper "La Prensa" in Reynosa, allegedly died on March 2nd in circumstances that remain unclear. While some local authorities appear to have claimed that his death was the result of natural causes as a consequence of a diabetic coma, other sources have informed leading nongovernmental organizations—such as the Committee to Protect Journalists (CPJ)—that the journalist was reportedly found comatose with signs that he had been tortured, and that he died few days later.

Sources consulted by the Office of the Special Rapporteur have indicated that the actions of drug cartels in the area and the failure of the local authorities to prevent crimes against journalists and to make progress on investigating and punishing such crimes have produced a chilling effect so significant that only a few media outlets in the State of Tamaulipas dare to publish investigations or reports on organized crime or corruption. In this regard, it is of concern that the serious crimes abovementioned were first reported, days after they happened, by foreign newspapers and nongovernment organizations and not by the local press or local authorities.

The criminal capacity and corrupting potential of organized crime is one of the most serious threats to freedom of expression in the region. Therefore, the fight against drug trafficking and other forms of organized crime should necessarily include a strong component aimed at protecting freedom of expression. It is particularly urgent that the State adopt permanent protection measures to guarantee the life and physical integrity of journalists at risk, that it federalize as soon as possible the jurisdiction to investigate and judge these crimes, and that it strengthen the Office of the Special Prosecutor for Crimes against Journalists.

Furthermore, bilateral and multilateral cooperation by concerned States should include a significant focus on the defense of journalists and human rights defenders, including financial resources to guarantee their protection, technical assistance to bolster ongoing investigations, and international solidarity in providing refuge to journalists or activists forced to flee by themselves or with their families as a consequence of their opinions, reports or investigations.
Violence related to drug trafficking has made Mexico the most dangerous country in the region for practicing journalism. In 2009 at least ten journalists were killed, while this year four journalists have reportedly been murdered.

The Office of the Special Rapporteur recalls 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."

## 9. PRESS RELEASE Nº R29/10

### OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS THE MURDER OF A JOURNALIST IN HONDURAS

*Washington D.C., March 15, 2010* – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of David Meza Montesinos, a journalist with Channel 10 and radios 'América' and 'El Patio', which occurred in Honduras on March 11th. The Office of the Special Rapporteur urges the Honduran authorities to investigate this crime in a rapid and effective fashion, to determine if it is related to Mr. Meza's professional activities, and to try and punish those responsible.

According to the information received, Meza died in La Ceiba, Department of Atlántida, after shots were fired at his vehicle while he was driving. As a result, he lost control of his vehicle and crashed into a building. The journalist was reportedly threatened after he published several reports on drug trafficking. Meza is the second journalist killed in Honduras in 2010.

The Office of the Special Rapporteur exhorts the State of Honduras to investigate the murder of journalist Meza, to try and punish those responsible, and to create effective measures to guarantee the life and physical integrity of at risk media workers.

The Office of the Special Rapporteur recalls that Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that "[t]he 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."

## 10. PRESS RELEASE Nº R34/10

### OFFICE OF THE SPECIAL RAPPOTEUR CONDEMNS MURDER OF JOURNALIST IN COLOMBIA AND EXPRESSES CONCERN OVER CLIMATE OF IMPUNITY

Washington, D.C., March 22, 2010 – The Inter-American Commission on Human Rights' (IACHR) Office of the Special Rapporteur for Freedom of Expression condemns the murder of Clodomiro Castilla Ospino, a journalist with the magazine *El Pulso del Tiempo* and the radio broadcaster La Voz de Montería, on Friday, March 19, 2010. The murder took place in the city ofMontería, in the department of Córdoba, Colombia. The Office of the Special Rapporteur recognizes the quick repudiation of this crime by the most senior Colombian officials, but expresses its deep concern at the situation of vulnerability the journalist faced despite having requested action fromColombia's Program for the Protection of Journalists.

According to the information received by the Office of the Special Rapporteur, Castilla Ospino had been researching and reporting on the issue of paramilitaries and political corruption in Córdoba. The information received indicates that the State had authorized protective measures for Mr. Castilla Ospino, but that they were suspended at the request of the journalist in February of 2009. Facing increased danger, Castilla Ospino and several NGO's submitted a new request for protection in November 2009. However, at the time of his death he was not under State protection. On March 19, two individuals on a motorcycle arrived at Castilla Ospino's residence and shot him several times, killing him.

The murder of Castilla Ospino—who had provided testimony, based on his investigative reporting, in legal proceedings examining the links between Córdoba politicians and paramilitary leaders—took place in the context of important Supreme Court investigations into the infiltration of drug cartels and paramilitaries in national politics. In addition, the Office of the Attorney General is investigating alleged spying, harassment, and threats by members of the Administrative Security Department (DAS), a body under the authority of the Presidency of the Republic, against journalists, human rights defenders and judges investigating and denouncing this same phenomenon.

The Office of the Special Rapporteur expresses concern over this situation and urges the Colombian State to move forward in its struggle against the situation of impunity that still surrounds these crimes. It also urges the State to support the work of judges and prosecutors and to push for effective and reinforced preventative mechanisms for protecting freedom of thought and expression. Likewise, the Office of the Special Rapporteur urgently recalls the State's international obligation to investigate and quickly resolve the crime against Castilla Ospino by duly capturing, prosecuting, and adequately punishing those responsible, as well as its obligations to compensate the relatives of the victim and to take all legal and administrative measures necessary to protect threatened journalists and defend freedom of thought and expression in Colombia.

The Office of the Special Rapporteur reminds the State that Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression 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."

## 11. PRESS RELEASE Nº R36/10

## IACHR CONCERNED ABOUT THE USE OF THE PUNITIVE POWER OF THE STATE TO SILENCE OPPONENTS IN VENEZUELA

Washington, D.C., March 25, 2010—The Inter-American Commission on Human Rights (IACHR) expresses its deep concern over the use of the punitive power of the State to criminalize human rights defenders, judicialize peaceful social protests, and persecute through the criminal system persons the authorities consider political opponents in Venezuela.

During its 138th period of sessions, the Commission received updated information about the situation of Judge María Lourdes Afiuni Mora, who is deprived of liberty and for whom the Commission granted precautionary measures on January 11, 2010, after receiving a request alleging that she had been threatened with being burned alive in prison. The IACHR reported on the situation of Judge Afiuni Mora in its report *Democracy and Human Rights in Venezuela*. On December 10, 2009, the judge ordered the release of a person who had been deprived of liberty for more than two years, the maximum period for preventive detention contemplated under the law. The following day, on a blanket national radio and television broadcast, President Hugo Chávez called for a 30-year prison sentence for the judge, and one day later the Office of the Attorney General charged her with serious crimes.

During the sessions, the IACHR and the Office of the Special Rapporteur for Freedom of Expression also received information about the detention of former governor and former presidential candidate Oswaldo Álvarez Paz and about the opening of an investigation of Guillermo Zuloaga by the Attorney General's Office. In both cases, the legal actions were initiated at the request of a member of the National Assembly.

According to the information received, on March 8, 2010, Oswaldo Álvarez Paz, a former governor of the state of Zulia and a member of the National Assembly, made allegations on a television program about supposed ties between high-level state officials and groups linked to drug trafficking. The following day, congressman Manuel Villalba, of the official United Socialist Party of Venezuela (Partido Socialista Unido de Venezuela, PSUV), filed a complaint with the Attorney General's Office requesting an investigation into Álvarez Paz's conduct. Álvarez Paz was charged with committing various crimes established in the Venezuelan Criminal Code, including conspiracy against the republican form of government, public instigation to commit a crime, and public intimidation, false information, and public uncertainty. On March 22, Álvarez Paz was detained and on March 24 the court ratified his detention. Álvarez Paz is being held in a location of the National Office for Intelligence and Prevention Services (DISIP). Separately, on March 24, congressman Manuel Villalba also asked the Attorney General's Office to begin an investigation of Guillermo Zuloaga, president of the Globovisión television channel, for statements he made at an assembly of the Inter-American Press Association (IAPA).

As the Commission has already stated in its report *Democracy and Human Rights in Venezuela*, the lack of independence and autonomy of the judiciary with respect to the political branches constitutes one of the weakest points of democracy in Venezuela, a situation that seriously hinders the free exercise of human rights in Venezuela. In the Commission's judgment, it is this lack of independence that has allowed the use of the State's punitive power inVenezuela to criminalize human rights defenders, judicialize peaceful social protest, and persecute political dissidents through the criminal system.

The Commission and its Office of the Special Rapporteur for Freedom of Expression have on repeated occasions expressed their serious concern about the situation of the right to freedom of expression in Venezuela. The space for public debate about Venezuelan government authorities is being increasingly reduced through the use of instruments such as the criminal justice system to silence critical or dissident expressions. In this regard, it is extremely troubling that those make allegations or state opinions about the situation in the country are charged with such offenses as the instigation to commit a crime. The

public statements made by many government officials supporting the detention of Álvarez Paz and calling for criminal proceedings to be brought against other individuals such as Guillermo Zuloaga, simply because they expressed their opinions in public forums, demonstrate a troubling consensus among the government authorities that it is legitimate to identify those who criticize the government with criminals.

The IACHR and its Office of the Special Rapporteur for Freedom of Expression urge the State of Venezuela to avoid using direct or indirect means to silence critical opinions or allegations made against authorities of the government, however disturbing or offensive these may be.

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 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.

## 12. PRESS RELEASE Nº R37/10

## IACHR REPUDIATES ARREST OF GUILLERMO ZULOAGA INVENEZUELA

Washington, D.C., March 25, 2010—The Inter-American Commission on Human Rights (IACHR) repudiates the arrest of Guillermo Zuloaga in Venezuela, which came about as part of an open investigation resulting from statements he made at an assembly of the Inter-American Press Association (IAPA).

The Attorney General of the Bolivarian Republic of Venezuela, Luisa Ortega Díaz, announced that Zuloaga was detained today at the Josefa Camejo Airport in Punto Fijo, in the state of Falcón. His arrest came about as a result of a warrant that had been issued as part of an open investigation resulting from a complaint filed with the Attorney General's Office by a member of Venezuela's National Assembly. The information received indicates that Zuloaga was heading to the island of Bonaire to vacation with his family over Easter Week. The Attorney General's Office stated that "there are sufficient elements to establish a presumption of risk that the businessman would not face the criminal proceedings initiated following the complaint regarding his speech at a meeting of the Inter-American Press Association (IAPA)."

The IACHR and the Office of the Special Rapporteur for Freedom of Expression express their deep concern over Zuloaga's arrest, which evidences the lack of independence of the judiciary and the utilization of the criminal justice system to punish criticism, producing an intimidating effect that extends to all of society. The Commission reiterates in all its terms the content of its Press Release 36/10, in which it expressed its serious concern over the use of the punitive power of the State to criminalize and persecute through the criminal system persons the authorities consider political opponents in Venezuela.

The IACHR decided to send a letter to the government ofVenezuela, under the terms of Article 41 of the American Convention on Human Rights, in order to request information on Zuloaga's arrest and the investigation being conducted by the Attorney General's Office. The IACHR and the Office of the Special Rapporteur for Freedom of Expression once again urge the Venezuelan authorities to guarantee complete freedom of expression of opinions and criticisms.

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 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.

## 13. PRESS RELEASE Nº R39/10

### OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS MURDER OF HONDURAN JOURNALISTS AND URGES THE STATE TO CLEAR UP THESE CRIMES AND ADOPT PROTECTION MECHANISMS

*Washington, D.C., March 27, 2010* — The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of journalists Bayardo Mairena and Manuel Juárez, both of R.Z. Television Channel 4 and Radio Excélsior, on March 26 in the department of Olancho, Honduras. The Office of the Special Rapporteur is deeply concerned about the grave situation of vulnerability that the press is experiencing in Honduras. Five journalists have been killed in the first three months of this year, and to date nothing is known about any measures in place to prevent these crimes or about any progress made in the investigations.Honduras has become one of the riskiest countries in the entire region in which to practice journalism.

According to the information the Office of the Special Rapporteur has received, Mairena and Juárez were traveling in a private vehicle on a highway near the city of Juticalpa when another vehicle pulled up alongside them and unknown gunmen fired several machine-gun volleys at them. Sources consulted by the Office of the Special Rapporteur indicated that Mairena had recently been reporting on land conflicts and organized crime in Honduras.

The Office of the Special Rapporteur reiterates its deep concern over the particularly serious situation faced by Honduran journalists and the fact that of the five murders so far in 2010, no information is yet available on any results of the police investigations. The Office of the Special Rapporteur also urges the State of Honduras to create effective mechanisms to protect journalists at risk; to investigate all the cases efficiently, diligently, and officially, using specialized technical bodies for the investigation; and to arrest and appropriately punish all who are responsible for these crimes.

The Office of the Special Rapporteur recalls that Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that "[t]he 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."

## 14. PRESS RELEASE Nº R40/10

## OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION CONCERNED ABOUT PRISON SENTENCE FOR JOURNALIST INECUADOR

*Washington, D.C., March 31, 2010* - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its deep concern over the three-year prison sentence issued against journalist Emilio Palacio, an editorial writer for the daily El Universo in the city of Guayaquil, Ecuador. The Office of the Special Rapporteur urges State authorities to apply the IACHR standards on freedom of expression, particularly in terms of not using criminal law to penalize expressions that criticize actions by the authorities in matters of public interest.

According to information that has been received, a legal action was brought against Palacio for crimes against honor by the president of the National Financial Corporation (CFN), a State-run financial institution. The official filed the legal action over an opinion piece signed by Palacio and published in the daily El Universo on August 27, 2009. The piece characterized the official as a "thug", harshly questioned the government's administration and attributed different kinds of abuses to government officials, including the plaintiff.

On March 26, 2010, Palacio was convicted and sentenced by the Second Criminal Court of Guayas to a prison term of three years to be carried out in the Centro de Rehabilitación Social de Varones de Guayaquil (Center for the Social Reahabilitation of Males of Guayaquil), and ordered to pay a fine of US$10,000 for legal costs. The court found that the journalist had committed two crimes against honor: libelous insults and grave non-libelous insults, both against a public official. Article 493 of Ecuador's criminal code establishes higher sanctions for these crimes when the offense is directed "at authority". Palacio was sentenced to the harshest penalty established in that provision. The journalist's defense counsel announced the filing of a motion for clarification and extension with the same court, which suspended the execution of the decision. If that motion is rejected, his defense will appeal to higher courts.

The Office of the Special Rapporteur believes that this judicial decision represents a serious setback in the regional process advanced by several States which have reformed their legal frameworks with the goal of not using the criminal law to sanction those who investigate or issue personal opinions about public officials, even if they are offensive, disturbing of unfounded. In this regard, the Office of the 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 that, according to Principle 10 of the Declaration of Principles, "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." Furthermore, the Office of the Special Rapporteur recalls that the Inter-American Court of Human Rights has established in the *Case of Kimel* that an opinion about the actions of a public official, inasmuch as it is a value judgment, cannot be subject to sanctions, however offensive, shocking, or disturbing that opinion may be.

The Office of the Special Rapporteur welcomes Ecuador's draft Organic Code of Criminal Procedure, a legal text that would eliminate several of the crimes for which Palacio was convicted. The draft legislation would take into account the standards of minimum intervention of criminal law in matters related to the expression of information, ideas, and opinions, and would constitute an important guarantee for ensuring the existence of a free, pluralistic, open, and uninhibited debate on public matters. The Office of the Special Rapporteur invites the State to move forward with that legal reform, which would constitute an advance in the region on the path toward promoting judicial systems that stimulate and do not inhibit public debate.

The Office of the Special Rapporteur reiterates its deep concern over Palacio's conviction and urges the authorities of the State of Ecuador to take into account, in accordance with its own National Constitution, the international standards on freedom of expression that derive from Article 13 of the American Convention on Human Rights.

## 15. PRESS RELEASE Nº R41-10

## OFFICE OF THE SPECIAL RAPPORTEUR EXPRESSES CONCERN FOR THE DISAPPEARANCE OF A JOURNALIST IN MEXICO

*Washington, D.C., April 12, 2010* - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its concern for the disappearance of journalist Ramón Ángeles Zalpa, correspondent for the daily *Cambio de Michoacán* in the city ofParacho, State of Michoacán, México. The Office of the Special Rapporteur urges the State to make all relevant efforts in order to find journalist Ángeles Zalpa alive, and calls on Mexican authorities to investigate the disappearence and implement suitable measures to protect reporters at risk.

According to the information received, Ramón Ángeles Zalpa was last seen on April 6, while he was driving his automobile towards the Universidad Pedagógica Nacional, in the city of Paracho, where he teaches. According to sources, before his disappearance Ángeles Zalpa used to cover news related to organized crime. Recently, he had reported on an armed attack allegedly committed by a local crime gang against an indigenous family near the municipalities of San Juan Nuevo and Angahuan. According to the information received, Ángeles Zalpa received strange phone calls shortly before his disappearance.

The Special Rapporteur urges Mexican authorities to quickly investigate the disappearing of Ángeles Zalpa, and calls for the urgent adoption of measures to protect the reporter. Furthermore, it urges the State to advance measures such as strengthening the Office of the Special Prosecutor for Crimes against Journalists, making crimes against journalists federal crimes, and implementing specialized and permanent protection measures.

The kidnapping and murder of journalists are the most serious threats to freedom of expression in México. At least ten journalists were murdered in that country in 2009 and, in the first few months of 2010, four journalists were murdered and –at least- five were kidnapped.

The Office of the Special Rapporteur recalls 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."

## 16. PRESS RELEASE Nº R 43/10

## OFFICE OF THE SPECIAL RAPPORTEUR PRESENTS ITS 2009 ANNUAL REPORT

*Washington, D.C., April 15, 2010* - Today the Inter-American Commission on Human Rights presented its 2009 annual report to the Organization of American States' (OAS) Committee on Political and Juridical Affairs. The report includes the 2009 annual report of the Office of the Special Rapporteur for Freedom of Expression.

In its evaluation of the status of freedom of thought and expression in the Americas in 2009 (chapter II of the report), the Office of the Special Rapporteur recognizes and expresses appreciation for the important progress made in the hemisphere on matters related to freedom of expression, particularly with regard to the incorporation of inter-American standards into the domestic law of various countries, as well as the promotion of the right to access to information. However, the Office of the Special Rapporteur also warns of the existence of serious challenges that must be vigorously and decisively confronted.

The Office of the Special Rapporteur's report calls attention to the increase in violence against journalists in 2009. That increase included the murder of at least 11 media workers and an ever-increasing number of kidnappings, threats, and assaults against media outlets and reporters due to their coverage of certain news items or their editorial stance. The report warns of the risk that organized crime represents and its capacity for corruption. The report also addresses the extraordinary risks run by journalists and human rights defenders who are harassed, spied on, or threatened by public officials in order to keep them from informing or reporting. In regard to these risks, the Office of the Special Rapporteur puts forward the need for implementing effective mechanisms for protecting at-risk journalists and for the struggle against the impunity of these crimes.

The Office of the Special Rapporteur also highlights the existence of laws in some states that are contrary to international standards on freedom of expression and allow for the imposition of disproportionate punishments that have a silencing effect hardly compatible with vigorous democracy and an active citizenry. In this sense, the Office of the Special Rapporteur calls once more on the states in question to repeal the crimes of *desacato* and insulting a public official, as well as their criminal laws against slander and libel for cases in which the opinions or information distributed have to do with the public interest or public officials. The Office of the Special Rapporteur also calls on those states to foster an environment that encourages, rather than inhibits, vigorous and open debate on all topics.

The Office of the Special Rapporteur highlights the urgent need for government officials to avoid publicly accusing journalists of committing crimes by covering the news or expressing their opinions. It likewise urges the most senior officials to abstain from giving stigmatizing statements that increase the risks faced by critical or independent journalists.

The Office of the Special Rapporteur also highlights the lack of clear regulations to prevent the existence of mechanisms of indirect censorship, such as the arbitrary use of government advertising. The Office of the Special Rapporteur warns of the need for states to make efforts to adjust their institutions to prevent state resources or authorities from being used to reward or punish media outlets according to their editorial stances. Finally, the Office of the Special Rapporteur invites states to avoid public or private monopolies on information and to promote greater pluralism and diversity in the public debate.

In addition to its evaluation of the freedom of expression situation in OAS member states, the Office of the Special Rapporteur's report presents a systematic and complete overview of inter-American standards on freedom of expression and access to information. A separate chapter explains the right to freedom of expression's implications for broadcasting frequencies. The report also includes a section describing best practices for incorporating inter-American standards on freedom of expression into domestic law. Finally, the report contains a chapter with general conclusions on the state of freedom of expression in the

hemisphere and makes a series of recommendations to states for improving the conditions necessary to guarantee the full exercise of freedom of expression in the Americas.

## 17. PRESS RELEASE Nº R45/10

### OFFICE OF THE SPECIAL RAPPORTEUR EXPRESSES ITS CONCERN AT THE LATEST MURDER OF A JOURNALIST IN HONDURAS AND AT THE GRAVE VULNERABILITY OF THE MEDIA THERE

*Washington D.C., April 22, 2010*—The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of journalist Jorge Alberto (Georgino) Orellana, which occurred on Tuesday, April 20, 2010, in the city of San Pedro Sula, Honduras. This is the sixth murder of a journalist in that country during 2010, and it once again highlights the serious situation of defenselessness and vulnerability in which the Honduran media finds itself. The Office of the Special Rapporteur strongly urges the state to take all measures necessary to prevent these crimes, protect at-risk journalists, and make quick and decisive progress in the investigations into these crimes.

According to the information received by the Office of the Special Rapporteur, Orellana was shot on the evening of Tuesday, April 20, minutes after leaving the offices of the channel *Televisión de Honduras*, where he hosted an opinion program on current events. The journalist died shortly afterwards from his gunshot wounds.

Orellana's murder marks the sixth time in Honduras so far this year that a journalist has been murdered allegedly due to his or her work. On March 1, 2010, Joseph Hernández Ochoa, a journalist with Channel 51 in Tegucigalpa, was murdered. On March 11, 2010, David Meza Montesinos, a journalist with Channel 10 and radio stations *América* and *El Patio* in the city of La Ceiba, was murdered. On March 14, 2010, Nahum Palacios, the news director of Channel 5 in Aguán, was murdered. On March 26, 2010, Bayardo Mairena and Manuel Juárez, both journalists with *Excélsior* Television and Radio, were murdered on the highway near the city of Juticalpa, Olancho department.

The Office of the Special Rapporteur wishes to reiterate its profound concern over the very serious situation facing Honduran journalists and the fact that the investigations into the aforementioned cases have yet to produce results. The Office of the Special Rapporteur urges the state to investigate these cases in a manner that is efficient, diligent, and responsible, using specialized professional investigative units, and it urges the state to capture and duly punish those responsible for these crimes.

The Office of the Special Rapporteur reminds the state that Principle 9 of the IACHR Declaration of Principles on Freedom of Expression states: "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 Nº R48/10

## OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEEDOM OF EXPRESSION CONDEMNS ATTACK IN OAXACA, MEXICO AND THE MURDER OF TWO SOCIAL ACTIVISTS, AND EXPRESSES SATISFACTION AT JOURNALISTS' RESCUE

Washington, D.C., April 30, 2010 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) deplores the attack on a humanitarian convoy that occurred on April 27th, 2010 while the convoy made its way to the community of San Juan Copala in the state of Oaxaca, Mexico. Two persons were killed in the attack, several others were injured, and two journalists from the newsmagazine *Contralínea*remained trapped in the area controlled by the armed group responsible for the attack. After an operation by the security forces, the journalists were rescued.

According to the information received, the convoy en route to San Juan Copala was made up of approximately 25 persons, among them human rights defenders and journalists, who sought to support the community and document the human rights situation. According to the information received, around 2:30 p.m. on April 27th, near La Sabana, the vehicles that made up the convoy were attacked with firearms by persons on the side of the road who presumably sought to prevent the convoy from reaching its destination. Activists Beatriz Alberta Cariño Trujillo and Jyry Jaakkola died in the attack, while several others were injured.

The information received by the Office of the Special Rapporteur indicates that*Contralínea* journalists Érika Ramírez and David Cilia remained in the area where the attack occurred for more than two days, unable to escape due to the presence of the armed group responsible for the attack. According to*Contralínea*, the two journalists we going to San Juan Copala with the intention of documenting the April 7th, 2008 murder of radio presenters Felícitas Martínez and Teresa Bautista of the community radio station *La Voz que Rompe el Silencio*, an incident condemned by the Office of the Special Rapporteur at the time it occurred.

According to the information received, on April 28th, 2010, the authorities conducted an operation to recover the bodies of the two victims who were killed. On the evening of the following day, a second operation was carried out in which the *Contralínea* reporters who had remained in the area were rescued and taken to the city of Santiago Juxtlahuaca. For its part, the State Prosecutor General's office has opened an investigation into the incident.

The Office of the Special Rapporteur condemns the attack and the murders that have been reported, and expresses its satisfaction regarding the rescue of the journalists who had remained trapped in the area where the attack occurred. The Rapporteurship urges the authorities to investigate the events of April 27thpromptly and effectively, and to protect the communities in the area whose rights, among them the right to freedom of expression, are threatened by the armed groups that participated in the attack.

The Office of the Special Rapporteur recalls 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."

## 19. PRESS RELEASE Nº R61/10

## IACHR COMMISSIONER FOR VENEZUELAN MATTERS AND THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION SEND COMMUNICATION TO THE VENEZUELAN STATE EXPRESSING DEEP CONCERN OVER THE SERIOUS SITUATION OF FREEDOM OF EXPRESSION

*Washington, D.C., June 14, 2010* - The commissioner for Venezuelan matters of the Inter-American Commission on Human Rights (IACHR), Paulo Sergio Pinheiro, and the IACHR's Special Rapporteur for Freedom of Expression, Catalina Botero Marino, today sent a communication to the Foreign Minister of the Bolivarian Republic of Venezuela, Nicolás Maduro Moros, to express their deep concern over the deterioration of the situation of the right to freedom of expression and to request information on incidents that have occurred in Venezuela over the last week. In particular, Pinherio and Botero expressed concern over the criminal conviction of journalist Francisco "Pancho" Pérez for having published a piece exposing corruption; over the warrant for the arrest of Guillermo Zuloaga, one of the owners of television channel *Globovisión*, only a few hours after the country's president criticized the judiciary for allowing Zuloaga to go free; and over the Molotov cocktail attack on the *Cadena Capriles* news network.

On June 11, 2010, the Fifth Circuit Court of the City of Valencia sentenced a journalist from the city of Carabobo named Francisco "Pancho" Pérez to three years and nine months in prison, political suspension and prohibition to practice journalism, and a monetary fine of slightly more than US$18,000 for the supposed crime of defamation of public officials. According to the information received, the proceedings started after the mayor of Valencia, Edgardo Parra, a member of the *Partido Socialista Unido de Venezuela* (PSUV), filed charges against the reporter over a column published on March 30, 2009, in the daily newspaper *El Carabobeño*. In the column, Pérez referred to the presence of the mayor's family members as contractors in the municipal government. In the letter, the Commissioner and the Special Rapporteur expressed their deep concern over the conviction and recalled that the Inter-American Court of Human Rights and the IACHR have ruled on numerous occasions against the existence of *vilipendio* and *desacato* laws and the use of criminal law to punish opinions and information critical toward public officials. The evident disproportion of the sentence handed down for the publication of a piece that was clearly in the public interest demonstrates the serious state of vulnerability in which freedom of expression in Venezuela finds itself.

Likewise, the Office of the Special Rapporteur received information on a warrant issued on June 11, 2010 by Caracas' 13th Court of Control for the arrest of one of the owners of the *Globovisión* network, Guillermo Zuloaga, as well as his son. According to the information received, they are both accused of the crimes of usury and conspiracy for having stored 24 vehicles on their private property. The journalists and owners of *Globovisión* have been subjected to constant stigmatization and threats from the most senior public officials, as well as attacks from private groups aligned with the government. Guillermo Zuloaga had been detained temporarily on March 25, 2010, in connection with a criminal investigation opened against him for the crime of disrespecting the President of the Republic. The investigation was started after Zuloaga made statements during a meeting of the Inter-American Press Association in Aruba. The arrest warrant was issued on June 11, eight days after the President of Venezuela criticized the judicial branch because Zuloaga was still free. The letter sent to the Venezuelan State by the Commissioner and the Special Rapporteur expressed concern at the detention and recalled that persecution via criminal prosecution for alleged crimes that are not related to the exercise of freedom of expression can constitute a violation of the right if such persecution is demonstrated to be motivated by the political position of the person charged or due to the exercise of their right to freedom of expression.

Finally, the Commissioner and the Special Rapporteur expressed their concern at the Molotov cocktail attack on the headquarters of *Cadena Capriles* on the night of Monday, June 7, 2010. This attack took place in the context of continuing public statements against various media outlets, their directors, and their journalists, accusing them of practicing "media terrorism," being "destabilizers," "coup conspirators," and of fostering "hateful discourse" that affects the "mental health" of the Venezuelan population. As the

Office of the Special Rapporteur has indicated previously, subsequent to these statements, acts of violence against several of these media outlets carried out by private criminal groups have been on the rise. In this respect, the Inter-American Court of Human Rights has indicated to the Venezuelan State that such conduct on the part of public officials puts people linked to these media outlets "in a position of greater relative vulnerability before the State and certain sectors of society." In this sense, the absence of model investigations and punishments in the serious and constant attacks suffered by media outlets and journalists in Venezuela due to their editorial stance or news coverage is worrisome.

As the Commission has already stated in its report *Democracy and Human Rights in Venezuela*, the existence of an inadequate legal framework, the Executive's ever-increasing intolerance toward criticism and dissent, and the judicial branch's lack of independence and autonomy from the other branches of government are some of the weakest points of Venezuelan democracy and appreciably compromise the guarantee of human rights in that country. In particular, the judicial branch's lack of independence has allowed the punitive power of the State to be used to criminalize the defense of human rights and peaceful social protest, as well as to persecute critics and political dissidents with criminal prosecution.

The Commissioner and the Special Rapporteur expressed their concern over the situation of the right to freedom of expression in Venezuela and indicated that "spaces for public debate on Venezuelan government authorities are constantly becoming smaller, given the use of instruments like the criminal law to silence critical expression and dissent. In this sense, it is extremely worrying that a journalist would be convicted for the crime of 'disrespecting a public official' for publishing an article denouncing a possible act of corruption; or that the criminal law can be used as an indirect method of censoring the owner of one of the only media outlets in Venezuelan that is independent of the government. These facts are another demonstration of the consensus between executive branch and judicial branch authorities on the idea that it is legitimate to silence critics of the government using the criminal law."

In their letter, the Commissioner and the Special Rapporteur urged the State of Venezuela to avoid the use of direct and indirect methods for silencing critical opinions and reports denouncing government authorities, no matter how upsetting or offensive they are. Likewise, they urged the State of Venezuela to immediately take all necessary measures to guarantee that journalist Francisco Pérez and *Globovisión* President Guillermo Zuloaga, as well as Venezuelan society in general, have the right to freedom of expression, as well as the rights to due process and to be brought to trial before impartial, independent judges committed to applying the provisions of the Venezuelan Constitution and international treaties to which Venezuela is party. Likewise, they urged the Venezuelan authorities to guarantee and protect the lives and physical safety of the journalists, employees, and owners of media outlets.

## 20. PRESS RELEASE Nº R62/10

## OFFICE OF THE SPECIAL RAPPORTEUR EXPRESSES ITS CONCERN AT THE LATEST MURDER OF A JOURNALIST IN HONDURAS AND AT THE GRAVE VULNERABILITY OF THE MEDIA THERE

*Washington D.C., June 16, 2010*—The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of journalist Luis Arturo Mondragón, on Tuesday, June 14, 2010, in the city of El Paraíso, Honduras. This is the seventh murder of a journalist in that country during 2010, and it once again highlights the serious situation of defenselessness and vulnerability in which the Honduran media finds itself. The Office of the Special Rapporteur strongly urges the state to take all measures necessary to prevent these crimes, protect at-risk journalists, and make quick and decisive progress in the investigations into these crimes.

According to the information received, Mondragón was shot four times as he was leaving the offices of the cable television channel Canal 19, where, in addition to being the news director, Mondragón had a program that reported on corruption, crime and environmental issues, among other things. Mondragón died at the location of the incident from the gunshot wounds.

According to the information received by the Office of the Special Rapporteur, Mondragón received constant threatening phone calls from anonymous callers during the last two years.

Mondragón's murder marks the seventh time in Honduras so far this year that a journalist has been murdered allegedly due to his or her work. On March 1, 2010, Joseph Hernández Ochoa, a journalist with Channel 51 in Tegucigalpa, was murdered. On March 11, 2010, David Meza Montesinos, a journalist with Channel 10 and radio stations *América* and *El Patio* in the city of La Ceiba, was murdered. On March 14, 2010, Nahúm Palacios, the news director of Channel 5 in Aguán, was murdered in the city of Tocoa. On March 26, 2010, Bayardo Mairena and Manuel Juárez, both journalists with *Excélsior* Television and Radio, were murdered on the highway near the city of Juticalpa, Olancho department. On April 20, 2010, Jorge Alberto (Georgino) Orellana, a journalist with the channel Televisión de Honduras, was murdered.

The Office of the Special Rapporteur wishes to reiterate its profound concern over the very serious situation facing Honduran journalists and the fact that the investigations into the aforementioned cases have yet to produce results about the authors of these crimes and the relationship of these murders to the reporting activities of the victims. The Office of the Special Rapporteur urges the state to investigate these cases in a manner that is efficient and diligent, using specialized professional investigative units, and it urges the state to capture and duly punish those responsible for these crimes.

The Office of the Special Rapporteur reminds the state that Principle 9 of the IACHR Declaration of Principles on Freedom of Expression states: "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."

## 21. PRESS RELEASE Nº R65/10

### OFFICE OF THE SPECIAL RAPPORTEUR STRESSES THE PROTECTION OF CRITICAL OR DISSIDENT VOICES IN THE INTER-AMERICAN SYSTEM

*Washington D.C., June 24, 2010* - On several occasions the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights and its Office of the Special Rapporteur have reminded the States of their obligation to create the necessary conditions for the public, plural, open and uninhibited deliberation of all matters of general interest. To accomplish this, the States must establish reinforced guarantees for the protection of critical or dissident speech.

In the *Case of Manuel Cepeda Vargas v. Colombia*, notified on June 21, 2010, the Inter-American Court of Human Rights recalled this state duty and emphasized the State's obligation to facilitate a democratic playing field that fully respects the voices of critics and opponents. As the Inter-American Court held in that case, "opposition voices are essential to a democratic society."

Manuel Cepeda Vargas was a prominent journalist, political leader and member of the Colombian congress. The Inter-American Court found that it had been proven that in 1994 State agents extrajudicially executed Cepeda in retaliation for his political activism. The Court further established that some public servants considered Manuel Cepeda, and the movement to which he belonged, to be "domestic enemies" and issued stigmatizing statements that considerably increased the risks those individuals faced. In the opinion of the Inter-American Court, the State conduct at issue was inconsistent with the duty of public servants to guarantee Senator Cepeda's rights, including his right to freedom of thought and expression.

In this case, the Court stated that "States must guarantee the effective participation of individuals, groups, organizations and political parties of the opposition in a democratic society, through appropriate standards and practices that enable their real and effective access to different deliberative forums on equal terms." Indeed, as the inter-American case law has already stated, freedom of expression protects not only the dissemination of ideas and information that is favorable or inoffensive to the government but also ideas and information that offend, shock, disturb, or are unpleasant or troubling to the State or a sector of the population. This is required by the principles of pluralism and tolerance inherent in the democracies of the Americas.

The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights underscores the important considerations of the Inter-American Court in the *Case of Manuel Cepeda Vargas*, and asks the States to take all measures necessary to guarantee—in accordance with Article 13 of the American Convention on Human Rights—the free and uninhibited existence of critical and dissident voices in the democratic societies of the hemisphere.

## 22. PRESS RELEASE Nº R66/10

### OFFICE OF THE SPECIAL RAPPORTEUR EXPRESSES DEEP CONCERN OVER THE MURDER OF TWO JOURNALISTS IN MEXICO

Washington D.C., July 2, 2010 - The Inter-American Commission on Human Rights' (IACHR) Office of the Special Rapporteur on Freedom of Expression wishes to express its deep concern at the murder of journalists Juan Francisco Rodríguez Ríos and María Elvira Hernández Galeana in Coyuca de Benítez, in the state of Guerrero, Mexico. The Office of the Special Rapporteur calls on the Mexican state to make all efforts necessary to quickly and effectively solve these crimes, in such a way as to bring those responsible to trial and duly punish them. Likewise, the Office of the Special Rapporteur once more urges the State to adopt mechanisms for the protection of at-risk journalists and to implement effective measures to combat impunity in crimes committed against media workers.

According to the information received by the Office of the Special Rapporteur, Rodríguez Ríos, who was a correspondent with the newspaper *El Sol de Acapulco* in Coyuca de Benítez, and Elvira Hernández Galeana, the editor of the weekly newspaper *Nueva Línea*, were shot to death on the evening of Monday, June 28. The crime took place in an internet café owned by the murdered journalists. Rodríguez Ríos was also the local director of the National Press Professionals Union. Some hours before the murder, Rodríguez Ríos had covered the 15th anniversary of the Aguas Blancas Massacre, an incident that took place in 1995 in which 17 peasants died at the hands of the police of the Guerrero state.

During 2009, at least 10 journalists were murdered in Mexico. The state of Guerrero, where last year three journalists were murdered, has become one of the most dangerous places in the region to work as a journalist. During the initial months of 2010, six journalists have been reported murdered in Mexico, and at least five more kidnapped.

The Office of the Special Rapporteur urges the Mexican State to efficiently carry out the existing investigations into crimes against journalists and to adopt, as soon as possible, measures indispensible for protecting the free exercise of journalism, such as strengthening the Special Prosecutor, classifying crimes against journalists as federal crimes, and implementing permanent, specialized protective mechanisms for protecting the lives and personal safety of at-risk media workers.

The Office of the Special Rapporteur reminds the state that Principle 9 of the IACHR Declaration of Principles on Freedom of Expression states: "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."

## 23. PRESS RELEASE Nº R67/10

## OFFICE OF SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION ASKS MEXICO TO DILIGENTLY INVESTIGATE MURDER OF JOURNALIST IN MICHOACÁN

*Washington, D.C., July 8, 2010* —The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses deep concern over the murder of journalist Hugo Alfredo Olivera, who was found dead on July 6 near the city of Apatzingán, in Mexico's Michoacán state. It asks the Mexican authorities to conduct a prompt and diligent investigation so as to identify and punish those responsible for the crime.

According to information that has been received, at 3 a.m. police found the journalist's body inside his vehicle, with bullet wounds to the head. Olivera had gone out to cover a story, but never returned home. The journalist was the editor of the newspaper El Día de Michoacán and headed the ADN regional news agency. He was also a correspondent for and contributor to various regional and national media outlets. Olivera wrote about police and political issues.

According to information confirmed by Mexican and international press organizations, in the early morning hours of July 6, unidentified individuals entered the offices of El Día de Michoacán and stole computers and memory storage devices.

Olivera's death brings to seven the number of journalists who have been killed in Mexico in 2010. On June 28, Juan Francisco Rodríguez Ríos and Elvira Hernández Galeana were killed in Guerrero state; Jorge Rábago Valdez was killed on March 2 in Tamaulipas; Jorge Ochoa Martínez was killed on January 29 in Guerrero; José Luis Romero was found dead on January 16 in Tamaulipas; and Valentín Valdés Espinosa was killed on January 7 in Coahuila. In addition, at least five journalists have been kidnapped this year.

The Office of the Special Rapporteur urgently calls on the Mexican authorities to prevent the impunity of crimes against journalists, a necessary step to prevent new murders intended to silence members of the media. It is essential to immediately adopt measures designed to protect the free and safe exercise of journalism, such as the strengthening of the Special Prosecutor's Office, the attention of the federal justice system to attacks against journalists, and the implementation of effective, prompt security measures to guarantee the life and physical integrity of journalists who have received threats.

As stated in Principle 9 of the IACHR Declaration of Principles on Freedom of Expression, it is the duty of the State to prevent and investigate murders and acts of aggression against journalists, punish their perpetrators, and ensure that victims receive just compensation.

## 24. PRESS RELEASE Nº R70/10

### SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION CONDEMNS RENEWED ACTS OF VIOLENCE AGAINST JOURNALISTS AND THE MEDIA IN MEXICO

Washington D.C., July 15, 2010.- The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) strongly condemns renewed acts of violence that, in separate incidents, took the lives of two journalists in Mexico and damaged a radio station's installations.

Journalist Marco Aurelio Martínez Tijerina, of the broadcasting station XEDD Radio La Tremenda in Montemorelos, in the state of Nuevo León, was kidnapped in that city last Friday night, July 9, and his body was found July 10 with a bullet wound to the head. Martínez covered political news and also worked as a correspondent for national Mexican media outlets.

Audiovisual producer and cameraman Guillermo Alcaraz Trejo was riddled with bullets by masked gunmen as he was leaving the newspaper Omnia, in Chihuahua, where he had been visiting former colleagues, on Saturday, July 10. Alcaraz was responsible for producing educational programs for the State Human Rights Commission of Chihuahua.

In another attack, unknown individuals threw a grenade, which did not explode, at the installations of the broadcasting station AW Noticias (XEAW 1290 AM) in Monterrey, state of Nuevo León, on the night of Friday, July 9. The device broke the glass of the main door to the radio station.

The Office of the Special Rapporteur reiterates that, as established in Principle 9 of the Declaration of Principles on Freedom of Expression, "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."

In this regard, the Office of the Special Rapporteur urges the Mexican authorities to conduct timely and effective investigations that identify the perpetrators of these crimes and lead to their prosecution and punishment. The conviction of those responsible for crimes against journalists and the media is a necessary condition to dissuade these attacks, compensate the victims, and provide effective protection of freedom of expression.

The Office of the Special Rapporteur urges the Mexican State to immediately adopt measures to protect the free and safe exercise of journalism, such as strengthening the Office of the Special Prosecutor for Crimes against Freedom of Expression; making crimes against journalists federal offenses; and implementing security measures to protect the life and physical integrity of journalists who have received threats.

The deaths of Martínez and Alcaraz bring to nine the number of journalists killed in Mexico so far this year. Hugo Alfredo Olivero died on July 6 in Michoacán; on June 28, Juan Francisco Rodríguez Ríos and Elvira Hernández Galeana were killed in Guerrero state; Jorge Rábago Valdez was killed on March 2 in Tamaulipas; Jorge Ochoa Martínez was killed on January 29 in Guerrero; José Luis Romero was found dead on January 16 in Tamaulipas; and Valentín Valdés Espinosa was killed on January 7 in Coahuila. In addition, at least five journalists have been kidnapped this year.

## 25. PRESS RELEASE Nº R78/10

## OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION DEEPLY CONCERNED BY MEXICAN CRIMINAL GANGS TAKING PRESS AS HOSTAGES

Washington, D.C., August 4, 2010—The Office of the Special Rapporteur for Freedom of Expression is deeply concerned over the taking of the news media and journalists as hostages in order to coerce media outlets to broadcast the messages of criminal gangs in Mexico. In the midst of the escalating violence being suffered by journalists in Mexico, the Office of the Special Rapporteur calls on the Mexican State to advance policies that improve protection of the press and of freedom of expression.

According to information that has been received, on Monday, July 26, a criminal group abducted cameraman Alejandro Hernández and reporter Héctor Gordoa of Televisa, cameraman Jaime Canales of Multimedios Laguna, and reporter Óscar Solís of the newspaper El Vespertino. The collective kidnapping forced the Mexican news media to give in to the kidnappers' demand to publish certain information. To save the lives of the abducted journalists, media outlets were forced to accept outside dictates on their editorial content and to censor themselves to avert any possibility of aggravating the victims' situation. With this incident, threats to freedom of expression in Mexico have reached an unprecedented level which affects everyone in the country.

From the moment the news broke about the journalists' kidnapping, this Office of the Special Rapporteur closely followed what was occurring. On Thursday, July 29, it requested information from the Mexican State and asked it to do everything in its power to save the lives of the four individuals.

The Office of the Special Rapporteur urgently requests the Mexican authorities to combat impunity in crimes against journalists by identifying and prosecuting those responsible for these crimes, a necessary step to prevent more acts of violence intended to silence, punish, or use journalists to broadcast criminal messages. To this end, it is essential that Mexico strengthen the Office of the Special Prosecutor for Crimes against Freedom of Expression, place the prosecution of crimes against journalists under federal jurisdiction, and implement measures to protect the life and physical integrity of journalists who have received threats.

At least nine journalists have been killed in Mexico in 2010. The body of Marco Aurelio Martínez Tijerina was found on July 10 in Montemorelos, Nuevo León. Guillermo Alcaraz Trejo was riddled with bullets on July 10 in Chihuahua. Hugo Alfredo Olivero died on July 6 in Michoacán. On June 28, Juan Francisco Rodríguez Ríos and Elvira Hernández Galeana were killed in Guerrero. Jorge Rábago Valdez was killed on March 2 in Tamaulipas, Jorge Ochoa Martínez was killed on January 29 in Guerrero, José Luis Romero was found dead on January 16 in Tamaulipas, and Valentín Valdés Espinosa died on January 7 in Coahuila. In addition, at least nine journalists have been kidnapped so far this year.

The Office of the Special Rapporteur urges the State of Mexico to take steps that effectively protect the lives of journalists and discourage the repetition of these deplorable acts. It is an obligation recognized by the Mexican State to do everything in its power to guarantee the free and safe exercise of freedom of expression to all of its citizens. Principle 9 of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights establishes 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."

## 26. PRESS RELEASE Nº R80/10

### OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION CONCERNED ABOUT THREATS AGAINST DOMINICAN JOURNALIST

Washington, D.C., August 10, 2010 – The Office of the Special Rapporteur for Freedom of Expression expresses its deep concern over threats received by Fausto Rosario Adames, the editor of the Dominican Republic weekly newspaper Clave, following the publication of articles on drug trafficking activities in that country, and regrets the closure of that publication.

According to information that has been received, Mr. Rosario was warned on August 4, 2010, that he was at risk of being murdered due to his investigations into a case of local corruption tied to drug trafficking. That same day, another Dominican journalist received a message that was similar in nature to the one threatening Rosario. The warnings made to the journalist coincided with serious acts of violence that, according to the information received, could be directly related to the threats.

On the afternoon of August 4, Rosario announced to his co-workers that the weekly Clave and its electronic version, Clave Digital, would be shut down. "This week both media outlets end their public life, until a new day of less gloom and economic crisis," the editor stated.

According to what this Office of the Special Rapporteur has been told, the President of the Dominican Republic Leonel Fernández, met in his office with Rosario and other co-workers to find out more about the situation and to order protection measures.

Inter-American doctrine and case law have repeatedly recognized that attacks and threats against journalists and the media outlets pose a danger to all of society and to democracy, by keeping citizens from being informed and limiting the free and vigorous debate of issues in the public interest.

It is important to recognize that the ninth principle of the Inter-American Commission on Human Rights' Declaration of Principles on Freedom of Expression establishes the following: "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."

The Office of the Special Rapporteur expresses its solidarity with Fausto Rosario Adames, recognizes the positive effect of President Fernández's attention to this case, and calls on the Dominican State to investigate, prosecute, and condemn those responsible for the threats, as well as to adopt effective security mechanisms that guarantee the life and physical integrity of Rosario and his colleagues who may be at risk.

## 27. PRESS RELEASE Nº R81/10

### UN AND OAS RAPPORTEURS FOR FREEDOM OF EXPRESSION DEPLORE ATTACK OUTSIDE RADIO CARACOL IN COLOMBIA

*Mexico City, August 13, 2010*—The rapporteurs for freedom of expression of the United Nations (UN) and the Organization of American States (OAS), Frank La Rue and Catalina Botero, deeply deplore the car-bomb attack that took place in the early morning hours of August 12 outside the offices of Radio Caracol, in Bogotá, Colombia, and express their solidarity with those who were injured and with the staff of the radio station.

According to the information received, a vehicle loaded with explosives blew up in front of the national headquarters of Radio Caracol, one of the leading news networks in Colombia. The blast left at least eight persons injured, caused destruction at the entrance to the radio station, and damaged facades and shattered windows in neighboring buildings. The employees who were working at that hour were not injured, and the radio station continued to broadcast and report on what had occurred. The office of the Spanish news agency EFE is also located in the same building as the radio station. Colombian President Juan Manuel Santos offered assurances that the authorities will investigate the source of the attack and track down those responsible. The Security Council met in a special session to evaluate the damage and decide on a course of action.

The UN and OAS rapporteurs for freedom of expression stress that to keep such brutal acts from being repeated, it is critical that the State act immediately to identify the cause of the attack and to capture, prosecute, and convict its perpetrators and masterminds, in a manner that is effective and proportional.

As established in Principle 9 of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights, "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."

La Rue and Botero emphasized that the Colombian press has courageously resisted attacks by various violent sectors that seek to silence it. The Colombian State must offer the press all guarantees so that it can robustly exercise its right to freedom of expression.

The UN and OAS rapporteurs for freedom of expression are carrying out a joint visit to Mexico through August 25.

## 28. PRESS RELEASE Nº R82/10

## RAPPORTEURS FOR FREEDOM OF EXPRESSION CONCERNED OVER PRIOR CENSORSHIP IN VENEZUELA

Culiacán, Sinaloa, Mexico, August 19, 2010—The Special Rapporteur for Freedom of Expression of the Organization of American States (OAS), Catalina Botero, and the United Nations Special Rapporteur on Freedom of Expression, Frank La Rue, believe that the decision by a Venezuelan court to prohibit the written press from publishing content that could be considered "violent" or "aggressive," for a one-month period, constitutes an act of prior censorship, which seriously compromises the right to freedom of expression in that country.

According to the information received, on Friday, August 13, the Caracas newspaper El Nacional published a photograph on its front page that showed a group of cadavers in a pile, as an illustration for a news story on "crime in Venezuela" and "the pile-up of bodies" in a Caracas morgue.

That same day, Venezuela's Office of the Public Ombudsman filed an action for protection against the newspaper in a court for the protection of children and adolescents, to order the paper to refrain from publishing images "of violent, bloody, or grotesque content" that could negatively affect minors. A day later, the Public Ministry filed a similar petition and launched a criminal investigation over the same facts.

In solidarity with the newspaper, the daily Tal Cual published the same photograph. As a result, the Ombudsman's Office asked the court to extend the protection action it had filed to all written-media outlets in the country.

On August 16, the competent court barred El Nacional from "publishing images, information, and advertisements of any type that contain blood, weapons, messages of terror, physical assaults, images that evoke content about war, and messages about deaths that could alter the psychological well-being of boys, girls, and adolescents," until a decision on the merits was made on the action for protection. A day later, the same court barred Tal Cual "and all other written communications media," for one month, from "publishing images of violent, bloody, [or] grotesque content, whether about crime stories or not, which could in one way or another violate the psychical and moral integrity" of minors.

The American Convention on Human Rights prohibits prior censorship, except when it comes to legal control of public entertainments for the sole purpose of regulating access to them for the moral protection of childhood and adolescence. Likewise, the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights have established that vague or imprecise limits on freedom of expression run contrary to the guarantee of this right, since they can be used to justify arbitrary decisions that illegitimately restrict the flow of ideas and opinions.

The OAS and UN rapporteurs for freedom of expression manifest their concern over the decision of the court in question, given that it constitutes an act of prior censorship which, moreover, imposes limits that are so vague and imprecise that they block the written press from being able to publish any information that could upset or annoy the government authorities. If this judicial decision stands, it will force the news media to refrain from reporting on a wide range of issues of public interest that Venezuelan society has the right to know.

The protection of the physical and emotional well-being of childhood is a central aim of the community of nations, but this purpose cannot give rise to the imposition of prior-censorship measures outside the framework established in international human rights law, or to restrictions that are so ambiguous that they could serve as a pretext for blocking publication of information and ideas that society has the right to receive, even though they may be annoying or uncomfortable for some public officials.

The OAS and UN rapporteurs for freedom of expression urgently call on the Venezuelan authorities to review the decisions that have been adopted against the news media and to reestablish the full guarantees for the exercise of freedom of expression.

The two rapporteurs are conducting an official visit to Mexico, which will end on August 25.

## 29. PRESS RELEASE Nº R83/10

## UN AND IACHR RAPPORTEURS FOR FREEDOM OF EXPRESSION CONCLUDE JOINT VISIT TO MEXICO

*Mexico City, August 24, 2010*– The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), Catalina Botero Marino, and the United Nations Special Rapporteur on Freedom of Expression and Opinion, Frank La Rue, concluded today their official joint visit to the United Mexican States, which took place from August 9-24, 2010. Today they also presented their conclusions to the Mexican authorities. The purpose of the visit was to assess the status of freedom of expression in the country.

During the official visit, the Rapporteurs were in Mexico City and in the States of Chihuahua, Sinaloa, Guerrero and the State of Mexico. They met with over forty federal and state institutions of the executive, legislative and judicial branches, as well as with representatives of autonomous bodies. In addition, they held meetings with more than one hundred journalists, representatives of civil society organizations, relatives of murdered journalists, and members of the international community based in Mexico.

The Offices of the Special Rapporteurs are grateful for the invitation of the Mexican State, and underscore its openness in having facilitated all the conditions necessary for the conduct of their visit, which was the first joint visit to a country in the region.

The official visit concluded with a press conference today at Casa Lamm in Mexico City, where the Rappoteurs shared their conclusions with the Mexican and international media.

The Rapporteurs have verified that Articles 6 and 7 of the Mexican Constitution explicitly protect the rights to freedom of expression and access to information. Mexico also has notable legal advances to its credit such as the Transparency and Access to Government Information Act and its equivalents at the state level; the decriminalization of crimes against honor at the federal level and in several states; the right to protect the confidentiality of sources provided for in the Federal Code of Criminal Procedure; and Article 134 of the Mexican Constitution, insofar as it refers to government advertising. The Rapporteurs likewise regard positively the amendment to Article 1 of the Constitution passed by the Senate of the Republic, which grants constitutional status to international human rights treaties and which is pending before the House of Representatives.

Nevertheless, the full enjoyment of freedom of expression in Mexico faces grave and diverse obstacles, including most notably the murder of journalists and other very serious acts of violence against those who disseminate information, ideas and opinions, and the widespread impunity in those cases.

The Rapporteurs are also concerned about the operation of criminal laws to penalize expression at the federal level, and in a significant number of states. The Rapporteurships also consider that the vigor, diversity and pluralism of the democratic debate in Mexico is seriously limited by a number of factors, including: the high concentration of ownership and control of mass media outlets that have been assigned radio and television frequencies; the absence of a clear, precise and equitable legal framework governing the allocation of said frequencies; the inexistence of mechanisms that provide access to alternative media; and the lack of regulations regarding government advertising. Finally, the Rapporteurs observe with concern an emerging trend toward the restriction of the right to access public information.

The two Rapporteurs were motivated to undertake their joint visit, and to present these preliminary conclusions, precisely by the need to acknowledge this crisis and to join forces to find solutions together with the Mexican State and society

## 30. PRESS RELEASE R84/10

### IACHR AND UN RAPPORTEURS FOR FREEDOM OF EXPRESSION PUBLISH PRELIMINARY REPORT REGARDING VISIT TO MEXICO

*Mexico City, August 25, 2010*– The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), Catalina Botero Marino, and the United Nations Special Rapporteur on Freedom of Expression and Opinion, Frank La Rue, made public their preliminary observations regarding their joint official visit to Mexico, which took place from August 9-24, 2010.

During the course of their visit, the Rapporteurs travelled to Mexico City and the States of Chihuahua, Sinaloa, Guerrero and the State of Mexico. They met with over forty federal and state institutions of the executive, legislative and judicial branches, as well as with representatives of autonomous bodies. In addition, they held meetings with more than one hundred journalists, representatives of civil society organizations, relatives of murdered journalists, and members of the international community based in Mexico.

Their preliminary observations were presented to State authorities and to the Mexican and international media on Tuesday, August 24th. Each Rapporteur will issue a final report regarding the visit in early 2011.

The full Spanish version of the Rapporteurs´ preliminary report is available at:

http://www.cidh.org/Comunicados/Spanish/2010/RELEMexico.pdf

The Spanish version of the executive summary of the Rapporteurs´ preliminary report is available at:

http://www.cidh.org/Comunicados/Spanish/2010/RELEMexCP.pdf

The English version of the executive summary of the Rapporteurs´ preliminary report is available at:

http://www.cidh.org/Comunicados/Spanish/2010/RELEMexicoEng.pdf

A full English version of the preliminary report will be available shortly on the website of the IACHR Office of the Special Rapporteur for Freedom of Expression: http://www.cidh.oas.org/relatoria/

## 31. PRESS RELEASE Nº R85/10

## SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION CONDEMNS LATEST MURDER OF JOURNALIST IN HONDURAS

Washington, D.C., August 26, 2010—The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of journalist Israel Zelaya Díaz, which took place last Tuesday, August 24, 2010, in the city of San Pedro Sula, Honduras. The Office of the Rapporteur expresses its deep concern over the grave situation for journalism in Honduras, a country in which at least eight journalists have been killed this year, with nothing yet known about the causes of the crimes or those responsible, or about measures adopted by the State to protect journalists at risk.

According to the information received, Israel Zelaya was found dead of gunshot wounds on Tuesday afternoon on a sugarcane plantation. None of his personal belongings had been stolen. Three months earlier, his house had been damaged by a fire whose cause could not be determined. As this Office of the Rapporteur has learned, Zelaya worked on a local news program at Radio Internacional, of San Pedro Sula, and he made a practice of denouncing matters of public interest.

The following other journalists have been murdered in Honduras this year: Joseph Hernández, on March 1 in Tegucigalpa; David Meza Montesinos, who died in La Ceiba on March 11; Nahúm Palacios, who was killed in Tocoa on March 14; Bayardo Mairena and Manuel Juárez, who were killed in Juticalpa on March 26; Jorge Alberto (Georgino) Orellano, who died on April 20 in San Pedro Sula; and Luis Arturo Mondragón, who was murdered on June 14 in El Paraíso. According to what the Office of the Special Rapporteur was able to confirm on its last visit to Honduras, these facts and the lack of effective and thorough investigations into them have kept the journalism profession in a state of permanent anxiety.

For the Office of the Special Rapporteur, the ongoing situation of risk faced by Honduran journalists is a matter of enormous concern, as is the absence of adequate measures to protect journalists and to prosecute the crimes that are committed. The Office of the Rapporteur has thus urged the State to create special investigative bodies and protocols, as well as protection mechanisms designed to guarantee the integrity of those who are facing threats due to their journalistic activities. As this office has stated before, it is urgent for the State of Honduras to conduct thorough, effective, and impartial investigations into the crimes committed against journalists and to identify, prosecute, and duly punish those responsible.

The Office of the Special Rapporteur reminds the State that Principle 9 of the Declaration of Principles on Freedom of Expression states: "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."

## 32. PRESS RELEASE Nº R87/10

## OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION CONDEMNS CAR BOMB ATTACK AGAINST TELEVISA IN MEXICO

*Washington D.C., August 27, 2010* – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its most emphatic condemnation of the car bomb attack against the Televisa building in Ciudad Victoria, which took place in the early morning hours today in that town in the Mexican state of Tamaulipas. This Office of the Special Rapporteur expresses its concern over the series of increasingly violent attacks with explosives aimed at Mexican communications media, and calls upon the Mexican authorities to immediately take the necessary measures to protect media outlets and journalists, as well as to investigate and prosecute the perpetrators of these crimes.

According to the information received, a vehicle exploded outside Televisa's premises shortly after midnight. No one was injured, but there was property damage. Personnel from the TV station had left work minutes prior to the attack. The explosion was felt for several blocks, and also affected the nearby Canal 7 Multimedios TV station building. Electrical power was knocked out and the Televisa signal went off the air in Ciudad Victoria.

This morning's attack was the strongest one of several attacks this year aimed against Mexican media outlets, which have not resulted in any casualties but which have caused considerable property damage. Last August 14 and 15, Televisa's offices in Matamoros and Monterrey were attacked with grenades. On July 30, a grenade was thrown at Televisa Channel 57 in Nuevo Laredo. On July 9, the lobby of Multimedios Radio in Monterrey was hit by a grenade that failed to go off, and on January 7, masked individuals attacked the Televisa building in Monterrey with firearms and threw a grenade.

Added to these attacks, this year alone, are the murders of at least nine journalists and numerous cases of kidnapping, threats and intimidation against the media and media workers.

In the opinion of this Office of the Special Rapporteur, today's car bomb marks a very serious qualitative leap in a trend of attacks and harassment directed at journalists and the media. In the joint visit conducted with the United Nations Special Rapporteur on Freedom of Expression and Opinion, which concluded this past August 24, the Rapporteurs confirmed that the violence against journalists in Mexico is alarming and showing signs of intensifying.

Just as we expressed in Mexico to the state authorities, this Office of the Special Rapporteur reiterates that, in accordance with international human rights standards, the State has the obligation to reasonably prevent acts of violence perpetrated by private individuals against journalists and the media. The State has the duty to investigate, prosecute, and if appropriate, punish the perpetrators of the attacks, as established in the ninth principle of the Declaration of Principles of the Inter-American Commission on Human Rights.

The Office of the Special Rapporteur for Freedom of Expression stresses emphatically to the State the urgent need to adopt a comprehensive policy of prevention, protection and provision of justice for journalists and the media.

## 33. PRESS RELEASE Nº R88/10

### OFFICE OF THE SPECIAL RAPPORTEUR EXPRESSES ITS CONCERN OVER CRIMINAL CONVICTION OF JOURNALIST IN PERU

*Washington, D.C., August 30, 2010*—The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) is concerned about the one-year prison sentence handed down by a Peruvian court on August 5 against journalist Fernando Santo Rojas, for the crime of aggravated defamation against the mayor of the municipal government of Satipo.

According to the information received, in addition to the prison sentence, the First Mixed Court of Satipo fined the journalist 25% of his income for 120 days and ordered him to pay 2,000 New Soles (around U.S. $713) to the plaintiff. The prison sentence was conditionally suspended, but Santos Rojas was sentenced to one year of probation. He will have to present himself to the court at the end of every month "to control and justify his activities," he will not be able to leave the area without authorization from the judge, and he must rectify the information and opinions he voiced about the mayor. The journalist appealed the judgment.

The case, as the Office of the Special Rapporteur has learned, began in June 2008 when, speaking on a radio program, the journalist questioned the capacity, ability, and transparency of the Mayor of Satipo, a town located 440 kilometers east of Lima. During the trial, Santos Rojas reiterated his assertions and claimed that he did not defame the mayor but limited himself to giving his opinion about the official, based on facts that are well-known.

The judgment in this case seriously limits the journalist’s freedom of expression by preventing him from referring to matters of public interest in which the municipal government is involved and by restricting his freedom of movement to seek information, due to the risk of violating the conditions for the suspension of the prison sentence.

The Inter-American Court of Human Rights and the Inter-American Commission on Human Rights have established repeatedly that freedom of expression must be guaranteed not only for ideas or information that may be received favorably or considered inoffensive or indifferent, but also for those statements that may offend, clash with, disturb, be disagreeable to, or upset the State or any segment of the population. Moreover, messages related to matters of public interest or about public officials in the exercise of their duties should enjoy special protections. In addition, both the IACHR and the Inter-American Court have stated categorically and repeatedly that opinions cannot be subject to subsequent imposition of liability.

The Office of the Special Rapporteur calls on the competent judicial authorities in Peru to take into account prevailing international standards in the area of freedom of expression in the final resolution of the case involving the journalist Fernando Santos Rojas.

Principle 10 of the IACHR Declaration of Principles on Freedom of Expression establishes the following: "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."

## 34. PRESS RELEASE Nº R92/10

### THE OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS MURDER OF JOURNALIST IN ARGENTINA

*Washington D.C., September 10, 2010* – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its concern regarding the murder of journalist and community leader Adams Ledesma Valenzuela, which took place on Saturday, September 4th in the 31 Bis neighborhood of Buenos Aires, Argentina. The Office of the Special Rapporteur calls upon the authorities to conduct a timely and effective investigation to determine the motive of the crime, and to identify and punish the masterminds and direct perpetrators.

According to the information received, Ledesma had received a call early Saturday morning to help a neighbor repair an electrical problem, but was murdered upon leaving his house. Relatives of the journalist were threatened by unknown persons when they tried to assist him, as well as during the funeral, when they were given a warning as they left the site.

Ledesma was a correspondent for the newspaper *Mundo Villa*, and was preparing to open the *Mundo TV Villa* television channel, which would broadcast its signal via cable to homes in the community. The journalist also had a long history as a community leader.

In statements given to an Argentinean newspaper last June, Ledesma announced the launch of the television channel and stated that he intended to do investigative journalism to "film the famous people" who come to the slum area to buy drugs.

According to the information received, Ledesma's community work was closely related to his work as a journalist. It is essential that the State provide adequate protection to the journalist's family and do everything possible to establish the facts of the murder and ensure that the crime is not met with impunity.

The Office of the Special Rapporteur recalls that, as established in the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), "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."

## 35. PRESS RELEASE Nº R95/10

## OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS MURDER OF PHOTOGRAPHER IN MEXICO

*Washington D.C., September 17, 2010* – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns yesterday's attack against two photographers in Ciudad Juarez, Mexico, in which Luis Carlos Santiago was killed and one of his colleagues was injured. The Office of the Special Rapporteur considers the ongoing murder of journalists in Mexico to be a situation of the utmost gravity, and this latest murder brings the number of deaths to at least ten this year. The Office of the Special Rapporteur calls upon the State to immediately take the action necessary to deter and prevent the repetition of these crimes.

According to the information received, unknown gunmen shot the two press photographers from *El Diario* of Ciudad Juarez in a public parking lot in that city in northern Mexico. Santiago died at the scene, and his colleague was transported to a hospital.

As the IACHR and United Nations Rapporteurs for Freedom of Expression confirmed on their joint visit to Mexico this past August, the violence against members of the media in Mexico is alarming and becoming increasingly serious. The crime committed yesterday reaffirms the urgent need for the State to immediately implement a comprehensive policy of prevention, protection, and the provision of justice to address the critical conditions of violence faced by journalists in Mexico.

The Office of the Special Rapporteur urges the Mexican State to promote measures that protect the free and safe practice of journalism, such as the strengthening of the Office of the Special Prosecutor for Crimes against Journalists, the transfer of investigations into crimes committed against members of the media to the federal justice system, and the implementation of security measures that protect the lives and safety of threatened journalists.

Santiago's death brings the number of murdered media workers to at least ten in 2010. Marco Aurelio Martínez Tijerina was found dead on July 10 in Montemorelos, Nuevo León. Guillermo Alcaraz Trejo was gunned down on July 10 in the city of Chihuahua. Hugo Alfredo Olivera died on July 6 in Michoacán; Juan Francisco Rodríguez Ríos and Elvira Hernández Galeana were killed on June 28 in Guerrero; Jorge Rábago Valdez was murdered on March 2 in Tamaulipas; Jorge Ochoa Martínez was murdered on January 29 in Guerrero; José Luis Romero was found dead on January 16 in Tamaulipas, and Valentín Valdés Espinosa died on January 7 in Coahuila. In addition, at least nine journalists have been kidnapped since January.

The Office of the Special Rapporteur reminds the Mexican State that, according to the ninth principle of the IACHR Declaration of Principles on Freedom of Expression, "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."

## 36. PRESS RELEASE Nº R96/10

## OFFICE OF THE SPECIAL RAPPORTEUR EXPRESSES CONCERN OVER NEW ATTACKS AGAINST JOURNALISTS AND MEDIA IN HONDURAS

*Washington D.C., September 20, 2010* – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the acts of violence committed in recent days against journalists and communications media in Honduras, and urges authorities to take all measures necessary to prevent such crimes and to duly investigate and punish the perpetrators.

According to the information received, on September 14 unknown persons fired shots at Honduran journalist Luis Galdámez Álvarez. Thanks to the journalist's quick reaction, the attack was thwarted. Galdámez is the director of an opinion program on *Radio Globo,* and has been a critic of the *coup d'état* of June 28, 2009. The IACHR granted precautionary measures for him as of July 24, 2009 because he had received death threats, and those measures remain in effect. Nevertheless, according to information received by this Rapporteur's Office, the Honduran authorities have failed to provide him with adequate safety measures.

The Office of the Special Rapporteur also learned that on September 15 members of the military and the police threw tear gas canisters at the *Radio Uno* radio station in San Pedro Sula, attacked the individuals inside the station with billy clubs and tear gas, broke the building's windows, damaged equipment, and seriously injured a person who was about to be interviewed. In addition, last August 31 unknown individuals damaged the station's broadcasting equipment and forced it off the air temporarily. *Radio Uno* is a cultural broadcasting station and an institute for journalism education owned by a media cooperative. The radio station has maintained a critical stance toward the *coup d'état*.

The Office of the Special Rapporteur was further informed that last September 7 demonstrators protesting the *coup d'état* threw sticks and rocks at the *Televicentro* television station and at the building where the news program *Abriendo Brecha* operates.

The Office of the Special Rapporteur is troubled by the persistence of the attacks against journalists and the media, as well as by the lack of results in the investigations into the murder of journalists committed this year in Honduras. Sustained impunity is one of the greatest threats to freedom of expression, as it not only denies justice to the victims but it also affects society as a whole by creating fear and self-censorship among reporters.

The Office of the Special Rapporteur urgently calls upon the Honduran authorities to condemn the attacks, investigate the facts, punish the perpetrators, effectively implement the precautionary measures ordered by the IACHR, and guarantee the safety of journalists and the media—an essential condition for the existence of free and robust debate.

The ninth principle of the IACHR 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."

## 37. PRESS RELEASE Nº R100/10

### OFFICE OF THE SPECIAL RAPPORTEUR EXPRESSES CONCERN OVER CHANGES IN PROTECTION OF FREEDOM OF EXPRESSION IN EL SALVADOR

*Washington D.C., October 7, 2010* - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its concern over a decision by the Supreme Court of El Salvador that allows for the imposition of criminal sanctions against journalists who disseminate information that offends the honor or reputation of public officials. The Office of the Special Rapporteur recognizes that the judgment, which references inter-American jurisprudence, establishes that such sanctions can only be imposed in response to the dissemination of information and not in response to the expression of opinions, and they are only permitted when the journalist acts in bad faith, as required by criminal law.

The legal provisions that were subjected to constitutional review established that only civil law, rather than criminal law, could be used to protect the rights of public officials that were affected by the media's dissemination of information in the public interest. These provisions were considered an important regional development in the process of abolishing ambiguous and disproportionate limitations on freedom of expression imposed by criminal law provisions related to the protection of honor and reputation.

On this point, the Declaration of Principles on Freedom of Expression, adopted by the Inter-American Commission in 2000, establishes in Principle 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."

Moreover, Principle 11 states: "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."

The Office of the Special Rapporteur expresses its concern over this decision, which represents a setback in the regional trend toward eliminating from criminal codes the crime of defamation with regard to public officials. The Office of the Special Rapporteur calls on the authorities of El Salvador to issue regulations in this area so that the expression of critical ideas or information by any person with respect to public officials is completely protected against criminal prosecution. This guarantee is a necessary safeguard for vigorous and uninhibited debate, and for this reason it is reflected in the consistent jurisprudence of the Inter-American Commission, as well as in principles 10 and 11 of the Declaration of Principles on Freedom of Expression and in the reports of this Office of the Special Rapporteur. It is also worth mentioning the jurisprudence of the Inter-American Court of Human Rights, which established in the Case of Kimel v. Argentina that ambiguous criminal laws for protecting the honor and reputation of public servants run contrary to the American Convention on Human Rights.

## 38. PRESS RELEASE Nº R101/10

## OFFICE OF THE SPECIAL RAPPORTEUR CONCERNED ABOUT CRIMINAL CONVICTION OF JOURNALISTS IN PANAMA

*Washington D.C., October 8, 2010.* — The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its concern over the criminal conviction and one-year prison sentence issued by a Panamanian court on September 24 against two journalists who had previously been acquitted for reporting on actions of public officials.

According to the information received, Panama's Second Superior Court of Justice sentenced the news director of Canal Dos, Sabrina Bacal, and reporter Justino González of radio station KW Continente to one year in prison for criminal defamation (*calumnia* and *injuria*). The ruling also bars both journalists from carrying out activities related to their profession for one year, and substitutes the prison sentence with a fine of $US 3,650 each. The conviction overturned two judgments of acquittal issued by tribunals of the First Criminal Circuit of Panama. The Office of the Special Rapporteur was informed that PresIdent Ricardo Martinelli announced on October 6th that he will pardon the convicted journalists. Although the pardon is without doubt a positive step, it would not prevent the future application of sanctions against those who expose possible irregularities that are of interest to the public.

The criminal conviction represents a serious setback in terms of the will the Panamanian State has demonstrated up until now to prosecute in civil courts alleged crimes against honor in matters of general interest that involve public officials. In addition, the order barring the journalists involved from exercising their profession for one year disproportionately compromises their freedom of expression.

The 2008 Criminal Code of Panama establishes that no criminal sanctions shall be imposed in cases of criminal defamation when those allegedly offended are high-level public servants. The Office of the Special Rapporteur has repeatedly noted the regional importance of this legislative development, which was the result of a significant national consensus. The Inter-American Court of Human Rights also referred positively to this development in January 2009, in the Case of Tristán Donoso v. Panama.

In addition to its concern regarding the journalists' criminal conviction, the Office of the Special Rapporteur is concerned about the opinion of the Attorney General's Office of Panama in favor of declaring unconstitutional the article of the Criminal Code that partially decriminalizes crimes against honor. The Office of the Special Rapporteur has indicated that criminal sanctions applied to crimes against honor have an inhibiting and intimidating effect on the exercise free expression and that this approach is disproportionate and truly unnecessary in a democratic society. The use of criminal mechanisms to punish expression in matters of public interest or about public officials can constitute a form of indirect censorship, due to its intimidating and inhibiting effect on public debate.

It is worth noting that Principle 10 of the Declaration of Principles on Freedom of Expression establishes the following: "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."

Moreover, Principle 11 of the same Declaration states: "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."

The Office of the Special Rapporteur calls on Panamanian authorities to preserve the important gains that have been achieved, which incorporate the jurisprudence and doctrine that the inter-American human rights system has established in the area of freedom of expression. These important gains provide an invaluable guarantee to ensure the existence of a truly vigorous, pluralistic, and uninhibited public debate and the very health of every democracy.

## 39. PRESS RELEASE Nº R106/10

## OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS MURDER OF INDIGENOUS JOURNALIST IN COLOMBIA

*Washington D.C., October 22, 2010* – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of indigenous leader and journalist Rodolfo Maya Aricape, which occurred on October 14 on the López Adentro reservation, in the Department of Cauca, Colombia. The Office of the Special Rapporteur calls upon the Colombian State to investigate the crime, identify and punish the perpetrators, and provide redress to the victims.

According to the information received, Maya Aricape was in his house with his wife and two daughters when two armed men shot him. The 34-year-old leader was the secretary of the López Adentro Indigenous Council and a correspondent for Radio Pa´yumat, a community radio station of the *Tejido de Comunicación* [Communications Network] project.

The Office of the Special Rapporteur was informed that Maya Aricape used to report daily on Radio Pa´yumat, covering events in his community. He was also in charge of documenting his people's activities and those of the indigenous organizations on video. It has been reported that, in carrying out this work, Maya Aricape was noted for speaking out firmly against all of the armed groups operating in indigenous territories.

The work of the *Tejido de Comunicación*, to which Maya Aricape dedicated his efforts, won it the Bartolomé de las Casas Award, given in Madrid, Spain, last September.

The Office of the Special Rapporteur reminds the State of the ninth principle of the IACHR Declaration of Principles on Freedom of Expression, according to which "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."

A crime against an indigenous journalist has especially serious effects on his community, given the often vulnerable status of indigenous peoples in the context of armed conflict. Therefore, the State must adopt essential policies of prevention and protection; it must also investigate the crime committed, punish the perpetrators, and provide redress to the community for the resulting harm.

## 40. PRESS RELEASE Nº R108/10

### OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS MURDER OF TWO JOURNALISTS IN BRAZIL

*Washington D.C., November 3, 2010.* – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murders of the director and president of the newspaper *Entre-Ríos,* José Pontes de Souza, which occurred on October 30 in Paraíba do Sul, and of radio reporter Francisco Gomes de Medeiros, who died on October 18 in the city of Caicó. The Office of the Special Rapporteur asks the authorities to conduct prompt and diligent investigations to establish the motive of the crimes, and to identify and appropriately punish the perpetrators.

According to the information received, José Pontes de Souza was murdered on Saturday, October 30 in the main square of Paraíba do Sul by an unknown individual who shot him in the head. The journalist was the director and owner of the regional newspaper *Entre-Ríos* of the town of Tres Ríos, in the province of Río de Janeiro.

In the case of Francisco Gomes, according to reports received by the Rapporteur's Office, a subject shot him several times in front of his house. The journalist was still alive when he was taken to a local hospital, where he later died. The day after the crime, the police arrested a person who allegedly admitted having committed the murder in retaliation for articles published by Gomes that were used by a court to sentence him to prison in 2007.

This Office of the Special Rapporteur was informed that Gomes worked as the news director of the *Radio Caicó* radio station, contributed to the *Tribuna do Norte* newspaper, and kept a personal blog on which he published his own criminal exposés and investigations. Gomes had recently denounced the alleged buying of votes in exchange for drugs by politicians in the community of Caicó, during the first round of the last general elections in Brazil. Gomes had received death threats as a result of this publication.

The Office of the Special Rapporteur urges the Brazilian authorities to ensure that these crimes do not go unpunished, by firmly pursuing the investigations, prosecution, and appropriate punishment of the perpetrators, as well as the just compensation of the victims' relatives.

The Office of the Special Rapporteur reminds the Brazilian State that, according to the ninth principle of the IACHR Declaration of Principles on Freedom of Expression: "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."

## 41. PRESS RELEASE Nº R111/10

## OFFICE OF THE SPECIAL RAPPORTEUR REQUESTS A THOROUGH, TRANSPARENT INVESTIGATION INTO DEATH OF JOURNALIST IN MEXICO

Washington, D.C., November 9, 2010. —The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights asks the State of Mexico to carry out a diligent, rigorous, independent, and transparent investigation in order to clarify the circumstances in which journalist Carlos Guajardo Romero died on November 5 in the city of Matamoros, Tamaulipas, during a major military operation against drug traffickers.

According to the information that has been received, Carlos Guajardo worked as a reporter on the police beat for the newspaper *Expreso Matamoros*. Around noon on Friday, November 5, the reporter was covering an armed confrontation between the Army and organized crime in downtown Matamoros, in which the head of the Gulf Cartel, Antonio Ezequiel Cárdenas Guillén, died. The journalist, who had been gathering information at the scene of the confrontation, was found dead with bullet wounds.

The Office of the Special Rapporteur recognizes the importance of the announcement made by the Army and by the National Human Rights Commission to the effect that an exhaustive investigation into the events was being launched. The Office of the Special Rapporteur trusts that independent Mexican authorities will investigate the facts that led to the death of the reporter, identify the circumstances of his death, and if appropriate, impose the appropriate punishment.

At least 10 journalists have died violently in Mexico in 2010, for reasons probably linked to their profession. In addition to these crimes, there have been numerous cases of kidnapping, threats, intimidation and attacks against the media and media workers. Given this situation, it is essential that the State clarify the cause of these events and adopt effective prevention and protection measures so that they do not happen again. The Office of the Special Rapporteur reminds the State that Principle 9 of the Declaration of Principles on Freedom of Expression establishes 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."

## 42. PRESS RELEASE Nº R113/10

## OFFICE OF THE SPECIAL RAPPORTEUR EXPRESSES CONCERN OVER CRIMINAL DEFAMATION CASE AGAINST THE ELECTED MAYOR OF LIMA

*Washington D.C., November 15th, 2010.* - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its concern over the announcement for pronouncement of judgment scheduled for November 17, 2010, in a criminal defamation case against elected mayor of Lima, Susana Villarán, as part of a criminal process for the alleged crime of defamation against Jorge Mufarech Nemy, former Minister of Labor under Alberto Fujimori.

In 2009, Susana Villarán published an opinion article on an Internet portal recalling the 2004 criminal complaint that she and several other individuals filed against Mr. Mufarech, accusing him of acts of corruption committed in his capacity as Minister. On August 10th, 2009, Mufarech Nemy filed a criminal complaint against Villarán de la Puente, alleging the offense of aggravated defamation arising from that publication.

The criminal complaint of corruption originally formulated by Villarán had already caused Mr. Mufarech to file a previous criminal complaint, and in October of 2006, the judge of competent jurisdiction issued an order finding the case inadmissible. However, on September 8th, 2009, the same judge based on the same facts opened a criminal case against Susana Villarán for the offense of aggravated defamation. On October 22nd, 2010, the trial court judge summonsed Villarán to the pronouncement of judgment proceedings *"…on notice that if [she] fails to appear, [she] may be held in contempt of the court and a warrant may be issued for [her] arrest…"*

The Office of the Special Rapporteur has expressed its concern over the application of defamation crime in Peru against individuals who have limited themselves to denounce or express critical opinions of those who hold or have held public office. The act of denouncing or expressing opinions against public servants or persons who have held public office is broadly protected under Article 13 of the American Convention on Human Rights. This type of expression cannot, under any circumstance, be qualified as an act of criminal defamation based solely on the fact that the person called into question feels offended. Individuals who hold or have held public office have a duty to withstand a higher degree of criticism and questioning, precisely because they voluntarily assume the administration of important public responsibilities. The use of the criminal law to silence criticism or denunciations is a serious infringement of the right to freedom of expression of not only the defendant but also of society as a whole.

Accordingly, principle ten of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights establishes 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 calls upon the competent judicial authorities of Peru to consider the international standards on freedom of expression currently in effect when rendering their decision in the case of Susana Villarán, as well as on any upcoming criminal libel processes regarding giving out denounces or critiques against public servants or persons of public relevance.

## 43. PRESS RELEASE Nº R119/10

## SPECIAL RAPPORTEURSHIP EXPRESSES CONCERN REGARDING VENEZUELAN STATE INTERVENTION IN GLOBOVISIÓN

Washington D.C., December 8, 2010 – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) expresses its concern regarding the possible intervention by the Venezuelan State in the television channel Globovisión by way of a public entity's assumption of control of twenty percent of the company's shares.

According to the information received, on Friday December 3rd, 2010, the Superintendence of Banks and Other Financial Institutions (SUDEBAN) published a resolution in the Official Gazette in which it resolved to dissolve the corporate entity Sindicato Ávila C.A., a company linked to Nelson Mezerhane's Grupo Financiero Federal. The corporate entity in question owns twenty percent of the shares of Corpomedios GV Inversiones, the company that owns the Globovisión television channel. The dissolution of Sindicato Ávila C.A. could imply that the government would assume control of the company's shares in Globovisión, enabling it to participate through its representatives in the company's shareholders' assembly.

The journalists and owners of Globovisión have been subjected to numerous acts of harassment and stigmatization as a result of the exercise of their freedom of expression. In particular, the liquidation measure which could give rise to the government's intervention in Globovisión was preceded by repeated public manifestations by State officials at the very highest levels who made clear their repudiation of the editorial slant of Globovisión and clearly expressed their intention to intervene in the channel.

Indeed, on June 16, 2010, the President of the Bolivarian Republic of Venezuela, Hugo Chávez Frías, questioned the fact that Globovisión shareholders Guillermo Zuloaga and Nelson Mezerhane, who face judicial proceedings initiated by the Venezuelan Public Prosecutor's office, exercise control over the channel. The President, in a blanket presidential broadcast, observed that the government intervention in the companies of Nelson Mezerhane, which hold a percentage of the channel's shares, entitled the government to appoint a representative to Globovisión's board of directors.

On the same day, National Assembly member Carlos Escarrá of the Partido Socialista Unido de Venezuela (United Socialist Party of Venezuela) appeared on the television program "La Hojilla" and said with regard to the judicial proceedings against Guillermo Zuloaga: "The State can very well request a precautionary measure granting it administration over the stock that Mr. Zuloaga has in Globovisión, which would make the State a majority shareholder in Globovisión. As a majority shareholder, I am not saying 55 percent, brother, (…) the State would have approximately 77 percent (…). It goes far beyond 55 per cent of this phantom company".

Later, on July 2, 2010, the President, in a blanket presidential radio and television broadcast, spoke again about the television channel. "We will see who can hold out longer: the craziness of Globovisión or Venezuela". He added: "We will have to think about what will happen with that channel (…) because the owners are fleeing from justice. And I call for those who are in charge of the channel, not its owners, those who are in charge, obeying instructions from the hidden fugitive owners, those who are trying to destabilize the country on behalf of the owners… It is very dangerous to allow a television channel to burn a country down; we can't allow that".

On November 20, 2010, President Hugo Chávez gave an interview to television channel Venezolana de Televisión. He accused Guillermo Zuloaga of organizing a criminal conspiracy to kill him, and he called on Vice-President Elías Jaua, the Attorney General and the Supreme Court to take all the necessary measures to intervene in Globovisión if Guillermo Zuloaga did not return to Venezuela. The President said: "Something has to be done. Either the owner comes to defend his property, to show his face, as it should be, or something has to be done regarding that station". One day later, the President repeated his call and said that it was necessary to intervene in Globovisión because it was a station managed by

citizens that were under investigation by the judiciary, a station that keeps "firing lead every day against the government, the people, disfiguring the truth… This government and the State of Venezuela have to do something about it!"

In response to these statements, on November 22, 2010, the Office of the Special Rapporteur asked the State of Venezuela for information regarding, among other issues, the evidence that supports the President's accusations against Guillermo Zuloaga, and whether any measures had been adopted against TV channel Globovisión. On November 24, 2010, the State of Venezuela responded and stated that "until now, no action has been taken against Globovisión, because each and every one of the constitutionally established branches of government are independent from one other, hence, the simple public statements made by the President are not orders with which other branches must abide". The State added that the statements made by the President were part of his freedom of expression.

On November 23, 2010, in a ceremony held in the Salón Elíptico of the National Assembly that was broadcast nationally on radio and television, the President, in reference to the need to "radicalize the revolution," said that the State could not remain quiet while Guillermo Zuloaga was going to the "Congress of the empire to attack Venezuela and still has a television channel here."

On December 3, 2010, a decision taken on November 16 was made public. According to that decision, the State could take control and administer a percentage of the shares of the company that owns the television channel Globovisión.

State intervention in a television channel whose editorial posture is uncomfortable for the State with the purpose of influencing its content is prohibited by Article 13 of the American Convention, which in subsection 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, 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."

Similarly, Principle 13 of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights sets out that the exercise of power by the state with the intent to put pressure on and punish social communicators and communications media "because of the opinions they express threaten[s] freedom of expression […]. The [communication 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."

The Office of the Special Rapporteur calls upon the State of Venezuela to comply with the most stringent international standards regarding freedom of expression so as to fully ensure the right of the television channel Globovisión to exercise, without undue interference by the government or arbitrary pressure, the right to free expression as well as the right to integrity and personal security, to due process and to a fair and impartial trial of the station's journalists and owners.

## 44. PRESS RELEASE Nº R122/10

## IACHR CONCERNED ABOUT LAW INITIATIVES IN VENEZUELA THAT COULD UNDERMINE THE EFFECTIVE EXERCISE OF HUMAN RIGHTS

Washington D.C., December 15, 2010 – The Inter-American Commission on Human Rights (IACHR) and its Office of the Special Rapporteur on Freedom of Expression express their concern regarding three draft laws that could be approved in the next few days in Venezuela: an Enabling Law, and bills that would modify the laws on Telecommunications and on Social Responsibility in Radio and Television.

The executive power has asked the National Assembly to approve an Enabling Law that delegates to the Executive the power to sanction laws for a period of one year. Both the constitutional provision and the delegating law fail to set the limits necessary for the existence of true control over the executive branch's legislative power, while there does not exist a mechanism to allow a balanced correlation of government power as a guarantee for the respect for human rights.

The separation of powers as a guarantee of the rule of law also demands an effective and not merely formal separation between the executive and legislative branches. The possibility that bodies democratically elected to create laws delegate this power to the executive branch is not in and of itself a violation of the separation of powers or the democratic state, so long as it does not generate unreasonable restrictions or deprive human rights of their meaning. Notwithstanding, the protection of human rights requires that state actions affecting the enjoyment of such rights in a fundamental way not be left to the discretion of the government but, rather, that they be surrounded by a set of guarantees to ensure that the inviolable attributes of the individual are not impaired. Moreover, the principle of legality, which must be respected when imposing restrictions on human rights, is jeopardized by permitting the delegation of legislative authority in terms that are overly broad and that could extend to criminal matters. The frequent concentration of executive and legislative functions in a single branch of government, in the absence of appropriate controls and constraints set by the Constitution and the Enabling Law, allows interference in the realm of rights and freedoms.

The Enabling Law currently under consideration by the National Assembly is of special concern to the IACHR with regard to the power delegated to the executive branch to create norms that establish the sanctions that would apply when crimes are committed. Moreover, the Enabling Law will allow the executive power to legislate in matters of international cooperation. In this aspect, the IACHR reiterates its concern regarding the possibility that the capacity of non-governmental human rights organizations to do their important work is curtailed. The Inter-American Commission reiterates the recommendation in its 2010 report *Democracy and Human Rights in Venezuela* to reform Article 203 of the Constitution of Venezuela, as it permits the delegation of legislative faculties to the President of the Republic without establishing clear and defined limits to the content of such delegation.

The Enabling Law also assigns the President of the Republic ample, imprecise and ambiguous powers to dictate and reform regulatory provisions in the telecommunications and information technology sectors. Additionally, the Assembly is discussing the modification of the laws on Telecommunications and Social Responsibility in Radio and Television, in order to extend their application to the electronic media, impose disproportionate obligations that would make impossible the continued operation of critical outlets such as Globovisión, and interfere with the content of all communications media.

The draft laws prohibit all media outlets from issuing messages that "incite or promote hatred", "foment anxiety in the citizenry" or "ignore the authorities", among other new prohibitions that are equally vague and ambiguous. In addition, they establish that Internet service providers should create mechanisms "that enable the restriction of (…) the dissemination" of these types of messages and they establish the liability of such companies for the expressions of third-parties.

By holding service providers responsible and extending the application of vague and ambiguous norms that have been questioned by the IACHR and the Office of the Special Rapporteur in their report *Democracy and Human Rights in Venezuela*, the draft law targets freedom of expression on the Internet

in an unprecedented fashion. The initiative includes ambiguous norms that sanction intermediaries for speech produced by third parties, based on assumptions that the law does not define, and without guaranteeing basic elements of due process. This would imply a serious restriction of the right to freedom of expression enshrined in the American Convention on Human Rights.

Finally, the draft laws establish new conditions for broadcasting activities, which appear to be directed at restricting the influence of independent audiovisual media outlets in Venezuela. For example, the bill requires all broadcasting license-holders to re-register before the competent authority despite the fact that their licenses were issued appropriately. In the case of corporations, the bill requires the new registry to be done "personally" by every one of the shareholders. This odd requirement could affect the license of Globovisión, since its principal shareholders are the subject of criminal proceedings for reasons unrelated to their ownership or administration of the channel, and they have requested political asylum in another country in the region. The draft legislation tends to create very effective mechanisms for interfering with content in order to prevent the circulation of information that proves uncomfortable for the government and creates a de facto public monopoly that restricts in an absolute way the principles of diversity and pluralism that should govern broadcasting.

The IACHR and the Office of the Special Rapporteur for Freedom of Expression consider that these measures represent a serious setback for freedom of expression that primarily affects dissident and minority groups that find in the Internet a free and democratic space to disseminate their ideas. In addition, by targeting the influence of private audiovisual media outlets, the aforementioned draft laws further restrict the space for public debate about the actions of Venezuelan authorities and increasingly favor the powerful voice of the State and government authorities.

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 a 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 are elected in a personal capacity by the OAS General Assembly and who do not represent their countries of origin or residence.

## 45. PRESS RELEASE Nº R125/10

## OFFICE OF THE SPECIAL RAPPORTEUR CONDEMNS MURDER OF JOURNALIST IN HONDURAS

*Washington D.C., December 29, 2010* – The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) condemns the murder of radio journalist Henry Suazo committed on December 28 in the town of La Masica, Honduras. The Office of the Special Rapporteur expresses its concern over the situation of journalists in Honduras and urges the State to promote investigations in this case as well as in others where journalists have been murdered and where perpetrators remain unpunished.

According to information available to this Office, two unknown individuals fired shots at journalist Henry Suazo as he was leaving his home. The journalist had been a reporter for the HRN radio station; additionally, he worked for a local TV station. Suazo had apparently denounced on radio days before that he had received a death threat via a text message sent to his phone.

In 2010, among other journalists and human rights advocates that were also murdered , the following journalists were killed in Honduras: Israel Zelaya, on August 24 in San Pedro Sula; Joseph Hernández, on March 1 in Tegucigalpa; David Meza Montesinos, who died in La Ceiba on March 11; Nahúm Palacios, who was killed in Tocoa on March 14; Bayardo Mairena and Manuel Juárez, who were murdered in Juticalpa on March 26; Jorge Alberto (Georgino) Orellana, who died on April 20 in San Pedro Sula; and Luis Arturo Mondragón, who was murdered on June 14 in El Paraíso. All of these crimes remain unpunished and Honduran authorities have not reported significant progress in any of the investigations into these murders.

The Office of the Special Rapporteur reminds the State that the ninth principle of the IACHR 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."

The Office of the Special Rapporteur insists upon the State about the need to create entities and special investigation protocols, as well as protection mechanisms to guarantee the safety of those who are under threats due to their journalistic activities. As it has been emphasized by this Office before, it is deemed urgent that the Honduran State investigate in a thorough, effective and impartial way the crimes against journalists and identify, bring to trial and punish the perpetrators.