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**ANNUAL REPORT OF THE  
INTER-AMERICAN COMMISSION  
ON HUMAN RIGHTS  
2008**

**VOLUME II**

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

GENERAL SECRETARIAT  
ORGANIZATION OF AMERICAN STATES  
1889 F ST. N.W.  
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SPECIAL RAPPORTEUR FOR  
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**VOLUME II**

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**Special Rapporteur for Freedom of Expression**

GENERAL SECRETARIAT  
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## INTRODUCTION

1. The Office of the Special Rapporteur for Freedom of Expression (hereafter, "Office of the Special Rapporteur") was created in October of 1997 by the Inter-American Commission on Human Rights (hereafter, "IACHR") during its 97<sup>th</sup> Period of Sessions. Since its establishment, the Office of the Special Rapporteur has had the support of not only the IACHR, but also the States, civil society organizations, communications media, journalists, and, especially, the victims of violations of the right to freedom of expression, who have seen in the Office of the Special Rapporteur a decisive support for the reestablishment of the guarantees necessary for the exercise of their rights and for the reparation of the consequences of violations of those rights.

2. During its ten years of functioning, 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 promotional visits and trips, and participated in dozens of conferences and seminars that have sensitized and trained hundreds of public functionaries, journalists, and defenders of the right to free expression.

3. This report 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 ten years of functioning, and the activities carried out in 2008.

4. Chapter II presents the now-traditional evaluation of the situation of freedom of expression in the Hemisphere. During 2008, 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 and advances in the guarantees of this right. Following the methodology of previous reports, this information was evaluated in light of the Declaration of Principles on Freedom of Expression (hereafter, "Declaration of Principles"), approved by the IACHR in 2000. The Declaration of Principles constitutes an authorized interpretation of the right to freedom of expression in the region and an important instrument to help the States to approach problems and to promote, guarantee, and respect the right to freedom of expression.

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

6. Chapter III continues the practice of the Office of the Special Rapporteur of presenting a study of the jurisprudence in the matter of freedom of expression. The objective of this chapter is to present the inter-American jurisprudence that defines the scope and content of the right to freedom of expression in a systematic manner. This year it presents the jurisprudence that establishes the importance, function, characteristics, and limitations of the exercise of the right to freedom of expression, as well as the types of protected discourse. In accordance with the mandate

given to the Office of the Special Rapporteur in the resolutions of the General Assembly of the Organization of American States (hereafter, "OAS"),<sup>1</sup> the chapter also develops other important themes within the exercise of the right to freedom of expression such as: the right of access to information, the prohibition of censorship and indirect restrictions, journalists and communications media, freedom of expression on the part of public functionaries, and freedom of expression in the ambit of electoral processes. The systematization of the jurisprudence constitutes an important tool to enable judges, public functionaries, social organizations, and journalists to know and apply the standards of the inter-American system.

7. Chapter IV presents the agenda of the Office of the Special Rapporteur for the period of 2008-2011. The first part summarizes the jurisprudential advances achieved (and presented in a detailed manner in Chapter III), to conclude with the most important challenges and priority issues for the office in the coming years.

8. The intense efforts of the Office of the Special Rapporteur have allowed it to become an expert office in the OAS in charge of promoting and monitoring respect for freedom of expression in the Hemisphere. This standing has generated, in turn, a substantial increase in the expectations by the hemispheric community about the work of the Office of the Special Rapporteur. In order to meet this demand, it is necessary to pay attention not only to the institutional and political support of the Office of the Special Rapporteur, but also its financial support, since without this, it cannot function and carry out the activities required by its mandate. The Office of the Special Rapporteur does not directly receive resources from the regular fund of the OAS. For that reason, its sustenance largely depends on the voluntary contributions made by some states and the contributions of foundations and international aid agencies for specific projects. It is important to once more urge the Member States to follow the steps of 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[.]"

9. The Office of the Special Rapporteur is grateful for the financial contributions received during 2008 from Canada, Costa Rica, the United States of America, France, Ireland, and Sweden, through the Swedish International Development Cooperation Agency (Sida). Once more, the Office of the Special Rapporteur invites other states to add to this necessary support.

10. In July 2008, through an open and public contest, the IACHR elected Colombian attorney Catalina Botero Marino as the new Special Rapporteur for Freedom of Expression. Botero Marino assumed the position on October 6, 2008. The new Special Rapporteur 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 it has carried out. This annual report is the product of their effort, teamwork, and dedication.

11. The present annual report attempts to continue contributing to the establishment of a better environment for the exercise of freedom of expression and, by this mechanism, to ensure the strengthening of democracy and the well-being and progress of the inhabitants of the

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

Hemisphere. Its objective is to collaborate with the Member States in raising awareness about the problems everyone wants resolved and in formulating viable proposals and recommendations based on the 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 to respond to the challenges we face and to give rise to a broad and fluid dialogue not only with the Member States, but also with civil society and social communicators from all of the 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 (IACHR) established the Office of the Special Rapporteur for Freedom of Expression during its 97<sup>th</sup> Period of Sessions, held in October 1997, by the unanimous decision of its members. This Special Rapporteurship was created as a permanent office with functional autonomy and its own operational structure. In creating the Office of the Special Rapporteur, the Commission sought to promote the defense of the right to freedom of expression in the hemisphere, in view of the fundamental role this right plays in consolidating and developing the democratic system and in protecting, guaranteeing, and promoting other human rights. During its 98<sup>th</sup> Period of Sessions, held in March 1998, the Commission 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 Organization of American States Member States. Indeed, during the Second Summit of the Americas the Heads of State and Government of the Americas recognized the fundamental role of freedom of expression and expressed their satisfaction over the creation of this 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.<sup>1</sup>

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 that governments:

Strengthen the exercise of and respect for all human rights and the consolidation of democracy, including the fundamental right to freedom of expression 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.<sup>2</sup>

4. During the Third Summit of the Americas, held in Quebec City, Canada, the Heads of State and Government ratified the mandate of the Special Rapporteurship, 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

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<sup>1</sup> 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.

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

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

5. The General Assembly of the OAS has on various occasions expressed its support for the work of the Office of the Special Rapporteur and entrusted it with the 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 of 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 on Human Rights.<sup>4</sup> 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. One year later, 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 included 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.<sup>5</sup> 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 in 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 October 26 and 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. This meeting was held on February 28 and 29, 2008.

8. On the subject of access to information, the General Assembly has made several pronouncements supporting the work of the Office of the Special Rapporteur and urging the adoption of its recommendations. In its Resolution 1932 (XXXII-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 has asked the Office of the Special Rapporteur to continue preparing a report in its Annual Reports on the situation regarding access to public information in the region. In 2006, through Resolution 2252 (XXXVI-O/06), among other points the Special Rapporteurship was instructed to provide support to the Member States that so request in the development of legislation and

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<sup>3</sup> Plan of Action, Third Summit of the Americas, April 20-22, 2001, Quebec, Canada. Available at: [www.summit-americas.org](http://www.summit-americas.org).

<sup>4</sup> See 2004 IACHR Annual Report, Volume III, Chapter II, Chapters V and VII. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=459&IID=1>.

<sup>5</sup> See 2005 IACHR Annual Report, Volume II, Chapter V and Chapter VI. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=662&IID=1>.

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*.<sup>6</sup>

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

10. In 2008, the General Assembly approved Resolution 2434 (XXXVII-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 concerning defamation, namely by repealing or amending laws that criminalize *desacato*, defamation, slander, and libel, and in this regard, to regulate these conducts exclusively in the area of civil law. That same year, the OAS General Assembly also approved Resolution 2418 (XXXVIII-O/08), which highlights the importance of the right of access to public information, urges the States to adapt their legislation to meet the standards on this issue, and instructs the Office of the Special Rapporteur to offer advisory support in this area, as well as to continue including a report on the situation regarding access to public information in the region, in its Annual Report.

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

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

12. The Office of the Special Rapporteur for Freedom of Expression is a permanent office with functional autonomy and its own budget, which operates within the legal framework of the IACHR.<sup>7</sup>

13. 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 expression, including the following:

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<sup>6</sup> IACHR Office of the Special Rapporteur, August 2007. *Special Study on the Right of Access to Information*. Available in Spanish at: <http://www.cidh.oas.org/relatoria/section/Estudio%20Especial%20sobre%20el%20derecho%20de%20Acceso%20a%20la%20Informacion.pdf>.

<sup>7</sup> See Articles 40 and 41 of the American Convention on Human Rights and Article 18 of the Statute of the Inter-American Commission on Human Rights.

- 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 expression;
- c) Advise the Inter-American Commission in conducting on-site visits to OAS member countries in order to expand the general observation of the situation and/or to investigate a particular situation that has to do with the right to freedom of expression;
- d) Conduct thematic visits to the various OAS member countries;
- e) Prepare specific and thematic reports for the Commission's approval;
- f) Promote the adoption of legislative, judicial, administrative, or other measures that may be necessary to effectively exercise the right to freedom of expression;
- g) Coordinate actions to verify or follow up on conditions involving the exercise of the right to freedom of expression in the Member States with public defender's offices or national human rights institutions;
- h) Provide technical advisory services to OAS bodies;
- i) Prepare an Annual Report on the situation regarding the right to freedom of expression in the Americas, which will be considered by the full Commission for its approval and inclusion in its Annual Report to the General Assembly; and
- j) Gather all the information necessary to prepare the aforementioned reports.

14. In 1998, the Commission announced a public competition for the post of Special Rapporteur for Freedom of Expression. After exhausting the process, 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 Dr. Eduardo A. Bertoní as Special Rapporteur. Bertoní stayed in this position from May 2002 to December 2005. On March 15, 2006, the IACHR chose Venezuelan attorney Ignacio J. Álvarez as the new Special Rapporteur.

15. In April 2008, the IACHR announced a competition to select Álvarez's successor. During the period in which this post was vacant, the Office of the Special Rapporteur was under the responsibility of Commission Chairman Paolo Carozza. The competition was closed on June 1, and the pre-selected candidates to occupy this post were interviewed in July, during the IACHR's 132<sup>nd</sup> Period of Sessions. After the round of interviews, on July 21, 2008, the IACHR selected Colombian attorney Catalina Botero Marino as Special Rapporteur.<sup>8</sup>

16. Botero Marino had worked as Auxiliary Magistrate in the Constitutional Court of Colombia for eight years. She had also held a number of posts, including: National Director of the Office for the Promotion and Dissemination of Human Rights, in the Office of the People's Defender of Colombia; Director of the Consultancy for Human Rights and International Humanitarian Law at the Social Foundation; adviser for the Office of the Prosecutor General of the Nation; and professor and researcher at the Law School of the University of the Andes and at other Colombian and foreign universities. Attorney Botero Marino has published more than a dozen academic articles in specialized magazines in various countries and has been the author or co-author of several books, some of which refer specifically to the scope of the right to freedom of expression in comparative law and to national and international mechanisms to make this right effective. The new Special Rapporteur assumed the post on October 6, 2008.

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<sup>8</sup> IACHR Press Release 29/08. Available at: <http://www.cidh.org/Comunicados/English/2008/29.08eng.htm>.



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

17. During its ten years of existence, the Office of the Special Rapporteur has carried out in a timely manner and with dedication each of the tasks assigned to it by the Inter-American Commission on Human Rights and by other bodies of the Organization of American States such as the General Assembly.

18. This part of the report summarizes in a general manner the activities that have been carried out in its ten years of existence, with a particular emphasis on activities advanced in 2008.

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

19. One of the most important functions of the Office of the Special Rapporteur is advising the IACHR in the evaluation of particular cases and preparing the corresponding reports.

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

21. From the time of 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 (hereafter, "Inter-American Court"):<sup>9</sup>

- *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile*. Judgment of February 5, 2001. This case had to do 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 which aired a program that was severely critical of certain aspects of the Peruvian government. The program in question reported several stories of abuse, including cases of torture and acts of corruption, committed by the Peruvian Intelligence Services. As a result of these reports, the State revoked the victim's Peruvian citizenship, and removed his control of the channel. The judgment found that the government's actions had violated the right to freedom of expression through indirect restrictions and ordered Peru to restore the victim's rights.

- *Case of Herrera-Ulloa v. Costa Rica* ("La Nación"). Judgment of July 2, 2004. This case has to do with 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

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<sup>9</sup> Until 1998 the Court's jurisprudence included only two cases involving freedom of expression: (1) Advisory Opinion OC-5/85 of November 13, 1985: Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29, American Convention on Human Rights), and (2) Advisory Opinion OC-7/86 of August 29, 1986: Enforceability of the Right to Reply or Correction (Arts. 14(1), 1(1) and 2, American Convention on Human Rights).

Inter-American Court understood that the conviction was disproportionate and that it violated the right to freedom of expression, and ordered the nullification of criminal proceedings against the communicator.

- *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 questioning 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 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 of Humberto 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, the restitution of all the copies that had been seized, and reparation of the victim’s rights.

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

- *Case of Kimel v. Argentina*. Judgment of May 2, 2008. The decision referred to the conviction of a journalist who criticized in a book the conduct of a criminal judge in charge of investigating a massacre. The judge initiated a criminal proceeding in defense of his honor that ended up in the conviction of the journalists. The Court found that the conviction was disproportionate and violated the victim’s right to freedom of expression.

22. The Office of the Special Rapporteur has worked on other cases that have been approved by the IACHR and are currently under study by the Inter-American Court. They are the following:<sup>10</sup>

- *Case of Santander Tristán Donoso v. Panama*. Pending. Refers to “crimes against honor.”

- *Case of Luisiana Ríos et al. v. Venezuela*. Pending. Refers to “indirect restrictions” due to acts of aggression and threats suffered by journalists during attacks against the RCTV television station.

- *Case of Gabriela Perozo et al. v. Venezuela*. Pending. Refers to “indirect restrictions” due to acts of aggression and threats suffered by journalists during attacks against the Globovisión television station.

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<sup>10</sup> The procedural status of the cases to which reference is made is current as of December 2008, the closing date for the preparation of this report.

- *Case of Francisco Usón Ramírez v. Venezuela*. Pending. Refers to a trial for the crime of “insults to the National Armed Forces.”

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

24. In 2008, in terms of the individual case system, the Inter-American Court’s judgment in the *Case of Kimel v. Argentina*, on May 2, 2008, stood out. In its judgment, the Court ordered the Argentine State to reform its legislation on the scope of the crimes of libel and slander, as well as to overturn the conviction handed down against Kimel.<sup>11</sup>

25. Following the 131<sup>st</sup> Period of Sessions, held in March 2008, the IACHR submitted to the Inter-American Court the Case of Francisco Usón Ramírez v. Venezuela. The facts refer to the filing of a criminal case under military jurisdiction against Francisco Usón Ramírez for the crime of “Insults to the National Armed Forces,” and his subsequent conviction and sentencing to five years and six months in prison, due to certain statements Usón made during a television interview. Hearings were also held during the year before the Inter-American Court on the contentious cases of Santander Tristán Donoso v. Panama, Luisiana Ríos et al. v. Venezuela, and Gabriela Perozo et al. v. Venezuela. A private hearing was held to supervise compliance with the judgment in the Case of Claude-Reyes et al. v. Chile.

## **2. Precautionary Measures**

26. The Office of the Special Rapporteur has worked with the Protection Group in terms of recommending the adoption of precautionary measures in the area of freedom of expression. In this regard, the IACHR has requested on multiple occasions that States adopt precautionary measures to protect the right to freedom of expression. It did so in the cases of (i) *Alejandra Matus Acuña v. Chile*,<sup>12</sup> (ii) *Herrera Ulloa v. Costa Rica*,<sup>13</sup> (iii) *Pablo López Ulacio v. Venezuela*,<sup>14</sup> (iv) *Juan*

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<sup>11</sup> Inter-American Court, May 2, 2008. *Case of Eduardo Kimel v. Argentina*. Available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_177\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_177_ing.pdf).

<sup>12</sup> Commission 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 the 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.

<sup>13</sup> Commission 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.

<sup>14</sup> Commission decision of February 7, 2001, requesting that the State of Venezuela adopt precautionary measures for the benefit of journalist Pablo López Ulacio, who was the subject of a judicial detention order and a ban on public mention, in the newspaper *La Razón*, of an official whom the journalist had accused of benefiting from State insurance contracts after having financed the presidential campaign.

*Cristóbal Peña v. Chile*,<sup>15</sup> *Globovisión v. Venezuela*,<sup>16</sup> (vi) *Santander Tristán Donoso v. Panama*,<sup>17</sup> and (vii) *Eduardo Yáñez Morel v. Chile*.<sup>18</sup> The granting of the precautionary measures does not constitute a prejudgment of the merits in question; rather, these stem from the need to adopt measures to avert grave, imminent, or irremediable harm to one of the rights protected in the American Convention of Human Rights, or to maintain jurisdiction of the case and so the subject of the action does not disappear.

27. In 2008 the Office of the Special Rapporteur collaborated on the study of precautionary measures granted for the benefit of journalist José Pelicó Pérez. On that occasion, the IACHR asked the State of Guatemala to take the necessary measures to ensure the life and integrity of Pelicó and his family, due to the grave and constant threats received by the reporter as a result of his investigations and publications on drug trafficking. Among the most important other decisions adopted in this area is the precautionary measure the IACHR granted on July 3, 2008, for the purpose of averting the destruction of election ballots in the 2006 presidential elections in Mexico.

### 3. Public Hearings

28. The IACHR has received various requests for hearings in the area of freedom of expression during its most recent periods of sessions. In the 133<sup>rd</sup> Period of Sessions alone, held in October 2008, there were eleven requests presented for hearings related to freedom of expression or a specific aspect of the exercise of this right, of which seven hearings were granted. The Office of the Special Rapporteur participates actively in such hearings, preparing the reports and handling the corresponding interventions and follow-up. From the beginning of 2007 through this last period of sessions in 2008, 17 thematic hearings have been convened on freedom of expression, having to do with the situation regarding this right in a particular country or region, or with the scope of one of its components.

29. During the 131<sup>st</sup> Period of Sessions in March, a public hearing was held on indirect restrictions to freedom of expression in Brazil; this was requested by the Center for Justice and International Law and the organization Article 19, in conjunction with the Brazilian Association of Journalism. During the same period of sessions, a hearing was held on media consolidation and freedom of expression in Mexico, at the request of the Mexican Association of the Right to Information and the Mexican Commission for the Defense and Promotion of Human Rights, AC (CMDPDH). In attendance at the hearing were the requesting organizations as well as representatives of the State of Mexico.<sup>19</sup>

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<sup>15</sup> Commission decision of March 2003, requesting that the State of Chile adopt precautionary measures, for the benefit of writer Juan Cristóbal Peña, consistent with 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.

<sup>16</sup> Commission decisions of October 3 and October 24, 2003, requesting that the State of Venezuela suspend administrative decisions to seize some operating equipment from the Globovisión television station and that it guarantee an impartial and independent national trial in this case.

<sup>17</sup> Commission decision of September 15, 2005, requesting that the State of Panama suspend a detention order against Mr. 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's denounced that the Prosecutor General of the Nation had intercepted, taped, and published his telephone calls.

<sup>18</sup> Commission decision adopted following the presentation of an individual petition in 2002, in the name of Mr. 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.

<sup>19</sup> IACHR, March 14, 2008. IACHR Press Release 10/08, Available at: <http://www.cidh.org/Comunicados/English/2008/10.08eng.htm>.

30. During the 133<sup>rd</sup> Period of Sessions, held in October 2008, the public hearings of note include those on freedom of expression in Peru and on freedom of expression and political rights in Nicaragua. These hearings were requested by nongovernmental organizations and included the presence of the State. The hearing on the situation regarding the right to freedom of expression and information in Venezuela was private at the request of the nongovernmental organizations that asked for the meeting. A hearing was also held at the request of the Worldwide Association of Community Radio Stations (AMARC), among other organizations, on principles and regulatory best practices for radio broadcasters.<sup>20</sup> The discussions and reports considered during the hearings have provided valuable input for the preparation of Chapter II of this report.

#### **4. Official Visits**

31. 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 Special Rapporteurship and the use of the inter-American human rights system to protect the right to freedom of expression.

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

33. In 2003, the Office of the Special Rapporteur participated in on-site visits to Guatemala, Mexico, and Honduras. In 2004, it conducted official visits to Honduras, Guatemala, and El Salvador. In 2005, another official visit to Colombia served as a basis for a special report on that country. In 2006, the Office of the Special Rapporteur conducted official visits to Uruguay and Costa Rica, and in 2007 it visited Haiti. Likewise, from February 11 to 14, 2008, the Special Rapporteur for Freedom of Expression conducted a working visit to Honduras. During the visit, the delegation met with representatives of the State, civil society organizations, and representatives of the communications media and journalists.<sup>21</sup> At the end of its visit, the Office of the Special Rapporteur issued a press release with observations and recommendations about the situation regarding freedom of expression in Honduras.<sup>22</sup>

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<sup>20</sup> IACHR, October 31, 2008. IACHR Press Release 46/08. Available at: <http://www.cidh.org/Comunicados/English/2008/46.08eng.htm>.

<sup>21</sup> During its visit to Honduras, the delegation of the Office of the Special Rapporteur met with: the President of Honduras, Manuel Zelaya; the Minister of the Presidency, Enrique Flores Lanza; the Vice Minister of the Secretariat of Foreign Affairs, Enrique Eduardo Reina; Magistrates of the Supreme Court of Justice Lidia Estela Cardona and Nicolás García Zorto; the President of the Institute for Access to Public Information, Commissioner Elizabeth Chiuz Sierra, and Commissioners Gilma Argurcia Valencia and Arturo Etchenique Santos; and the National Commissioner for Human Rights, Ramón Custodio López. It also held meetings with the former IACHR Commissioner and Executive Director of ACI Participa, Leo Valladares; with representatives of the Committee of Families of the Detained and Disappeared in Honduras (COFADEH); the Honduran Press Association; the College of Journalists of Honduras; the Democracy without Borders Foundation; “C-Libre”; and the Association of Communications Media. It also met with a representative number of well-known Honduran journalists.

<sup>22</sup> IACHR Office of the Special Rapporteur, February 14, 2008. Press Release 185/08. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=721&IID=1>.

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

34. Seminars constitute another critical tool as part of the Office of the Special Rapporteur's promotion efforts regarding the inter-American system for the protection of human rights and the right to freedom of expression. In the last ten years, the Office of the Special Rapporteur has organized seminars throughout the region, in many cases with the cooperation of universities and nongovernmental organizations.

35. Hundreds of journalists, attorneys, university professors, judges, and journalism and law students have attended the training sessions. These are offered by staff members of the Special Rapporteurship in the capitals of the countries as well as 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 expression.

36. The meetings with those involved open the door for more people to be able to use the inter-American human rights system to raise issues and denounce problems, particularly in terms of freedom of expression. The seminars 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.

37. Within this framework, in 2008 the Office of the Special Rapporteur organized specialized seminars in four countries. The first workshop was held in Honduras on February 14, 2008, for the purpose of training journalists, attorneys, and members of nongovernmental organizations in the use of the inter-American system for the promotion and protection of human rights, in particular for the defense of the right to freedom of expression. The course, sponsored by Foreign Affairs and International Trade Canada, was held in Tegucigalpa. The seminar, held at the School of Journalism of the National Autonomous University of Honduras, had more than 60 participants.

38. On November 10 and 12, 2008, the Office of the Special Rapporteur, in collaboration with the Foundation for Press Freedom (FLIP), the Autonomous University of the West, and the National Association of Colombian Dailies (Andiarios), organized two seminars in Colombia to train journalists, attorneys, and members of nongovernmental organizations in the use of the inter-American system for the promotion and protection of human rights to defend the right to freedom of expression. The seminars were offered in the cities of Bogotá and Cali and enabled the training of close to 60 journalists, attorneys, and members of nongovernmental organizations that promote freedom of expression in the region. These seminars were financed thanks to the important support of Sida.

39. Between November 19 and 20, 2008, the Special Rapporteur—with the collaboration of the Association of Civil Rights (ADC) and the Center for Legal and Social Studies (CELS) and the support of the University of Buenos Aires, the National University of La Plata's Institute of Human Rights, and the same university's School of Journalism and Communication—gave two workshops in Argentina on the inter-American human rights system and the defense of freedom of expression. One of the seminars was held in Buenos Aires and the second in the city of La Plata. In total, more than 50 professionals were trained. To organize both of these workshops, the Office of the Special Rapporteur received funding from Sida.

40. On November 18, 2008, the Special Rapporteur, with support from the office of the Friedrich Ebert Foundation in Uruguay (FESUR), the Media and Society Group, and the Uruguayan Press Association, coordinated a workshop in Montevideo, Uruguay, on the inter-American human rights system, in which 15 journalists and human rights activists participated.

41. Besides the training workshops organized directly by the Office of the Special Rapporteur, both the Special Rapporteur and his or her staff are invited to and regularly participate in activities designed to promote the right to freedom of expression. Following are descriptions of some of the most important activities for promotion and dissemination in which the Office of the Special Rapporteur participated in 2008.

42. From January 21 to 23, 2008, then-Special Rapporteur for Freedom of Expression traveled to Lima, Peru, where he met with representatives of social organizations that work on issues related to freedom of expression.

43. The Office of the Special Rapporteur co-organized the Special Meeting on the Right to Freedom of Thought and Expression held by the OAS Committee on Juridical and Political Affairs on February 28 and 29, 2008.

44. On September 29, 2008, the Special Rapporteur, Catalina Botero Marino, participated in the "First National Conference on Access to Information," held in Lima, Peru by the Institute of Press and Society (IPYS), where she gave a presentation on international standards and best practices in the area of access to information.

45. On October 14, 2008, Botero Marino gave a presentation at an event called "The Price of Silence: Indirect Censorship in Latin America," organized by the Inter-American Dialogue in Washington, D.C.

46. On November 11, 2008, the Special Rapporteur was a panelist in a debate on "Slander, Insult, and Prison," convened by the University of the Andes' Global Justice and the newspaper *El Espectador* in Bogotá, Colombia.

47. On November 14, 2008, at the University of Buenos Aires, Argentina, the Special Rapporteur gave a presentation at an international conference on "Freedom of Expression, Pluralism, and Diversity in Radio Broadcasting," along with the United Nations Special Rapporteur on the promotion and protection of the right to Freedom of Opinion and Expression, Frank La Rue.

48. On November 15, in Buenos Aires, the Special Rapporteur participated in an international seminar on "Invisible Gags: Old and New Barriers to Diversity in Radio Broadcasting." At that event, experts presented the results of research on "Democratic Governance and Standards for Regulating Access and Use of Radio and TV Frequencies," conducted by the AMARC-ALC Program on Legislation and the Right to Communication, with support from the Ford Foundation.

49. On November 17 and 18, 2008, the Special Rapporteur traveled to Montevideo, Uruguay, at the invitation of the Media and Society Group (GMS), an entity that promotes freedom of expression in that country; the AMARC-ALC Program on Legislation and the Right to Communication; and the office of the Friedrich Ebert Foundation in Uruguay (FESUR). On November 17, the Special Rapporteur met with experts and representatives of Uruguayan organizations that work on issues related to freedom of expression and the right to information, in order to exchange information and opinions. That same day, she gave a presentation at the "Forum on Pluralism and Diversity in Radio Broadcasting." On November 18, the Special Rapporteur met with the directive team of the International Broadcasting Association (AIR) in order to listen to their points of view and exchange opinions on the problems and challenges that broadcasting faces in the region.

50. On November 21, 2008, the Special Rapporteur attended the opening of the III National and International Congress of the Argentine Journalism Forum (FOPEA), on "The Challenges of Journalism in the Digital Era."

51. From December 7 to 10, 2008, the Special Rapporteur attended the World Conference of the Global Forum for Media Development, held in Athens, Greece, and gave a lecture in front of more than 400 invitees on the Special Rapporteurship's functions in the effort to defend and promote the right to freedom of expression.

52. On December 9, 2008, also in Athens, a meeting was held to agree on the 2008 Joint Declaration of the Special Rapporteurs for Freedom of Expression, an activity organized by Article 19, which brings together the rapporteurs for freedom of expression from the United Nations, Europe, the OAS/IACHR, and Africa.

53. On December 15, 2008, the Special Rapporteur gave a presentation on the right of access to information, during a special meeting on the issue convened by the OAS Committee of Juridical and Political Affairs.

## **6. Annual Report and Development of Expertise**

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

55. Besides its Annual Reports, the Office of the Special Rapporteur periodically produces specific reports about particular countries. For example, the Special Rapporteurship has prepared and published special reports on the situation regarding freedom of expression in Paraguay (2001), Panama (2003), Haiti (2003), Guatemala (2004), Venezuela (2004), and Colombia (2005).

56. The Office of the Special Rapporteur similarly prepares thematic reports that have opened up important channels for discussion in the hemisphere and led to the implementation of legislative and administrative reforms in many States of the region. Thus, for example, the Office of the Special Rapporteur has published studies on the right of access to information; impunity in crimes against journalists; new technologies and freedom of expression; and poverty and freedom of expression, among others.

57. One example of this type of report was the Special Study on the Murder of Journalists. In March 2008, during the 131<sup>st</sup> Period of Sessions, the IACHR approved the publication of the special study, which refers to the status of investigations into cases in which journalists were killed between 1995 and 2005 for reasons that may have been linked to freedom of expression. On March 27, 2008, the Office of the Special Rapporteur published this study on its Web site.<sup>23</sup>

## **7. Special Statements and Declarations: Using the Bully Pulpit**

58. Through the daily monitoring of the state of freedom of expression in the region—conducted through 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

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<sup>23</sup> Office of the Special Rapporteur, March 2008, Special Study on the Murder of Journalists. Available at: <http://www.cidh.oas.org/relatoria/section/Asesinato%20de%20Periodistas%20INGLES.pdf>. IACHR Office of the Special Rapporteur, March 27, 2008. Press Release 187/08. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=724&IID=1>.



situations that are relevant to the exercise of this fundamental right. Press releases issued by the Office of the Special Rapporteur receive wide coverage and constitute one of its most important work mechanisms.

59. The Office of the Special Rapporteur receives an average of 2250 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 individual case system; and the remaining 15% have to do with issues that are not in 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, among others, from directing letters to the States or issuing press releases<sup>24</sup> to advocating that the IACHR grant precautionary measures in serious situations that may so warrant.

60. On another matter, since its creation the Office of the Special Rapporteur has participated in the drafting of Joint Declarations of the different rapporteurships for Freedom of Expression. These statements are usually signed by the rapporteurs for the United Nations, the Media of the Organization for Security and Co-operation in Europe, the OAS, and the African Commission on Human and Peoples' Rights. When the problems are regional in nature, the Declarations are signed by the Rapporteur for the United Nations and the Special Rapporteur for the OAS.

61. The Joint Declarations are an important tool for the work of the IACHR Office of the Special Rapporteur. In previous years, these statements have covered such subjects as: the importance of freedom of expression (1999); murders of journalists and defamation laws (2000); challenges to freedom of expression in the new century in areas such as terrorism, the Internet, and radio (2001); freedom of expression and the administration of justice, commercialization and freedom of expression, and criminal defamation (2002); media regulation, restrictions on journalists, and investigations into corruption (2003); access to information and secrecy legislation (2004); the Internet and anti-terrorism measures (2005); publication of confidential information, openness of national and international entities, freedom of expression and cultural-religious tensions, and impunity in cases of attacks against journalists (2006); and diversity in access, ownership, and content of the media, particularly radio and television (2007).<sup>25</sup>

62. In December 2008, the rapporteurs for freedom of expression of the UN, the OSCE, the OAS, and the ACHPR issued the Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation, after holding a meeting December 9 in Athens, Greece. This Joint Declaration expresses the four rapporteurs' concern about resolutions on "defamation of religions" adopted by the UN Commission on Human Rights and then its Human Rights Council, and by the General Assembly of the same organization since 2005. It also expresses concern about the proliferation, particularly since the attacks of September 11, of anti-terrorism and anti-extremism

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<sup>24</sup> In 2008, the following press releases were prepared: IACHR Special Rapporteur. January 11, 2008, Press Release 183/08. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=718&IID=1>. March 27, 2008, Press Release 187/08. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=724&IID=1>. April 9, 2008, Press Release 189/08. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=728&IID=1>. April 18, 2008, Press Release 190/08. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=729&IID=1>. May 16, 2008, Press Release 191/08. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=730&IID=1>. June 5, 2008, Press Release R24/08. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=731&IID=1>. Press Release R37/08, August 14, 2008. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=732&IID=1>. October 23, 2008, Press Release R44/08. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=733&IID=1>. November 14, 2008, Press Release R50/08. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=734&IID=1>.

<sup>25</sup> The abovementioned joint declarations are available at: <http://www.cidh.oas.org/relatoria/docListCat.asp?catID=16&IID=1>.

laws that unduly restrict freedom of expression and access to information. In this regard, the Joint Declaration emphasizes that the concept of “defamation of religions” is incompatible with international standards on defamation, which refer to protecting the reputation of individuals and not of ideas or beliefs. In addition, the Joint Declaration recommends that international organizations desist from adopting statements on this notion. It also warns about the use of vague notions in seeking criminalization of expressions related to terrorism, and emphasizes the need for this type of anti-terrorism and anti-extremism legislation to respect the role of the media.<sup>26</sup>

63. The Special Rapporteur’s statements and opinions on the work of the office and on international standards regarding freedom of expression have been published in the following countries and media outlets, among others: in Argentina, in the newspapers *Clarín* and *Página 12*; in Brazil, in *O Estado de S. Paulo*; in Colombia, in the newspapers *El Espectador* and *El Tiempo* and in the magazines *Cambio* and *Semana.com*, in the specialized newspaper *Ámbito Jurídico*, as well as in the specialized publication of the FLIP; in Peru, in the newspaper *El Comercio* and the electronic publication of the IPYS; in Mexico, in the magazine *Proceso* and the newspaper *La Jornada*; in Nicaragua, in the daily *La Prensa*; in Uruguay, in *Búsqueda* magazine, as well as being reported on *Radio Nederland International*, *Radio Sarandí* and *W Radio*, to cite some examples of press coverage.<sup>27</sup>

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

64. The Office of the Special Rapporteur has worked, under the coordination of the Rapporteur, with a team that fluctuates between two and three expert attorneys on issues regarding freedom of expression, one expert in journalism and communications, and one person who does administrative assistant duties. The Office of the Special Rapporteur has had help from specialized external consultants in the preparation of some technical reports.

65. This team’s expertise and professional commitment have enabled the Office of the Special Rapporteur to have advised the IACHR on the presentation of the aforementioned 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

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<sup>26</sup> Office of the Special Rapporteur, December 9, 2008. Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=735&IID=1>.

<sup>27</sup> *Clarín*. November 22, 2008. “La censura indirecta viola la libertad de expresión”. Available at: <http://www.clarin.com/diario/2008/11/22/sociedad/s-01807810.htm>. *Página 12*, November 23, 2008. *Libertades y derechos*. Available at: <http://www.pagina12.com.ar/diario/elpais/1-115485-2008-11-23.html>. *O Estado de S. Paulo*. October 15, 2008. “Lei de imprensa irá apagar rescaldos ditatoriais”. Available at: [http://www.estadao.com.br/estadaodehoje/20081015/not\\_imp259976\\_0.php](http://www.estadao.com.br/estadaodehoje/20081015/not_imp259976_0.php). *El Espectador*. July 26, 2008. *Apasionada por la Justicia*. Available at: <http://www.elespectador.com/impreso/articuloimpreso-apasionada-justicia>. *Cambio*. November 2, 2008. “No hay democracia sin pluralidad de voces y mensajes”. Available at: [http://www.cambio.com.co/paiscambio/10preguntascambio/786/ARTICULO-WEB-NOTA\\_INTERIOR\\_CAMBIO-4393226.html](http://www.cambio.com.co/paiscambio/10preguntascambio/786/ARTICULO-WEB-NOTA_INTERIOR_CAMBIO-4393226.html). *Semana.com*, August 1, 2008. *Catalina Botero, defensora de la expresión en todo el continente*. Available at: [http://www.semana.com/wf\\_InfoArticulo.aspx?IdArt=114124](http://www.semana.com/wf_InfoArticulo.aspx?IdArt=114124). Foundation for Press Freedom. December 19, 2008. *Tres expertos hablan sobre libertad de expresión*. Available at: <http://www.flip.org.co/veralerta.php?idAlerta=337>. Press and Society Institute. September 5, 2008. *La nutrida agenda de la Relatora para la Libertad de Expresión*. Available at: [http://www.ipys.org/interpresna\\_detalle.php](http://www.ipys.org/interpresna_detalle.php). *Búsqueda*. November 27, 2008. *Relatora para la Libertad de Expresión de la OEA reclamó a jueces “incorporar” los estándares internacionales y respetar a la prensa*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=699&IID=2>. *La Jornada*. November 15, 2008. *Organismos internacionales condenan el asesinato del periodista Armando Rodríguez*. Available at: <http://www.jornada.unam.mx/2008/11/15/index.php?section=politica&article=014n1pol>. *Radio Nederland*. August 1, 2008. *Incorporar a excluidos en mercado de ideas*. Available at: <http://www.informarn.nl/informes/orginternacionales/act080801-derechos-humanos>.

been essential in terms of the Office of the Special Rapporteur's capacity to respond to the inquiries made to the office every day. 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 follow up systematically on the alerts that are received, and constitutes one of the principal sources for the preparation of Annual Reports and thematic or national reports.

66. The Office of the Special Rapporteur has also benefited from the presence of interns or scholarship recipients, who have been a vital part of the operation that enables the Rapporteurship to carry out its tasks every day. Students of law, communications, and political science, attorneys specialized in freedom of expression, human rights, or international law, and also journalists, have contributed their time, energy, and knowledge so the Office of the Special Rapporteur can meet its objectives in every sense.<sup>28</sup>

## **E. Funding**

67. The Office of the Special Rapporteur is financed wholly through external funds specifically donated for such use by OAS Member States, observer countries, and international cooperation foundations. Each job position, including that of the Special Rapporteur, has been financed with funds from different countries and/or organizations. From 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), which is designated to recover the indirect costs of managing these contributions.

68. The umbrella project of the Office of the Special Rapporteur is called the Project for Strengthening Freedom of Expression in the Americas. In 2008, this project was able to be executed thanks to, among other things, important funds donated for that purpose in 2007 by the Republic of Korea, Italy, and Canada.

69. In 2008, the Project for Strengthening Freedom of Expression in the Americas received important funding from Ireland valued at \$78,640; from France valued at \$15,000; from the Republic of Costa Rica valued at \$2,882; and \$550,000 from the United States of America, through its "OAS Democracy Unprogrammed Funds". Thanks to these important contributions, the Special Rapporteurship could cover the salaries of all its personnel in 2008 and has the resources to fund the core office team in 2009. In addition, these resources make it possible to draft and translate the 2008 and 2009 annual reports, and travel to the pertinent sessions of the Inter-American Court, among other activities.

70. In June 2008, the Office of the Special Rapporteur completed an important project for disseminating and promoting the inter-American system for the protection of human rights in the area of freedom of expression, funded wholly by Sida. This project has made it possible to fund seminars, working visits to the OAS Member States, as well as the post of the Press and Communications Coordinator of the Office of the Special Rapporteur. Sida and the Office of the Special Rapporteur entered into a new agreement, similar to the one already executed, which has been in effect since July 2008 and which ends in December 2009. The project involves a very important contribution, equivalent to 1,500,000 Swedish crowns.

71. The Office of the Special Rapporteur would like to express its appreciation for the contributions received from the OAS Member States, observer countries, and international

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<sup>28</sup> The Office of the Special Rapporteur thanks Camille Aponte-Rossini, Ricardo Lillo, Naiara Leitte, and Mario Morazán, who were interns in 2008, for their work and contributions.

cooperation entities. In 2008, the Office of the Special Rapporteur makes special note of the projects that have moved forward thanks to contributions in 2008 from Canada, Costa Rica, the United States of America, France, Ireland and Sida. This funding has allowed the Office of the Special Rapporteur to fulfill its mandate and to move forward with its work of promoting and defending the right to freedom of expression.

## CHAPTER II

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

#### A. Introduction and methodology

1. This chapter describes some the most important aspects related to freedom of expression during 2008 in the hemisphere. 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 confrontation during this period. The Office of the Special Rapporteur has confidence in the will of the OAS Member States to promote decisively the right to freedom of expression and, to that end, to publicize their best practices, report the most serious problems observed, and formulate viable and practical recommendations based on the Declaration of Principles.

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

3. The selected information is ordered and systematized in a manner so as to present the advances, regressions, and challenges in various aspects of the exercise of the right to freedom of expression, such as: murders, threats and attacks against journalists in the practice of their profession, the protection of the practice of journalism, the disproportionate imposition of subsequent liabilities, the guarantee of protection of sources, the right of access to information, the assignment of official publicity, among others.

4. The cases selected in each topic seek to serve as paradigmatic examples that reflect the situation in each country in relation to the respect and exercise of freedom of expression. Sources are cited in all cases.<sup>1</sup> 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.

5. 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.

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<sup>1</sup> 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 petitions for precautionary measures, which has not been made public. In elaborating the 2008 Annual Report, the Office of the Special Rapporteur used data available up to December 31, 2008. Some cases have been updated with information that has been received up to the completion date of this report between January and February 2009.

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

### **1. Argentina**

6. The Office of the Special Rapporteur values positively the June 24, 2008 decision of the Supreme Court of Justice of the Nation Corte (*Suprema de Justicia de la Nación*) in the case of *Patitó, José Ángel y otro c/ Diario La Nación y otros*. The judgment revokes the sentence of Division H of the National Court of Civil Appeals (*Sala H de la Cámara Nacional de Apelaciones en lo Civil*) that ordered the newspaper *La Nación* to pay an indemnity for moral damages after publishing an editorial that questioned the functioning of the Forensic Medical Corps of the Argentine Judiciary (*Cuerpo Médico Forense del Poder Judicial de Argentina*).<sup>2</sup>

7. In *Patitó, José Ángel y otro c/ Diario La Nación y otros*, the Supreme Court affirmed that “dealing with information referring to public officials, public figures or private individuals who have intervened in matters of this nature, when the report contains false or inexact statements, those who consider themselves affected must show that the individual making the statement or imputation knew that it was false and acted with knowledge of its falsity or with reckless disregard for its veracity.” The tribunal added that, “in the framework of the public debate about issues of general interest, and in particular about the government, every expression that can be classified as an opinion, by itself, does not give rise to civil or criminal liability in favor of persons who occupy positions in the State; their reputations are not damaged by opinions or evaluations, but only through the malicious dissemination of false information,” and that “there can be no liability for criticism or dissent, even when expressed ardently, since every diverse and pluralistic society needs democratic debate, that which is nourished by opinions having the goal of social peace.”<sup>3</sup>

8. The decision of the Supreme Court constitutes a decisive advance in the incorporation of the standards on freedom of expression of the inter-American system in the Argentine legal system. Principle 10 of the Declaration of Principles 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.”

9. On May 2, 2008, the Inter-American Court issued its judgment on the merits, reparations, and costs in the case of *Kimel v. Argentina*. Eduardo Kimel had been condemned in March of 1999 to a year in prison, suspended, and the payment of an indemnity for criticizing the activities of a judge in the book “La masacre de San Patricio,” an investigation about the murder of five Pallottine religious published in November of 1989. The Inter-American Court declared, among others, the violation of the right to freedom of expression consecrated in Articles 13.1 and 13.2 of the American Convention against Kimel, and ordered the State “to set aside the criminal sentence imposed on Mr. Kimel and all the effects deriving therefrom” and “to bring [...] its domestic legislation into conformity with the provisions of the Inter-American Convention on Human Rights,

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<sup>2</sup> Committee to Protect Journalists. July 1, 2008. *Court asserts right to criticize public officials*. Available at: <http://cpj.org/2008/07/court-asserts-right-to-criticize-public-officials.php>. Inter-American Press Association. *Argentina Report*. 64<sup>th</sup> General Assembly, Madrid, Spain. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=20&infoid=304&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&infoid=304&idioma=us).

<sup>3</sup> Supreme Court of Justice of the Nation. June 24, 2008. *Patitó, José Ángel y otro c/ Diario La Nación y otros*. Clauses (*Considerandos*) 8 and 11.

so that the lack of accuracy acknowledged by the State [...] be amended in order to comply with the requirements of legal certainty so that, consequently, they do not affect the exercise of the right to freedom of thought and expression.”<sup>4</sup>

10. It should be noted that during the processing of this case before the Inter-American Court, the Argentine State “acknowledge[d] its international responsibility and the legal consequences thereof, in relation to the violation of Article 13 of the American Convention on Human Rights, regarding the general obligation to respect and ensure rights, as well as to adopt legislative or other measures as may be necessary to uphold the rights protected, pursuant to Articles 1(1) and 2 of the Convention.” The Office of the Special Rapporteur urges the State to adopt the measures that are necessary to comply adequately with the judgment of the Inter-American Court and awaits the receipt of information about the advances in this process.

11. On another matter, Gregorio Ríos, who was initially sentenced in February 2000 to life in prison for instigating the murder of photographer Jose Luis Cabezas, was granted parole on October 28, 2008.<sup>5</sup> On September 19, 2007, the Supreme Court of Justice of the Province of Buenos Aires revoked the judgment that reduced to 27 years the sentence of the trial court. Up to the date of this report however, the criminal process continues and the initial judgment has not gained the effect of *res judicata*. This would have allowed for the granting of special benefits to Ríos.<sup>6</sup> The Office of the Special Rapporteur underscores that the delays in the administration of justice and the granting of criminal benefits cannot lead to the employment of measures of relative impunity that run contrary to the international obligations of the State. The Inter-American Court has stated that States have “a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.”<sup>7</sup>

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<sup>4</sup> I/A Court H.R., *Case of Kimel v. Argentina*. Merits, Reparations, and Costs. Judgment of May 2, 2008 Series C No. 177. Available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_177\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_177_ing.pdf).

<sup>5</sup> José Luis Cabezas was a photographer for *Noticias* magazine. On January 25, 1997, his charred cadaver, with two bullets to the head and with his hands in handcuffs, was found in Pinamar, a province of Buenos Aires. On February 2, 2000, the State informed the Office of the Special Rapporteur that probative elements existed that indicated that the motive of the homicide was related to Cabezas’ work as a photographer. Office of the Special Rapporteur – IACHR. March 8, 2008. *Special Study on the Situation of the Investigations on the Assassination of Journalists for reasons that may be related to the Journalistic Activity: 1995-2005 Period*. Page 73. Available at: <http://www.cidh.org/relatoria/section/Asesinato%20de%20Periodistas.pdf>. Clarín. October 28, 2008. *Justicia argentina otorgó libertad condicional a instigador de asesinato de Cabezas*. Available at: <http://www.clarin.com/diario/2008/10/28/um/m-01790680.htm>. La Nación. October 28, 2008. *Bronca de la viuda de Cabezas al conocer que otorgaron la libertad condicional de Gregorio Ríos*. Available at: [http://www.lanacion.com.ar/nota.asp?nota\\_id=1064044](http://www.lanacion.com.ar/nota.asp?nota_id=1064044). Committee to Protect Journalists. October 28, 2008. *In Argentina, CPJ shocked by release*. Available at: <http://cpj.org/blog/2008/10/in-argentina-cpj-shocked-by-release.php>.

<sup>6</sup> It is worth noting, however, that at the completion of this report, the Special Rapporteurship was informed that the Supreme Court of Justice of the Province of Buenos Aires revoked the judgment that had reduced to 24 years the life sentence handed down against Alberto Gomez, ex commissioner of Pinamar, on December of 2002, for having “freed the zone” that facilitated committing such crime. Supreme Court of Justice of the Province of Buenos Aires. February 4, 2009. *P. 98.577 (y su acumulada: P. 98.688) - Sentencia en la denominada causa “Cabezas II”*. Available at: <http://www.scba.gov.ar/sitio/portada/default.asp>. La Nación. February 12, 2009. *Caso Cabezas: Disponen prisión perpetua para un ex comisario de Pinamar*. Available at: [http://www.lanacion.com.ar/nota.asp?nota\\_id=1099220](http://www.lanacion.com.ar/nota.asp?nota_id=1099220). Clarín. February 12, 2009. *Caso Cabezas: Ordena que el comisario Gómez cumpla la prisión perpetua*. Available at: <http://www.clarin.com/diario/2009/02/12/um/m-01857731.htm>. Foro de Periodismo Argentino. February 12, 2009. *Fopea celebra una decisión de la Suprema Corte de Justicia Bonaerense en el caso Cabezas*. Available at: <http://www.fopea.org/Inicio/Fopea celebra una decision de la Suprema Corte Bonaerense en el Caso Cabezas>.

<sup>7</sup> I/A Court H.R., *Case of Velásquez-Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4. Paragraph 174 (emphasis added).



12. With respect to the right to access to information, on August 20, 2008, the Federal Administrative Court of Appeals (*Sala V de la Cámara de Apelaciones en lo Contencioso Administrativo Federal*) ordered the Minister of Economics and Production (*Ministro de Economía y Producción*) to hand over, within a period of ten working days, information about the calculation of the Consumer Price Index (*Índice de Precios al Consumidor*).<sup>8</sup> The resolution of the Court of Appeals constitutes an important advance for the effective exercise of the right to access to information for all individuals. Principle 4 of the Declaration of Principles establishes that “[a]ccess to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right.”

13. The Office of the Special Rapporteur regrets that during 2008, it continued to receive complaints about acts of aggression and threats against communicators and media outside of the capital, presumably in relation to the exercise of the journalistic profession.<sup>9</sup> The case of Juan Parada, a collaborator with the regional newspaper *Río Negro* and the radio station *Patagonia*, received particular attention. Since May of 2008, Parada had been the victim of death threats presumably related to the investigation of cases of corruption in which functionaries of the province of Neuquén were implicated.<sup>10</sup> The Office of the Special Rapporteur exhorts the Argentine governmental authorities to adopt the measures necessary to guarantee that social communicators can exercise their right to freedom of expression, as well as to identify, try, and punish those responsible for these acts.

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<sup>8</sup> The request was originally presented on July 18, 2007 before the National Institute of Statistics and Census (*Instituto Nacional de Estadísticas y Censos* (INDEC)) by a local non-governmental human rights organization, with the aim of finding out the real poverty index in Argentina. In light of INDEC's silence, the organization presented an action for protection (*amparo*) that was resolved in its favor. Nevertheless, in May 2008, the INDEC's response was considered by the *Tercer Juzgado en lo Contencioso Administrativo Federal* as “insufficient and inadequate to satisfy the right to access to information and thus to permit effective citizen participation.” The INDEC appealed the decision. *Asociación por los Derechos Civiles*. August 20, 2008. *Boletín de Prensa No. 134*. Available in Spanish at: <http://www.adc.org.ar>.

<sup>9</sup> In the section on Argentina, the 2007 Annual Report of the Office of the Special Rapporteur stated that it “lament[ed] that it continued to receive reports of aggressions and threats against journalists during the year.” The Office of the Special Rapporteur also added that it “urge[d] the Argentine government authorities to take all necessary measures to guarantee that [...] reporters can exercise their right to freedom of expression without suffering these types of consequences, and to investigate and punish those responsible for such actions.” Office of the Special Rapporteur — IACHR. Annual Report 2007. Volume II. Chapter II. Paragraph 171. Available at: [http://www.cidh.oas.org/annualrep/2007eng/Annual\\_Report\\_2007.VOL.II%20ENG.pdf](http://www.cidh.oas.org/annualrep/2007eng/Annual_Report_2007.VOL.II%20ENG.pdf). During 2008, the Office of the Special Rapporteur received information about the cases of Leonardo Patricio and Cecelia Maletti from the newspaper *Río Negro*, Samuel Huerga of *Radio Cadena NOA*, Edgardo Esteban of *Telesur*, Carlos Carvallo of the radio station *FM Show*, Jose Luis Campillay of the weekly *Chilecito*, and Leonardo Vallejos of *Radio Fénix*. Reporters Without Borders. February 25, 2008. *Radio presenter says arson attack on his car was “gangster-style message.”* Available at: [http://www.rsf.org/article.php3?id\\_article=25874](http://www.rsf.org/article.php3?id_article=25874). Foro de Periodismo Argentino/IFEX. June 2, 2008. *Journalist threatened, knocked out by police while covering eviction in Orán*. Available at: <http://www.ifex.org/en/content/view/full/94187>. Foro de Periodismo Argentino/IFEX. September 12, 2008. *Journalist's home targeted with homemade explosive*. Available at: <http://www.ifex.org/en/content/view/full/96977>. La Nación. September 11, 2008. *Agreden a un periodista argentino en su domicilio*. Available in Spanish at: [http://www.lanacion.com.ar/nota.asp?nota\\_id=1049168](http://www.lanacion.com.ar/nota.asp?nota_id=1049168). Inter-American Press Association. *Argentina Report. 64<sup>th</sup> General Assembly, Madrid, Spain*. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=20&infoid=304&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&infoid=304&idioma=us). Reporters Without Borders. December 2, 2008. *Concern about wave of attack on media in northwest*. Available at: [http://www.rsf.org/article.php3?id\\_article=29514](http://www.rsf.org/article.php3?id_article=29514). Foro de Periodismo Argentino/IFEX. December 17, 2008. *Journalist assaulted, detained by police*. Available at: <http://www.ifex.org/en/content/view/full/99374>.

<sup>10</sup> Foro de Periodismo Argentino/IFEX. September 15, 2008. *Journalist threatened, harassed in Chos Malal, allegedly by Neuquén provincial police*. Available at: <http://www.ifex.org/en/content/view/full/97023>. Reporters Without Borders. September 23, 2008. *Journalist who exposed corruption harassed and threatened with death*. Available at: [http://www.rsf.org/article.php3?id\\_article=28677](http://www.rsf.org/article.php3?id_article=28677).



14. On the other hand, the Office of the Special Rapporteur received information about the presentation of bills for a new regulatory framework for broadcasting.<sup>11</sup> The Office of the Special Rapporteur emphasizes that this process must take into account that which is provided in Principle 13 of the Declaration of Principles, which establishes that “the concession of radio and television broadcast frequencies, [...] 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[s] 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.”

15. Finally, the Office of the Special Rapporteur values positively the resolution of the Supreme Court of Justice of the Nation (*Corte Suprema de Justicia de la Nación*) on December 22, 2008 in the case of *Radiodifusora Pampeana S.A. c/La Pampa, provincia de s/ acción declarativa de inconstitucionalidad*. In the case, *Radiodifusora Pampeana S.A.* requested the court to grant a precautionary measure (*medida cautelar de no innovar*) arguing that “the decision of the Governor of La Pampa to stop the dissemination of official publicity [was] arbitrary and unconstitutional, because it constituted [...] the covering up of a sanction against a communications media [...] for having disseminated a survey that was supposedly inconvenient in January of 2007.” The decision of the Supreme Court ordered the “defendant to restore to the claimant a share of official publicity according to terms compatible with that assigned in the accounting period corresponding to the year 2006, which is to say, the period immediately prior to that in which the interruption in official publicity in question occurred.”<sup>12</sup> The Office of the Special Rapporteur recalls that the State has the duty to establish clear, transparent, just, objective, and non-discriminatory criteria for the determination of the distribution of official publicity. In no case should official publicity be used with the intention of damaging or favoring one communications media over another because of its editorial stance or criticism of public administration.

## 2. Barbados

16. The Office of the Special Rapporteur views positively the fact that in 2008, the government of Barbados worked on a bill to guarantee access to information, which will be presented to Parliament in 2009. According to the information received, the initiative was presented

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<sup>11</sup> World Association of Community Radio Broadcasters. August 6, 2008. *AMARC insta a avanzar en discusión y aprobación de una nueva ley de radiodifusión*. Available in Spanish at: <http://legislaciones.item.org.uy/index?q=node/721>. MDZ. October 8, 2008. *El gobierno congela la Ley de Radiodifusión hasta el 2009*. Available in Spanish at: <http://legislaciones.item.org.uy/index?q=node/775>. La Nación/AMARC. December 12, 2008. *Presentan proyecto de ley que prevé mecanismos para otorgar licencias de radiodifusión*. Available in Spanish at: <http://legislaciones.item.org.uy/index?q=node/858>.

<sup>12</sup> Supreme Court of Justice of the Nation. December 22, 2008. *Radiodifusora Pampeana S.A. c/La Pampa, provincia de s/ acción declarativa de inconstitucionalidad*. Clauses (*Considerandos*) 1 and 6.

In this context, a recent report about the distribution of official publicity in Argentina during 2008 stated that, between January and June of this year, the Executive Power (*Poder Ejecutivo*) invested an additional 10.3% over that invested in the same period in 2007, and 76.4% of the total budget projected for 2008. According to this information, the tendency to increase the spending on official publicity was particularly evident in the so-called “broadcasting campaigns on administration.” On the other hand, it indicated that direct investment of official publicity was concentrated in the nationally-distributed media. Asociación por los Derechos Civiles. December 18, 2008. *Cómo se distribuyó la publicidad oficial del PEN durante el primer semestre de 2008*. Available in Spanish at: [http://www.adc.org.ar/sw\\_contenido.php?id=499](http://www.adc.org.ar/sw_contenido.php?id=499). The complete text of the report is available in Spanish at: <http://www.censuraindirecta.org.ar/images/fck/file/Informes%20y%20publicaciones/Informe%20Primer%20semestre%202008%20sobre%20Publicidad%20Oficial%20del%20Poder%20Ejecutivo%20Nacional%20-%20ADC%20-%20web.pdf>.

to the public in order to gather observations from interested parties.<sup>13</sup> The Office of the Special Rapporteur urges the State, when determining the scope and the definitive content of the law as well as the measures of implementation, to ensure that these are in accordance with the standards on access to information of the inter-American system. In this regard, it recalls Principle 4 of the Declaration of Principles, which states that: "Access to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right."

17. On the other hand, Cherie Pitt, a photographer for the newspaper *Nation*, and Jimmy Gittens, a cameraman with the *Caribbean Broadcasting Corporation*, were detained on December 20, 2008 when they attempted to photograph a police officer who was presumably being investigated. According to this information, the photographer was charged with assaulting a police officer and resisting authority, while Gittens was charged with obstructing a police officer in the exercise of his duty. Both reporters were released on bond and must appear in court in May of 2009.<sup>14</sup> The Office of the Special Rapporteur reminds the State of that which is provided under Principle 2 of the Declaration of Principles: "Every person has the right to seek, receive and impart information freely under terms set forth in Article 13 of the American Convention on Human Rights." It also highlights what is stated in Principle 13, in that: "Direct or indirect pressures exerted on journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression."

### 3. Bolivia

18. The Office of the Special Rapporteur looks favorably upon the fact that the new Constitution, which was approved by referendum in January 2009, establishes the right to freedom of expression in articles 106 and 107.<sup>15</sup>

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

<sup>14</sup> Caribbean 360. December 23, 2008. *Journalists face court*. Available at: <http://www.caribbean360.com/News/Caribbean/Stories/2008/12/23/NEWS0000006730.html>. Barbados Free Press. December 21, 2008. *Barbados Police out of control – Journalists arrested for reporting on crooked cops – Call for Commissioner's resignation*. Available at: <http://barbadosfreepress.wordpress.com/2008/12/21/barbados-police-out-of-control-journalists-arrested-for-reporting-on-crooked-cops-call-for-commissioners-resignation/>. The Vincentian. December 31, 2008. *Bajan Journalists Arrested*. Available at: <http://www.thevincentian.com/dcmmain.aspx?p=0&i=1236&skin=62&tID=198>.

<sup>15</sup> Vicepresidency of the Republic of Bolivia. January 25, 2009. *Presidente celebra el triunfo del Sí*. Available at: <http://www.vicepresidencia.gob.bo/Inicio/tabid/36/ctl/noticia/mid/471/code/200901261/Default.aspx>. Articles 106 and 107 of the new Political Constitution of the State provide:

#### Article 106.

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

#### Article 107.

- I. The communications media must contribute to the promotion of the ethical, moral and civic values of the country's distinct cultures, with the production and dissemination of educational programs that are multilingual and in alternative languages for the disabled.

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19. However, the Office of the Special Rapporteur takes note of the new wording of Article 107 of the Constitution, which states that “the principles of truthfulness and responsibility” shall be practiced “through the rules of ethics and self-regulation of journalists’ organizations and communications media and *their law*.”<sup>16</sup> This conditioning upon the law may be interpreted as an illegitimate restriction to the exercise of the right to freedom of expression. The Office of the Special Rapporteur calls upon the State to take into account that Principle 7 of the Declaration of Principles states that the “[p]rior conditioning of expressions, such as truthfulness, timeliness or impartiality, is incompatible with the right to freedom of expression recognized in international instruments.”

20. The Office of the Special Rapporteur condemns the death of journalist Carlos Quispe Quispe, which occurred on March 29, 2008, as the result of a beating he had received two days earlier at the facilities of *Radio Municipal de Pucarani*. According to the information received, the journalist was working at the station when demonstrators—allegedly opponents of the mayor of Pucarani, Alejandro Mamani—attacked the radio station and the reporter, leaving him unconscious. Quispe died two days later due to the seriousness of his injuries.<sup>17</sup> Principle 9 of the Declaration of Principles states that the murder of journalists “violate[s] the fundamental rights of individuals and strongly restrict[s] freedom of expression.” The Office of the Special Rapporteur urges the State to adopt all measures within its power to guarantee the lives and personal safety of members of the media, as well as their right to freedom of expression. Likewise, it demands that these acts be investigated, that the perpetrators be punished, and that the victims and their families be provided with due compensation.

21. The Office of the Special Rapporteur expresses its concern for the complaints received during 2008 of attacks on communications media and assaults against journalists.

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II. The information and opinions imparted through the communications media must respect the principles of truthfulness and responsibility. These principles shall be practiced through the rules of ethics and self-regulation of journalists’ organizations and communications media and their law. III. The communications media may not consist, directly or indirectly, of monopolies or oligopolies.

IV. The State shall support the creation of community media under equal opportunity conditions.

The text of the new Political Constitution of the State is available at: [http://www.vicepresidencia.gob.bo/Portals/0/documentos/NUEVA\\_CONSTITUCION\\_POLITICA\\_DEL\\_ESTADO.pdf](http://www.vicepresidencia.gob.bo/Portals/0/documentos/NUEVA_CONSTITUCION_POLITICA_DEL_ESTADO.pdf).

<sup>16</sup> Section II of Article 108 of the previous draft bill of the Constitution indicated that “[t]he information and opinions imparted through the communications media must respect the principles of truthfulness and responsibility.”

The Office of the Special Rapporteur sent a letter to the State in July of 2008 and asked that it take into account, among other issues, Principle 7 of the Declaration of Principles. On October 21, 2008 the draft bill of the Constitution was ratified with the amendment. Inter American Press Association/IFEX. February 12, 2008. *Preocupada la SIP sobre artículo de propuesta Constitución que solicita “veracidad y responsabilidad” a los medios*. Available at: <http://www.ifex.org/es/content/view/full/90693/>. La Opinión. February 2008. *Alertan de riesgos para libertad de expresión en nueva Constitución*. Available at: <http://www.opinion.com.bo/Portal.html?CodNot=18267&CodSec=8>. Instituto Prensa y Sociedad/IFEX. March 27, 2008. *Organización de prensa condena nueva Constitución por limitar libertad de la prensa; medida problemática sobre transmisiones de radio y televisión derrotada*. Available at: <http://www.ifex.org/es/content/view/full/91989/>. La Razón. October 2008. *Proyecto de nueva CPE garantiza libertad de prensa*. Available at: <http://www.la-razon.com/ultima.asp?id=694747>.

<sup>17</sup> Office of the Special Rapporteur – IACHR. April 9, 2008. *Press Release No. 189/08*. Available at: <http://www.IACHR.oas.org/relatoria/showarticle.asp?artID=728&IID=2>. Committee to Protect Journalists. April 8, 2008. *Periodista muere tras ataque a radio gubernamental*. Available at: <http://cpj.org/es/2008/04/periodista-muere-tras-ataque-a-radio-gubernamental.php>. Federación de Periodistas de América Latina y el Caribe. April 3, 2008. *Asesinan a periodista en demencial ataque*. Available at: <http://www.ifj.org/pdfs/Bolivia040308FEPALC.pdf>. Reporters Without Borders. June 18, 2008. *Comienza el juicio de los presuntos asesinos del periodista Carlos Quispe Quispe*. Available at: [http://www.rsf.org/article.php3?id\\_article=26493](http://www.rsf.org/article.php3?id_article=26493).

According to the information received, some of these attacks and assaults coincided with times of high social and political tension in the country. The information received by the Office of the Special Rapporteur also disclosed that in the majority of cases, the aggressions were perpetrated by presumed opponents of the government of Bolivian President Evo Morales, or by alleged supporters of his administration.

22. During 2008, at least a dozen communications media were subject to attacks. In March of 2008, the facilities of *Canal 7 Televisión Boliviana* and *Patria Nueva*<sup>18</sup> radio, and *Radio Municipal de Pucarani*<sup>19</sup> were attacked. Two months later, the headquarters of *TV Norte Canal 24*<sup>20</sup> was also attacked. In June of 2008, the premises of *Radio Kollasuyo*<sup>21</sup> in Potosí and *Canal 4-Unitel* in Santa Cruz were attacked with explosives. In the case of *Canal 4-Unitel*, the prosecutor of Yacuiba, Diego Choque, filed charges on June 23, 2008 against a member of the military and 21 other detainees for the commission of the attack.<sup>22</sup> In addition, the State media *Canal 7* and *Patria*

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<sup>18</sup> On March 25, 2008, a group of demonstrators took over the facilities of *Canal 7 Televisión Boliviana* and *Patria Nueva* radio, and took the broadcasts of both of these government-owned media off the air for several hours during a major protest against the interim prefect of the Department of Chuquisaca. According to the information received, the group of protesters entered the offices of these media, broke the windows and cut off the power supply to their equipment. *La Razón*. March 26, 2008. *Cívicos de Sucre toman la Prefectura*. Available at: [http://www.la-razon.com/versiones/20080326\\_006223/nota\\_247\\_567594.htm](http://www.la-razon.com/versiones/20080326_006223/nota_247_567594.htm). Red Erbol. March 25, 2008. *Un grupo de vándalos atenta contra los medios estatales en Sucre*. Available at: <http://www.erbol.com.bo/noticia.php?identificador=4407&id=1>. Reporters Without Borders. March 27, 2008. *Reporters Without Borders condena los ataques a dos medios de comunicación públicos durante una manifestación en Sucre*. Available at: [http://www.rsf.org/article.php3?id\\_article=26357](http://www.rsf.org/article.php3?id_article=26357). Radio La Primerísima. March 26, 2008. *Gobierno boliviano indignado por ataques a los medios estatales*. Available at: <http://www.radiolaprimerisima.com/noticias/alba/26770>.

<sup>20</sup> On March 27, 2008, residents of the town of Pucarani, near La Paz, set fire to the equipment of *Radio Municipal de Pucarani*, bringing down its antenna. They then violently entered the station's facilities and took its transmission equipment out into the town square. According to this information, the demonstrators had claimed that the radio station was used by Mayor Alejandro Mamani to defame them. The murdered reporter Quispe was beaten in this attack. Instituto Prensa y Sociedad/IPFEX. April 3, 2008. *Manifestantes, enojados por cobertura de conflicto municipal, destruyen equipo de emisora de radio*. Available at: <http://www.ifex.org/es/content/view/full/92274>. Red Erbol. April 3, 2008. *Vecinos quema una radio en el municipio de Pucarani*. Available at: <http://erbol.com.bo/noticia.php?identificador=4434&id=1>.

<sup>20</sup> On May 4, 2008, alleged pro-government demonstrators tried to set fire to the premises of *TV Norte Canal 24*, accusing its owner, the prefect José Luis Paredes, of being an opponent of the government of Evo Morales. According to the information received, the act took place in El Alto, after a town council meeting called by social movements in their rejection of the referendum being held that day in Santa Cruz. The report adds that it was decided at this meeting to take over the communications media "at the service of the oligarchy", after which a group of protesters went to the channel, threw rocks at it and burned tires in the vicinity. Reporters Without Borders. May 6, 2008. *Tres periodistas y un canal incendiado con ocasión al referendo autonomista en Santa Cruz*. Available at: [http://www.rsf.org/article.php3?id\\_article=26886](http://www.rsf.org/article.php3?id_article=26886). Instituto Prensa y Sociedad. May 5, 2008. *Manifestantes incendian canal y agreden a reporteros en El Alto*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1480>. Agencia de Información Bolivariana. May 4, 2008. *Protesta contra estatuto cruceño termina en quema de TV norte y agresión a periodistas*. Available at: [http://abi.bo/index.php?i=noticias\\_texto\\_paleta&j=20080504174540](http://abi.bo/index.php?i=noticias_texto_paleta&j=20080504174540).

<sup>21</sup> On June 20, 2008, in Potosí, the headquarters of *Radio Kollasuyo* was the target of an explosives attack that destroyed the door and the facade of the building. According to Epifanio Moscoso, director of the station, two workers were injured. According to the information received, the incidents occurred during a miners' demonstration in the center of Potosí. Reporters Without Borders. June 23, 2008. *Atentan con explosivos contra un canal de televisión de Tarija y una emisora de radio de Potosí*. Available at: [http://www.rsf.org/article.php3?id\\_article=27592](http://www.rsf.org/article.php3?id_article=27592). Inter American Press Association. June 24, 2008. *SIP condena atentados contra medios de comunicación en México y en Bolivia*. Available at: <http://www.sipiapa.org/espanol/pressreleases/chronologicaldetail.cfm?PressReleaseID=2140>.

<sup>22</sup> On June 21, 2008, the facilities of the private channel *Canal 4-Unitel* were the target of an explosives attack that damaged the front door and windows of the building. According to judicial authorities, the individuals responsible for the attack were alleged members of the Army and a group of university students from Santa Cruz, allegedly supporters of the government. Reporters Without Borders. June 23, 2008. *Atentan con explosivos contra un canal de televisión de Tarija y una emisora de radio de Potosí*. Available at: [http://www.rsf.org/article.php3?id\\_article=27592](http://www.rsf.org/article.php3?id_article=27592). Observatorio Latinoamericano para la Libertad de Expresión. June 22, 2008. *Fiscal acusa de terrorismo a 22 detenidos por atentar contra canal de TV*. Alert received via email by the Office of the Special Rapporteur for Freedom of Expression. Reporters Without Borders. June 24, 2008. *Acusado de "terrorismo" un militar tras el atentado a la sede de un canal de televisión en Tarija*. Available at: [http://www.rsf.org/article.php3?id\\_article=27592](http://www.rsf.org/article.php3?id_article=27592). Terra/Agencia EFE. July 10, 2008. *Periodistas bolivianos en huelga por*

*Nueva radio* were attacked in September of 2008,<sup>23</sup> while in another attack, dynamite was exploded outside the studios of *Red Uno* in Cochabamba.<sup>24</sup> In October of 2008, *Canal 13* of the State University of San Francisco Xavier in Sucre<sup>25</sup> and the newspaper *El Potosí*<sup>26</sup> were attacked with dynamite.

23. Most of assaults against members of the media reported during this year occurred in the context of voting. In May of 2008, when the autonomy referendum was held in Santa Cruz de la Sierra, there were several complaints of assaults on reporters. According to the information received, on May 3, 2008, Miguel Carrasco, photographer from the newspaper *La Razón*, was beaten and robbed by a group of unidentified individuals while photographing a town council meeting in the town of Yapacaní, in Santa Cruz.<sup>27</sup> On May 4, 2008, the day of the referendum, a group of demonstrators in the Plan 3000 neighborhood tried to burn a mobile unit from *Canal Megavisión*. According to this information, they also broke the windows of the mobile unit from the PAT television network and threatened a journalist from the newspaper *El Deber*. In Montero,

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*atentado contra canal de TV*. Available at: <http://actualidad.terra.es/sociedad/articulo/periodistas-tv-bolivianos-huelga-atentado-2611284.htm>. Inter American Press Association. June 24, 2008. *SIP condena atentados contra periodistas y medios en México y Bolivia*. Available at: [http://www.sipiapa.com/v4/index.php?page=cont\\_comunicados&seccion=detalles&id=3953&idioma=sp](http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=3953&idioma=sp).

<sup>23</sup> On September 9, 2008, alleged opposition activists attacked the offices of the state-owned radio station *Patria Nueva* in Santa Cruz de la Sierra with molotov cocktails. According to the information received, alleged opposition activists also occupied the offices of the state channel *Canal 7*, stole equipment and set fire to the furniture. There were no reports of injuries, but the offices of both stations sustained considerable property damage and their programming was interrupted, according to the information received. Inter American Press Association. September 11, 2008. *Preocupación por agresiones contra medios bolivianos*. Available at: [http://www.sipiapa.com/v4/index.php?page=cont\\_comunicados&seccion=detalles&id=4029&idioma=sp](http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4029&idioma=sp). Committee to Protect Journalists. September 10, 2008. *Activistas opositores atacan a dos medios estatales*. Available at: [http://www.cpj.org/news/2008/americas/bolivia10sep08na\\_sp.html](http://www.cpj.org/news/2008/americas/bolivia10sep08na_sp.html). Reporters Without Borders. September 15, 2008. *Reporteros sin Fronteras se dirige a la presidencia y a cuatro perfectos de la oposición, después de diez días de una violencia extrema*. Available at: [http://www.rsf.org/article.php3?id\\_article=28549](http://www.rsf.org/article.php3?id_article=28549).

<sup>24</sup> According to the information received, in the early morning hours of September 16, 2008, the studios of *Red Uno*, a television channel allegedly critical of the Bolivian government, was the target of a dynamite attack in the city of Cochabamba. The same day, in La Paz, a group of youths, allegedly supporters of the government, attempted to enter the facilities of PAT and *Red Unitel*, also critical of the government, but were suppressed by the police. Observatorio Latinoamericano para la Libertad de Expresión. 16 de septiembre de 2008. *Canal de televisión de oposición sufre atentado con dinamita*. Alert received via email by the Office of the Special Rapporteur for Freedom of Expression. Committee to Protect Journalists. September 19, 2008. *EL CPJ insta a la acción gubernamental tras escalada de violencia contra la prensa*. Available at: <http://cpj.org/es/2008/09/el-cpj-insta-a-la-acción-gubernamental-tras-escala.php>.

<sup>25</sup> Inter American Press Association. November 20, 2008. *Alerta SIP por actos de violencia en Nicaragua. También condenó un atentado en Bolivia*. Available at: [http://www.sipiapa.com/v4/index.php?page=cont\\_comunicados&seccion=detalles&id=4094&idioma=sp](http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4094&idioma=sp). Reporters Without Borders/IFEX. December 2, 2008. *Bolivia: un atentado con dinamita causa daños en los locales de un diario*. Available at: <http://www.ifex.org/es/content/view/full/99046/>. La Prensa. November 18, 2008. *Canal universitario de Sucre sufre un atentado explosivo*. Available at: [http://www.laprensa.com.bo/noticias/18-11-08/18\\_11\\_08\\_alfi2.php](http://www.laprensa.com.bo/noticias/18-11-08/18_11_08_alfi2.php).

<sup>26</sup> Reporters Without Borders/IFEX. December 2, 2008. *Bolivia: un atentado con dinamita causa daños en los locales de un diario*. Available at: <http://www.ifex.org/es/content/view/full/99046/>. El Deber. December 2, 2008. *Periódico El Potosí sufre un atentado*. Available at: <http://www.eldeber.com.bo/2008/2008-12-02/vernotanacional.php?id=081201224612>. Los Tiempos. December 2, 2008. *Instruyen aclarar el atentado contra El Potosí*. Available at: [http://www.lostiempos.com/noticias/02-12-08/02\\_12\\_08\\_nac11.php](http://www.lostiempos.com/noticias/02-12-08/02_12_08_nac11.php).

<sup>27</sup> The townspeople were protesting against a referendum when they saw that Carrasco was taking photographs of them. According to the information received, the photographer was surrounded and beaten. His camera and wallet were taken from him, and he was accused of being a journalist who favored departmental autonomy. Carrasco sustained slight injuries and did not get his camera back. Instituto Prensa y Sociedad. May 5, 2008. *Periodista agredido por simpatizantes del gobierno en Santa Cruz*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1477>. Reporters Without Borders. May 6, 2008. *Tres periodistas heridos y un canal incendiado con ocasión del referéndum autonomista en Santa Cruz*. Available at: [http://www.rsf.org/article.php3?id\\_article=26886](http://www.rsf.org/article.php3?id_article=26886).



cameraman José Luis Herrera from the *Unitel* network was injured by a rock that had been thrown, while Chandé Lima, a photographer for the newspaper *El Norte de Montero*, Wilson Castillo, de *PAT*, Vannesa Escobar, from *Canal Megavisión*, and Paola Mallea and Jorge Guasase, from the *Sittel* channel, also complained of having been attacked while covering the referendum, as did journalist Franco Conchari and cameraman Marco Ayllón from *TV Red Uno*.<sup>28</sup>

24. Likewise, on May 24, 2008, journalist Marianela Paco from *Radio Aclo Chuquisaca* was beaten and insulted by a group of unidentified individuals when she was covering the violent acts that caused the President of Bolivia to choose not to go to Sucre.<sup>29</sup> Several attacks against members of the media were also reported around the date of the referendum, held in August of 2008, to revoke the President's mandate. On August 3, 2008, press photographer Carlos Hugo Vaca, from the *Reuters* news agency, was attacked by a group of demonstrators while covering a march in support of the President.<sup>30</sup> On August 15, 2008, journalists Wilson Castillo, from the *PAT* television network, and Rubén Darío Méndez, from the newspaper *El Deber*, complained of having been beaten by members of the Police while they were covering a protest. The next day, cameraman Juan Carlos Tames from the state channel *Televisión Boliviana*, among others, was attacked by a group of alleged government opponents at a march. According to the information received, on the night of August 18, 2008, journalists Eyel Mendoza and Remberto Arauz, from *Bolivisión* and *ATB*, were beaten by alleged pro-government activists while they were covering a demonstration of the Santa Cruz Youth Union (*Unión Juvenil Cruceñista*). The following day, journalist José Luis Ledesma and cameraman Iván Justiniano, from the *Megavisión* channel, and photographer Hilario Muñoz from *El Mundo*, were attacked with sticks and rocks during the general strike in Santa Cruz.<sup>31</sup> According to the information received, in October of 2008 police officer

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<sup>28</sup> Instituto Prensa y Sociedad/ IFEX. May 14, 2008. *Periodistas de PAT TV, Megavisión, Sittel agredidos, emisora Bolivia Unida atacado durante referéndum autonomista en Santa Cruz*. Available at: <http://www.ifex.org/es/content/view/full/93723>. Reporters Without Borders. May 6, 2008. *Tres periodistas y un canal incendiado con ocasión al referendo autonomista en Santa Cruz*. Available at: [http://www.rsf.org/article.php3?id\\_article=26886](http://www.rsf.org/article.php3?id_article=26886). Instituto Prensa y Sociedad. May 5, 2008. *Manifestantes incendian canal y agreden a reporteros en El Alto*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1480>. Agencia de Información Bolivariana. May 4, 2008. *Protesta contra estatuto cruceño termina en quema de TV norte y agresión a periodistas*. Available at: [http://abi.bo/index.php?i=noticias\\_texto\\_paleta&j=20080504174540](http://abi.bo/index.php?i=noticias_texto_paleta&j=20080504174540). La Razón, May 8, 2008. *Fiscalía investigará de oficio los ataques a los periodistas*. Available at: [http://www.la-razon.com/versiones/20080508\\_006266/nota\\_250\\_592279.htm](http://www.la-razon.com/versiones/20080508_006266/nota_250_592279.htm).

<sup>29</sup> According to the information received, someone identified her as a reporter from *Aclo* and she was attacked. She asked for help from the Red Cross in order to be taken out of the area. Red Erbol. May 25, 2008. *Erbol responsabiliza a Nava, Barrón, Herrera y Durán por agresión a periodista de Aclo*. Available at: [http://www.constituyentesoberana.org/3/pronunciamientos/052008/250508\\_1.html](http://www.constituyentesoberana.org/3/pronunciamientos/052008/250508_1.html). Agencia Boliviana de Información. May 27, 2008. *Gobierno denuncia ante la Felap agresión a periodista en Sucre*. Available at: [http://abi.bo/index.php?i=noticias\\_texto\\_paleta&j=20080527211416&k](http://abi.bo/index.php?i=noticias_texto_paleta&j=20080527211416&k). FM Bolivia. May 2008. *La Asociación Nacional de Prensa repudia agresión a periodista*. Available at: <http://www.fmbolivia.com.bo/noticia993-la-asociacin-nacional-de-la-prensa-repudia-agresin-a-periodista-de-aclo-y-atentado-a-tvb.html>.

<sup>30</sup> Vaca said that a demonstrator approached him to deflate the tires of his motorbike to prevent him from following the caravan. Later, four subjects beat his arms, accusing him of being in favor of the opposition. Ricardo Montero, from the newspaper *El Deber*, complained that other reporters were also threatened at this march. Reporters Without Borders. August 11, 2008. *A pesar de algunas agresiones aisladas, el referéndum transcurrió en calma*. Available at: [http://www.rsf.org/article.php3?id\\_article=28123](http://www.rsf.org/article.php3?id_article=28123). Instituto Prensa y Sociedad. August 6, 2008. *Partidarios de Evo Morales agreden a reportero de Reuters*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1563>. Inter American Press Association. August 21, 2008. *Preocupa a la SIP agresiones contra la prensa en Bolivia y Venezuela*. Available at: [http://www.sipiapa.com/v4/index.php?page=cont\\_comunicados&seccion=detalles&id=3991&idioma=sp](http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=3991&idioma=sp).

<sup>31</sup> Instituto Prensa y Sociedad. August 20, 2008. *Varias agresiones contra reporteros en Santa Cruz*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1577>. Reporters Without Borders. August 20, 2008. *En los días siguientes al referéndum revocatorio, rebrota la violencia con los medios de comunicación*. Available at: [http://www.rsf.org/article.php3?id\\_article=28242](http://www.rsf.org/article.php3?id_article=28242). Inter American Press Association. August 21, 2008. *Preocupa a la SIP agresiones contra la prensa en Bolivia y Venezuela*. Available at: [http://www.sipiapa.com/v4/index.php?page=cont\\_comunicados&seccion=detalles&id=3991&idioma=sp](http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=3991&idioma=sp).

David Leytón Alborta was placed in pretrial detention as the alleged perpetrator of the attack on cameraman Iván Justiniano.<sup>32</sup>

25. On September of 2008, information was also received on attacks against members of the media when the autonomy referendum was held in Pando. *Radio Pando* interrupted its broadcasts due to threats received by its director, Juan Domingo Yanique, also a correspondent for the state radio station *Patria Nueva*. On September 5, 2008, a journalist from *Radio Digital* station, Humberto Lucana, was beaten at the airport in the city of Cobija; his attackers had mistaken him for the owner of a radio station that was identified as being related to the national government. On September 6, 2008, the *Red Educación Radiofónica de Bolivia* suspended the transmission in Cobija of its associate station *Radio Frontera* for three days because the safety of its workers could not be guaranteed. In Beni, a group of alleged members of the Rurrenabaque Civic Committee knocked down the antenna and cut the transmission cables of the state radio station *Radio Rurrenabaque*.<sup>33</sup>

26. The Office of the Special Rapporteur also received information about attacks against journalists under other circumstances. On February 26, 2008, journalist Limberth Sánchez and cameraman Edson Jiménez, from *Red Bolivision*, were assaulted in Epizana by protesters who wanted to stop them from covering the lynching of three police officers.<sup>34</sup> On April 13, 2008, journalists Fernando Cola and Tanimbu Estremadoiro were attacked in Cuevo when they were gathering information and images of a confrontation between townspeople and some 200 Guaraní and officials from the National Institute of Agrarian Reform in Alto Parapetí.<sup>35</sup> On August 22, 2008, a group of alleged university students attacked at least 15 radio, press and television journalists with rocks and firecrackers as they covered the students' attack on the house of Wálter Arízaga, a faculty leader at the San Francisco Xavier University.<sup>36</sup>

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<sup>32</sup> Instituto Prensa y Sociedad/IFEX. November 5, 2008. *Encarcelan a policía que agredió a camarógrafo*. Available at: <http://egypt.ifex.org/en/content/view/full/98159/index.html>. La Razón. October 21, 2008. *Detienen al policía que golpeó a camarógrafo*. Available at: [http://www.la-razon.com/versiones/20081021\\_006432/nota\\_250\\_694106.htm](http://www.la-razon.com/versiones/20081021_006432/nota_250_694106.htm).

<sup>33</sup> Instituto Prensa y Sociedad/IFEX. September 15, 2008. *Emisoras en la frontera con Brasil suspenden transmisión por agresiones a sus periodistas; denuncian que opositores al gobierno tumbaron antena de radio estatal*. Available at: <http://www.ifex.org/es/content/view/full/97013>. Reporters Without Borders. September 15, 2008. *Reporteros Sin Fronteras se dirige a la Presidencia y a cuatro prefectos de la oposición, después de diez días de una violencia extrema*. Available at: [http://www.rsfb.org/article.php3?id\\_article=28549](http://www.rsfb.org/article.php3?id_article=28549). Inter American Press Association. September 17, 2008. *SIP revisará nuevo texto constitucional de Bolivia en su próxima asamblea general en Madrid*. Available at: [http://www.sipiapa.com/v4/index.php?page=cont\\_comunicados&seccion=detalles&id=4030&idioma=sp](http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4030&idioma=sp).

<sup>34</sup> Reporters Without Borders. February 28, 2008. *Dos periodistas escapan por los pelos de una ejecución pública en el departamento de Cochabamba*. Available at: [http://www.rsfb.org/article.php3?id\\_article=25945](http://www.rsfb.org/article.php3?id_article=25945). La Razón. May 10, 2008. *La inseguridad acecha más a los periodistas*. Available at: [http://www.la-razon.com/versiones/20080510\\_006268/nota\\_250\\_593798.htm](http://www.la-razon.com/versiones/20080510_006268/nota_250_593798.htm). Inter American Press Association. *Informe Bolivia. Reunión de Medio Año, Caracas, Venezuela*. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=5&infoid=279&idioma=sp](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=5&infoid=279&idioma=sp).

<sup>35</sup> On April 16, 2008, the Executive Branch announced that the journalists and an attorney for the Guaraní People's Assembly from the town of Cuevo were rescued from the hands of Civic Committee leaders and the Cuevo Neighborhood Council. Estremadoiro reported that they threw rocks at her and insulted her, and also had her tied to a tree trunk in the rain for over an hour. Cola stated that he was kicked and had rocks thrown at him, but he was able to escape and was sheltered by three families until the following day. Agencia Bolivariana de Información. April 15, 2008. *Los trabajadores de la prensa rechazan agresiones de ganaderos a 2 periodistas*. Available at: [http://abi.bo/index.php?i=noticias\\_texto\\_paleta&j=20080415012637&k](http://abi.bo/index.php?i=noticias_texto_paleta&j=20080415012637&k). Reporters Without Borders. April 18, 2008. *Secuestro y malos tratos a periodistas en Santa Cruz*. Available at: [http://www.rsfb.org/imprimir.php3?id\\_article=26640](http://www.rsfb.org/imprimir.php3?id_article=26640). Agencia Bolivariana de Noticias. April 16, 2008. *Ejecutivo rescató a dos periodistas y un abogado torturado por ganaderos*. Available at: [http://abi.bo/index.php?i=noticias\\_texto\\_paleta&j=20080416230719&k](http://abi.bo/index.php?i=noticias_texto_paleta&j=20080416230719&k).

<sup>36</sup> The students tried to break into the residence at the end of a protest march over a recent salary increase for teachers, which had the university in Sucre in a state of internal conflict. Observatorio Latinoamericano para la Libertad de Expresión. September 3, 2008. *Universitarios agreden a reporteros en Sucre*. Alert received via email by the Office of the Special Rapporteur for Freedom of Expression. Instituto Prensa y Sociedad/IFEX. September 3, 2008. *Reporteros agredidos por universitarios en Sucre*. Available at: <http://www.ifex.org/es/content/view/full/96703>.

27. The Special Rapporteurship received information according to which in the last week of October 2008, a group of alleged activists from the Popular Civic Committee (*Comité Cívico Popular*) attacked journalists outside the San Pedro Jail in La Paz, where the former prefect Leopoldo Fernández was incarcerated. According to this information, these attacks are under investigation, and the main suspect is Adolfo Cerrudo, who has already appeared before judicial authorities for attacking and threatening other members of the media. Nevertheless, no information has been received on final decisions issued for the protection of the journalists who were attacked.<sup>37</sup>

28. Additionally, the Office of the Special Rapporteur expresses its concern over the information it received on threats made to journalists during 2008. On March 6, 2008, a journalist of the newspaper *La Razón* was threatened with rape by a group of alleged militants of the Popular Civic Committee, while covering a confrontation between government supporters and opponents in a public square in La Paz.<sup>38</sup> On June 4, 2008, during a protest held by a group of alleged government supporters demanding the resignation of Waldo Albarracín, the Ombudsman of the People, a leader from the Popular Civic Committee threatened journalist Christian Rojas and cameraman Erick Quispe, from *Cadena A*.<sup>39</sup> According to the information received, on August 19, 2008, three journalists from the *Bolivisión* network who were covering the 24-hour political strike in Santa Cruz were intimidated with firearms by alleged opponents of the government. The reporters filed a criminal complaint and the case was taken on by a prosecutor.<sup>40</sup>

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<sup>37</sup> Reporters Without Borders. October 31, 2008. *Militantes progubernamentales atacan a la prensa. "La seguridad de los periodistas debe ser prioritaria", según Reporteros sin Fronteras*. Available at: [http://www.rsf.org/imprimir.php3?id\\_article=29159](http://www.rsf.org/imprimir.php3?id_article=29159). Inter American Press Association. October 31, 2008. *Fustiga la SIP violencia descontrolada contra periodistas en Bolivia*. Available at: [http://www.sipiapa.org/v4/index.php?page=cont\\_comunicados&seccion=detalles&id=4082&idioma=br](http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4082&idioma=br). FM Bolivia. October 31, 2008. *Periodistas presentan querrela penal en contra de sus agresores*. Available at: <http://www.fmbolivia.com.bo/noticia5076-periodistas-presentan-querrela-penal-en-contra-de-sus-agresores.html>.

<sup>38</sup> The reporter Adriana Barriga was taking photographs of the events when she was threatened. The directors of the newspaper stated that the group of attackers was allegedly headed by Adolfo Cerrudo. The authorities investigated the leader and, according to the information received, ordered him to stay away from the journalists or face arrest. *La Razón*. March 7, 2008. *Hombres del MAS amenazan a una periodista*. Available at: [http://larazon.glradio.com/versiones/20080307\\_006204/nota\\_249\\_559811.htm](http://larazon.glradio.com/versiones/20080307_006204/nota_249_559811.htm). Reporters Without Borders. June 9, 2008. *Atacan en La Paz a periodistas de medios privados: "Los grupos progubernamentales radicales, lo mismo que las milicias autonomistas, tienen que verse imposibilitados de causar daño"*. Available at: [http://www.rsf.org/article.php3?id\\_article=27390](http://www.rsf.org/article.php3?id_article=27390). Reporters Without Borders. July 25, 2008. *En libertad y arresto domiciliario Adolfo Cerrudo*. Available at: [http://www.rsf.org/article.php3?id\\_article=27865](http://www.rsf.org/article.php3?id_article=27865). Inter American Press Association. *Informe Bolivia. Reunión de Medio Año. Caracas, Venezuela*. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=5&infoid=279&idioma=sp](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=5&infoid=279&idioma=sp).

<sup>39</sup> According to the information received, the footage filmed by the channel shows Adolfo Cerrudo as he egged on the people at the scene to attack the journalists. Knight Center for Journalism in the Americas. June 6, 2008. *Dirigente político ataca a reportero y camarógrafos que cubrían manifestación*. Available at: <http://knightcenter2.communication.utexas.edu/?q=es/node/641>. *La Razón*. June 6, 2008. *Cerrudo y su grupo atacan al Defensor y al canal Cadena A*. Available at: [http://www.la-razon.com/versiones/20080606\\_006295/nota\\_250\\_609494.htm](http://www.la-razon.com/versiones/20080606_006295/nota_250_609494.htm). Reporters Without Borders. June 9, 2008. *Atacan en La Paz a periodistas de los medios privados: "Los grupos progubernamentales radicales, lo mismo que las milicias autonomistas, tienen que verse imposibilitados de causar daño"*. Available at: [http://www.rsf.org/article.php3?id\\_article=27390](http://www.rsf.org/article.php3?id_article=27390).

<sup>40</sup> Observatorio Latinoamericano para la Libertad de Prensa. August 19, 2008. *Tres periodistas agredidos durante paro cívico*. Alert received via email by the Office of the Special Rapporteur for Freedom of Expression. ABI. August 19, 2008. *Paro político del Conalce comenzó con incidentes violentos en Santa Cruz*. Available at: [http://abi.bo/index.php?i=noticias\\_texto\\_paleta&j=20080819095504&k](http://abi.bo/index.php?i=noticias_texto_paleta&j=20080819095504&k). Los Tiempos. August 19, 2008. *Unionistas agredieron a policías y periodistas en el inicio del paro*. Available at: [http://www.lostiempos.com/noticias/19-08-08/19\\_08\\_08\\_ultimas\\_nac2.php?imprimir=ok](http://www.lostiempos.com/noticias/19-08-08/19_08_08_ultimas_nac2.php?imprimir=ok).



29. The Office of the Special Rapporteur recognizes as a positive development the fact that, according to the information received, on May 7, 2008, Attorney General Mario Uribe instructed all of the district prosecutors in the country to open, on their own initiative, investigations into cases of attacks on journalists.<sup>41</sup> It also views favorably the progress made in the investigation of some of the aforementioned cases of attacks and the prompt action of the justice system in some of them. Nevertheless, in light of the complaints reported in the above paragraphs, the Office of the Special Rapporteur urges the State to take the measures necessary to guarantee the safety of reporters while they are carrying out their work as journalists. Principle 9 of the Declaration of Principles, states that “[t]he [...] kidnapping, intimidation 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. In this context, the Office of the Special Rapporteur manifests its concern for the declarations made by some high-level government officials and critical media, which may increase the climate of intimidation and hostility toward journalists and could, in turn, lead to self-censorship<sup>42</sup>. As it indicated in its 2007 Annual Report, the Office of the Special Rapporteur recalls that “heads of State play a critical role in making room for tolerance and democratic coexistence; thus, they should exercise special care in terms of the impact their statements may have on freedom of expression and on other human rights, such as the right to life and to personal integrity.”<sup>43</sup>

31. The Office of the Special Rapporteur was likewise informed that in January of 2008 it became public that the Police Intelligence Services had wiretapped the telephone conversations of government and opposition politicians, as well as at least two journalists. According to the investigation conducted by the Senate Committee on the Constitution, Justice, Investigative Police, Public Ministry, Human Rights and Electoral System, the group of people whose calls had been tapped included journalist Juan José Espada Sandy, assistant press chief at *Unitel*, and René Fernández of *Radio Cadena Nacional*. The Senate approved the report on July 8, 2008 and sent it to the Public Ministry.<sup>44</sup>

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<sup>41</sup> Instituto Prensa y Sociedad/IFEX. May 14, 2008. *Periodistas de PAT TV, Megavisión, Sittel agredidos, emisora Bolivia Unida atacado durante referéndum autonomista en Santa Cruz*. Available at: <http://www.ifex.org/es/content/view/full/93723>. Reporters Without Borders. May 6, 2008. *Tres periodistas y un canal incendiado con ocasión al referendo autonomista en Santa Cruz*. Available at: [http://www.rsf.org/article.php3?id\\_article=26886](http://www.rsf.org/article.php3?id_article=26886). Instituto Prensa y Sociedad. May 5, 2008. *Manifestantes incendian canal y agreden a reporteros en El Alto*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1480>. Agencia de Información Bolivariana. May 4, 2008. *Protesta contra estatuto cruceño termina en quema de TV norte y agresión a periodistas*. Available at: [http://abi.bo/index.php?i=noticias\\_texto\\_paleta&j=20080504174540](http://abi.bo/index.php?i=noticias_texto_paleta&j=20080504174540). La Razón. May 8, 2008. *Fiscalía investigará de oficio los ataques a los periodistas*. Available at: [http://www.la-razon.com/versiones/20080508\\_006266/nota\\_250\\_592279.htm](http://www.la-razon.com/versiones/20080508_006266/nota_250_592279.htm).

<sup>42</sup> Instituto Prensa y Sociedad. December 19, 2008. *Editores de diario amenazados tras denunciar nexos del entorno presidencial con presunto contrabando*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1688>. La Prensa. December 11, 2008. *Gremios de prensa condenan abuso de poder de Morales*. Available at: [http://www.laprensa.com.bo/noticias/11-12-08/11\\_12\\_08\\_segu1.php](http://www.laprensa.com.bo/noticias/11-12-08/11_12_08_segu1.php). FM Bolivia. December 10, 2008. *Evo Morales atropella a un periodista del periódico La Prensa y otro es amenazado*. Available at: <http://www.fmbolivia.com.bo/noticia5978-evo-morales-atropella-a-un-periodista-del-periodico-la-prensa-y-otro-es-amenazado.html>. Asociación Nacional de Prensa (de Bolivia). Diciembre 2008. *La ANP exige garantías para La Prensa y periodista amenazado*. Available at: [http://anpbolivia.com/index.php?option=com\\_content&task=view&id=36&Itemid=1](http://anpbolivia.com/index.php?option=com_content&task=view&id=36&Itemid=1).

<sup>43</sup> Office of the Special Rapporteur – IACHR. 2007 Annual Report. Volume II, Chapter II, para. 144. Available at: <http://www.IACHR.oas.org/annualrep/2007sp/Anual%202007%20Vol.%20II%20es.pdf>.

<sup>44</sup> In note P.No. 167/2008, the President of the National Senate sent the President of the IACHR a copy of the investigation and its attachments. The document was received by the Office of the Special Rapporteur on July 22, 2008. Terra. January 24, 2008. *Escándalo en Bolivia por denuncias de espionaje a políticos y periodistas*. Available at:

32. The Office of the Special Rapporteur also calls the State's attention in regards to a letter that the Telecommunications Regulatory Authority sent in March of 2008 to television channels and radio stations, warning them that their broadcasts could be subject to temporary shutdowns if they disseminated information that, although true, could "harm" the public. The Office of the Special Rapporteur appreciates that this provision was set aside within a few days.<sup>45</sup> Principle 5 of the Declaration of Principles states that, "[r]estrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

33. In addition, the Office of the Special Rapporteur shares the opinions expressed by the IACHR in the *Follow-up Report – Access to Justice and Social Inclusion: The path toward strengthening democracy in Bolivia*, published in its 2008 Annual Report. The report recalls that at the end of 2007 the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples indicated that expressions with racist content "are frequent in some mass communications media."<sup>46</sup> Also of particular note are the paragraphs concerning so-called "lynchings" or the "taking of justice into one's own hands" and warns that these acts "continue to be misunderstood by some sectors of society as means for the enforcement of indigenous law. The communications media in particular have reported on these criminal acts as expressions of community justice."<sup>47</sup> The IACHR and the Office of the Special Rapporteur appreciates that some information and training measures have been undertaken by the Ministry of Justice and the Ombudsman of the People to disseminate information on the nature, practices and scope of indigenous law, and its conceptual differences to "street justice" or "lynchings."<sup>48</sup> Likewise, they condemn the messages with racist content that may incite discrimination or violence, especially when they come from social communicators or journalists, because they form public opinion. The Office of the Special Rapporteur recalls that Article 9 of the Inter-American Democratic Charter establishes that the "elimination of all forms of discrimination, especially gender, ethnic and race discrimination, as well as diverse forms of intolerance, the promotion and protection of human rights of indigenous peoples and migrants, and respect for ethnic, cultural and religious diversity in the Americas contribute to strengthening democracy and citizen participation."

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...continuation

<http://www3.terra.com.co/actualidad/articulo/html/acu8240.htm>. Agencia Boliviana de Información. January 24, 2008. *Espionaje a políticos y periodistas desata polémica; la Policía inicia investigación*. Available at: [http://abi.bo/index.php?i=noticias\\_texto\\_paleta&j=20080124231010](http://abi.bo/index.php?i=noticias_texto_paleta&j=20080124231010). AFP. January 26, 2008. *Gobierno ordena investigar espionaje a políticos y periodistas en Bolivia*. Available at: [http://afp.google.com/article/ALeqM5jh-26fS\\_GZeRoUckaARxL1QCLbFg](http://afp.google.com/article/ALeqM5jh-26fS_GZeRoUckaARxL1QCLbFg).

<sup>45</sup> Inter American Press Association. *Informe Bolivia. Reunión de Medio Año. Caracas, Venezuela*. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=5&infoid=279&idioma=sp](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=5&infoid=279&idioma=sp). El Mostrador. March 20, 2008. *Gobierno de Morales se desmarca de la carta que advierte el cierre a medios*. Available at: [http://www.elmostrador.cl/modulos/noticias/constructor/noticia\\_nueva.asp?id\\_noticia=242767](http://www.elmostrador.cl/modulos/noticias/constructor/noticia_nueva.asp?id_noticia=242767). Paz Digital. March 20, 2008. *El gobierno de Bolivia amenaza a los medios con sanciones si dan noticias que alarmen a la población*. Available at: <http://paz-digital.org/new/content/view/6985/2/>. El Deber. March 21, 2008. *Gobierno ratifica defensa de libertad de prensa y pide explicaciones a Sittel*. Available at: <http://www.eldeber.com.bo/2008/2008-03-21/vernotaahora.php?id=080320194214>.

<sup>46</sup> Cited in IACHR. *Follow-up Report – Access to Justice and Social Inclusion: The path toward strengthening democracy in Bolivia*, para. 119. Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples. Rodolfo Stavenhagen. Preliminary note on the mission to Bolivia between November 25 and December 7, 2007. A/HRC/6/15/Add.2. December 11, 2007, pp. 2-3.

<sup>47</sup> IACHR. *Follow-up Report – Access to Justice and Social Inclusion: The path toward strengthening democracy in Bolivia*, para. 172.

<sup>48</sup> IACHR. *Follow-up Report – Access to Justice and Social Inclusion: The path toward strengthening democracy in Bolivia*, para. 173.

#### 4. Brazil

34. On March 10, 2008, during the 131st Period of Sessions, the IACHR held a public hearing on indirect restrictions on freedom of expression in Brazil. Representatives of the Brazilian State and of non-governmental organizations participated in the hearing. In preparing this section of its 2008 Annual Report, the Office of the Special Rapporteur relied on the information provided by the parties in this hearing<sup>49</sup>.

35. The Office of the Special Rapporteur welcomes the February 21, 2008 decision by the Supreme Federal Tribunal to temporarily suspend twenty articles of the Press Law (Law 5250 of 1967) in response to a petition for *Arguição de descumprimento de preceito Fundamental* (Breach of Constitutional Mandate). This measure entails suspension of the judicial proceedings initiated under those provisions. In September of 2008, the tribunal decided to extend the suspension of the articles for an additional six months.<sup>50</sup>

36. Likewise, in June of 2008, the Supreme Electoral Tribunal held that candidates can give interviews and explain their proposals, despite Law 9504 of 1997, which prohibits the transmission of electoral propaganda before a period of three months prior to the elections. In July of 2006, the tribunal also stated that journalistic content cannot be considered electoral propaganda.<sup>51</sup>

37. This year, journalist Walter Lessa de Oliveira, of the television channel of the Legislative Assembly of the state of Alagoas, was assassinated in the city of Maceio. According to the information provided by police to the local press, it was initially suspected that the motive for the crime was related to exercise of journalism.<sup>52</sup> Nonetheless, the current investigation has

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<sup>49</sup> The State delegation was composed of Márcia Maria Adorno Cavalcanti Ramos and Camila Serrano Giunchetti, both of the Division of Human Rights of the Ministry of Foreign Relations; Bartira Nagaro of the Special Secretariat of Human Rights for the President of the Republic; and Celso Augusto Schröder of the National Federation of Journalists (Federação Nacional dos Jornalistas – FENAJ). The human rights non-governmental organizations that requested the public hearing were the Center for Justice and International Law (CEJIL) and Article 19. An audio recording of the hearing is available in Spanish at: <http://www.cidh.org/Audiencias/seleccionar.aspx>.

<sup>50</sup> Supreme Federal Tribunal of Brazil. Full Tribunal (Tribunal Pleno). Judgment of February 27, 2008: *Med. Caut. Em Arguição de Descumprimento de Preceito Fundamental 130-7 Distrito Federal. Relator: Min. Carlos Britto. Argüente: Partido Democrático Trabalhista – PDT* [English Translation: Precautionary Measures in Favor of an Action for Breach of Constitutional Mandate 130-7 Federal District. Decision by Judge Carlos Britto. Claimant: Democratic Labor Party]. Available at: [www.direitoacomunicacao.org.br/novo/index.php?option=com\\_docman&task=doc\\_download&gid=396](http://www.direitoacomunicacao.org.br/novo/index.php?option=com_docman&task=doc_download&gid=396). Article 19. February 22, 2008. *Brazil: Twenty articles of the Press Law deemed incompatible with the Constitution*. Available at: <http://www.ifex.org/en/content/view/full/91073>. Reporters Without Borders. February 29, 2008. *Federal Supreme Court opens way to final repeal of 1967 Press Law*. Available at: [http://www.rsf.org/print.php3?id\\_article=25062](http://www.rsf.org/print.php3?id_article=25062); September 5, 2008. *Brazil: Court extends partial suspension of 1967 law for another six months*. Available at: [http://www.rsf.org/article.php3?id\\_article=28432](http://www.rsf.org/article.php3?id_article=28432).

<sup>51</sup> Reporters Without Borders. July 4, 2008. *Highest electoral court says fining media for “premature electoral propaganda” was unconstitutional*. Available at: [http://www.rsf.org/print.php3?id\\_article=27557](http://www.rsf.org/print.php3?id_article=27557); July 9, 2008. *A Folha de Sao Paulo and Veja win appeal against “premature electoral propaganda” fines*. Available at: [http://www.rsf.org/print.php3?id\\_article=27557](http://www.rsf.org/print.php3?id_article=27557). Article 19. July 10, 2008. *Brazil: Electoral Court Overthrows Fines Applied to the Press for Interviewing Prospective Candidate*. Available at: <http://www.article19.org/pdfs/press/brazil-electoral-court-overthrows-fines-applied-to-the-press-for-interviewin.pdf>.

<sup>52</sup> Office of the Special Rapporteur – IACHR. January 11, 2008. *Press Release No. 183/08*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=718&IID=1>. Reporters Without Borders. January 9, 2008. *Brazil – Public TV cameraman gunned down in Alagoas State, revenge killing by drug trafficker suspected*. Available in: [http://www.rsf.org/article.php3?id\\_article=24979](http://www.rsf.org/article.php3?id_article=24979). Article 19. January 8, 2008. *Brazil: Journalist Assassinated in Alagoas*. Available at: <http://www.article19.org/pdfs/press/brazil-journalist-murder.pdf>.

indicated that the crime may not be related to that cause.<sup>53</sup> The Office of the Special Rapporteur welcomes the action of the authorities in this case, and exhorts the State to come to a rapid resolution.

38. During 2008, the Office of the Special Rapporteur received information regarding attacks on media outlets and journalists who investigated corruption cases. According to the information received, on some of those cases, the aggressors were public officials. However, it should also be highlighted that on multiple occasions, the authorities reacted in a prompt and efficient manner to investigate the facts and punish the perpetrators. Particular attention received the case of a team of journalists from *O Dia* newspaper, who was involved in an undercover investigation of the presence and operations of paramilitary groups in a neighborhood of Rio de Janeiro. On May 14, 2008, the journalists' cover was blown, they were tortured and held captive for eight hours by masked individuals. The reporters were freed on the threat that something would happen to them if they revealed the identity of their captors. The authorities initiated an investigation and detained several persons accused of having committed the crime<sup>54</sup>. Other attacks against journalists and media outlets allegedly related to their investigation on corruption cases took place against employees of *TV Diário*<sup>55</sup> television program, *Bandeirantes*<sup>56</sup> television channel, and *Folha de São Paulo*<sup>57</sup> newspaper.

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<sup>53</sup> Santana Oxente. October 17, 2008. *Caso Walter Lessa: polícia diz que esposa foi quem planejou o crime*. Available in Portuguese at: <http://www.santanaoxente.net/santana/example/2008/10/17/caso-walter-lessa-pol-cia-diz-que-esposa-foi-quem-planejou-o-crime.html>. International Federation of Journalists. December 17, 2008. *FIJ pede liberação de jornalista preso no Protesto dos Sapatos*. Available in Portuguese at: <http://www.fenaj.org.br/materia.php?id=2407>.

<sup>54</sup> Inter American Press Association. June 2, 2008. *The IAPA condemns the kidnapping and torture of Brazilian investigative journalists*. Available at: [http://www.sipiapa.org/v4/index.php?page=cont\\_comunicados&seccion=detalles&id=3931&idioma=sp](http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=3931&idioma=sp). Reporters Without Borders/IFEX. June 2, 2008. *Brazil – Call for Federal Commission of Enquiry alter Paramilitaries Kidnap and Torture three O Dia Employees*. Available at: <http://www.ifex.org/en/layout/set/print/content/view/full/94185>. Committee to Protect Journalists. June 2, 2008. *Brazil: CPJ appalled by reported torture of journalists, driver*. Available at: <http://cpj.org/2008/06/cpj-appalled-by-reported-torture-of-journalists-driver.php>. Reporters Without Borders/IFEX. June 6, 2008. *Fugitive police inspector named as leading suspect in “O Dia” torture case, another suspect arrested*. Available at: <http://www.ifex.org/en/content/view/full/94320>. Committee to Protect Journalists. June 16, 2008. *Militia leader accused of torturing reporters surrenders*. Available at: <http://cpj.org/2008/06/militia-leader-accused-of-torturing-reporters-surr.php>. *Folha Online*. July 31, 2008. *Juiz decreta prisão preventiva de suspeitos de torturarem jornalistas*. Available in Portuguese at: <http://www.hojeinoticias.com.br/brasil/juiz-decreta-prisao-preventiva-de-suspeitos-de-torturarem-jornalistas/>. Reporters Without Borders/IFEX. December 15, 2008. *Four new arrests in investigation into abduction of newspaper employees*. Available at: <http://www.ifex.org/en/layout/set/print/content/view/full/99343>. Instituto Prensa y Sociedad. December 16, 2008. *Detienen a sospechosos de secuestrar y torturar a reporteros de diario O Dia*. Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1683>.

<sup>55</sup> According to information received, on May 15, 2008, reporter Edson Ferraz of *TV Diário* suffered an attempt on his life with a firearm as he was driving his vehicle through a suburb of São Paulo. The journalist had been covering corruption, extortion, theft and money laundering cases that, according to his investigations, could involve several members of the Police. According to this journalist, the attack was a form of intimidation that forced him to leave the city together with his family. Reporters Without Borders. May 19, 2008. *Brazil – Shooting attack on TV Reporter in Sao Paulo Suburb, Police Suspected*. Available at: [http://www.rsf.org/print.php3?id\\_article=27066](http://www.rsf.org/print.php3?id_article=27066). Article 19. May 21, 2008. *Brazil: Article 19 condemns attack against journalist covering police corruption*. Available at: <http://www.article19.org/pdfs/press/brazil-article-19-condemns-attack.pdf>. Committee to Protect Journalists. May 21, 2008. *Hooded gunmen shoot at TV reporter's car*. Available at: <http://cpj.org/2008/05/hooded-gunmen-shoot-at-tv-reporters-car.php>.

<sup>56</sup> According to information received, on July 20, 2008, two unidentified individuals set fire to the residence of journalist and critic Jeso Carneiro in the city of Santarém. Although there were no casualties as a result of this attack, the residence suffered serious damage. Committee to Protect Journalists. July 24, 2008. *Critical journalist's home set on fire in the northern Amazon region*. Available at: <http://cpj.org/2008/07/critical-journalists-home-set-on-fire-in-the-north.php>. Article 19. July 25, 2008. *Brazil: Article 19 Condemns Attack on Journalist's home in Pará*. Available at: [www.article19.org/pdfs/press/brasil-artigo-19-repudia-atentado-contra-casa-de-jornalista-em-santarem.pdf](http://www.article19.org/pdfs/press/brasil-artigo-19-repudia-atentado-contra-casa-de-jornalista-em-santarem.pdf).

<sup>57</sup> According to information received, on October 26, 2008, journalist Graciliano Rocha of *Folha de São Paulo* newspaper was attacked in the city of Porto Alegre by individuals who supported the local mayor, José Fogaçaat, in retaliation for his negative coverage of the mayor's administration. According to the information provided, while awaiting a press conference outside of the campaign's headquarters, Rocha was insulted by a man and later beaten and kicked by a

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39. In other instances, security agents prevented journalists from *RIC-TV* channel<sup>58</sup>, *TV Educativa* (TVE)<sup>59</sup> and *O Estado* newspaper,<sup>60</sup> from reporting on certain situations. Finally, three photographers from different newspapers were attacked by unidentified individuals in Rio de Janeiro while they were covering a Senator's visit.<sup>61</sup>

40. Principle 9 of the Declaration of Principles establishes that intimidation of and/or threats to journalists, as well as attacks on communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. For these reasons, States have a duty to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.

41. On another front, regarding the development of lawsuits and criminal prosecutions directed against journalists and media outlets, during the public hearing of March 10, 2008, the organizations that requested it explained that: (a) in many cases, the lawsuit or prosecution is related to investigations of corruption cases or issues of public concern, and the plaintiffs are sitting

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group of individuals. Committee to Protect Journalists. October 26, 2008. *Political activists attack journalist in Porto Alegre*. Available at: <http://cpj.org/2008/10/political-activists-attack-journalist-in-porto-ale.php>. Instituto Prensa y Sociedad. October 28, 2008. *Simpatizantes de alcalde agreden a periodista*. Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1635>.

<sup>58</sup> According to information received, on March 10, 2008, journalist Simone Munhoz and cameraman Marcelo Dorce of *RIC-TV* were intimidated by a police officer in the settlement of Almirante in the city of Tamandaré in the state of Paraná. The communicators had just finished filming inside the municipal administration building, which they were authorized to do, when a policeman who worked as a guard at the building tried to confiscate their equipment, advised the communicators to erase their tapes, followed the reporters to their vehicles, and held a gun to the head of one of the reporters. The local police authorities announced that they would investigate the conduct of the officer, and the mayor of the settlement publicly asked for forgiveness for the incident at the station. Article 19/IFEX. March 17, 2008. *Two television journalists harassed, threatened by policeman in Paraná while investigating childcare shortage*. Available at: <http://www.ifex.org/en/content/view/full/91738/>.

<sup>59</sup> According to information received, on October 5, 2008, a police officer attacked the news team of *TV Educativa* (TVE) as they attempted to cover an incident that occurred during the municipal elections in the city of Salvador, Bahia. According to the journalists, they attempted to film a group of police officers that were attacking several voters. When one of the officers noticed what was going on, he demanded that they destroy the record. The officer then threw the journalists' equipment to the ground and shot the camera six times. Salvador police immediately issued a press release rejecting this conduct and announcing an investigation of the officer responsible. Afterwards, the attacking officer was suspended and prosecuted by court martial. ABRAJI/IFEX. November 13, 2008. *Military police lieutenant turns on cameraman filming police attack on voters*. Available at: <http://www.ifex.org/en/content/view/full/98479/>.

<sup>60</sup> According to information received, on December 18, 2008, journalist Sergio Gobetti of *O Estado de São Paulo* newspaper was attacked by a security agent of the Chamber of Deputies in Brasília. The journalist was detained as he sought to enter the Chamber to cover the vote on the Federal Budget because his identification was not visible. Then the guard grabbed him by the neck and tried to choke him to death when the journalist demanded that the guard show him his identification. The incident occurred in the presence of a member of Congress and was registered in a security camera. According to the information presented, the guard was suspended by the President of the Chamber. Instituto Prensa y Sociedad. December 19, 2008. *Agente de seguridad agreed a periodista por no mostrar su credencial*. Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1690>. ABRAJI/IFEX. December 23, 2008. *Journalist attacked by security guard*. Available at: <http://www.ifex.org/en/layout/set/print/content/view/full/99527/>.

<sup>61</sup> According to information received, on July 26, 2008, three photographers from the *O Globo*, *O Dia* and *Jornal do Brasil* newspapers were attacked by armed men while covering the visit of Senator Marcelo Crivella to a poor neighborhood in the city in the context of his campaign for mayor. The armed men attacked the journalists after the photographers took photographs of the Senator as he approached a group of young people who had yelled that they did not wish to be photographed. The assailants warned the reporters that they would not be able to leave the neighborhood if they did not erase the photographs, and then threatened them with injury if they were published. Apparently, the reporters erased the photographs and were freed. Committee to Protect Journalists. July 28, 2008. *In Rio de Janeiro, armed men threaten photographers covering political campaign*. Available at: <http://cpj.org/2008/07/in-rio-de-janeiro-armed-men-threaten-photographers.php>. Inter American Press Association. *Brazil Report*. 64th General Assembly, Madrid, Spain. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=20&infoid=307&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&infoid=307&idioma=us).



public officials; (b) there are legal norms that do not meet the standards of the Inter-American system on freedom of expression, such as the Press Law, electoral norms, criminal norms, and norms relating to civil liability; (c) judges can dictate provisional measures upon the admission of these suits, a practice that may constitute prior censorship; (d) there is a high number of lawsuits and prosecutions moving through the system; (e) in many cases, numerous lawsuits have been filed simultaneously as part of a strategy designed to silence the media and social communicators; (f) no distinction is made between lawsuits involving private parties and those involving public figures; and (g) the decree of damages does not take into account standards relating to freedom of expression, and instead usually amount to disproportionate awards that generate an inhibitory effect on reporters and media outlets. The petitioning organizations indicated that these problems primarily occur with judges at the first instance. The excessive delays and wasted resources that occur at this level impose severe economic, emotional and time costs upon the affected individuals.

42. The State representatives signaled that the Brazilian judicial system provides an ample and guarantee-based legal framework for the protection of freedom of expression. In this regard, the State representatives highlighted the importance of the decision of the Supreme Federal Tribunal to suspend several articles of the Press Law. They also explained that there is no clear proof as to the increase in the number of judicial actions brought against those exercising their right to freedom of expression. The representatives indicated that the total amount of compensation awarded in these cases equals approximately 60,000 *reais*.<sup>62</sup> They, however, emphasized that this amount is similar to the sums granted by the Inter-American Court of Human Rights in similar cases involving damages. They also noted that in the establishment of damages for human rights violations, the ability to pay of the perpetrator should not be a relevant criterion, as the primary concern should be the magnitude of the harm caused to the victim. In response to a question from a Commissioner about the existence of a test for prosecutions of journalists for expressions relating to public officials in exercise of their function, the representatives indicated that no such distinction exists and that the law is applied equally to all parties. However, the representatives specified that judges have understood that freedom of expression protects both expressions considered favorable and speech considered unsettling, offensive, or abrasive. They noted the existence of certain laws that criminalize the offenses of defamation, slander and libel. They indicated that in accordance with the standards set forth by the Inter-American system, these laws have been narrowly interpreted, and many of the criminal suits presented which involve the exercise of freedom of expression have been rejected. According to the representatives, judges in the highest courts have implemented a preliminary examination in these cases that requires that intent to offend or harm be demonstrated on the part of the individual making the expression. Finally, the representatives responded to a Commissioner's question involving judicial authority to dictate provisional measures designed to suspend or prevent the circulation of a certain opinion or piece of information. The representatives indicated that in Brazil, the judicial system allows judges to retain documents in controversy during a resolution of a lawsuit. The representatives indicated that suspending the dissemination of potentially harmful forms of expression is necessary to avoid irreparable harm during the process of considering the rights of the parties and adopting a decision on the merits designed to balance these. At any rate, the representatives indicated that these decisions could be appealed.

43. The Office of the Special Rapporteur warns that, despite the important decisions of the Supreme Federal Tribunal and the Supreme Electoral Tribunal, criminalization of expression persists in Brazilian legislation via the criminal offenses of defamation, slander and libel (*difamação, calúnia e injúria*). These offenses have not been the object of a judicial suspension, and that in their concrete application, could constitute obstacles for the full exercise of freedom of expression. Likewise, there is currently no judicial norm that permits the distinction between expressions relating to public officials in the exercise of their official functions, on the one hand, and expressions

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<sup>62</sup> In January of 2009, this sum was equivalent to approximately US\$28,000.

relating to private parties, on the other, in such a way that journalists may rely on a margin of security sufficient for them to inform about issues in the public interest without fear of being incarcerated or of losing their patrimony. Moreover, the Office of the Special Rapporteur observes that the ability of judges to adopt provisional measures in the course of judicial proceedings relating to freedom of expression constitutes an authority that is equivalent in its specific application to a form of prior censorship. The Special Rapporteur's Office underscores that in cases where a violation of a personal right is alleged due to the exercise of freedom of expression, where the expressions refer to issues in the public interest, it is indispensable to ensure that the form of compensation issued is not disproportionate or generates a deterrent effect on the free circulation of information and ideas.

44. On this same issue, during 2008, the Office of the Special Rapporteur received information about multiple cases of restrictive judicial orders or prosecution that could constitute limitations on freedom of expression. Such is the case in the prosecutions for criminal defamation (*difamação, calúnia e injúria*) promoted by public officials against the director of *Recomeço*,<sup>63</sup> a newspaper, or against *Pioneiro* newspaper.<sup>64</sup> Such is also the case in the proceedings initiated by private parties under this same legislation, as was the case of suits filed by more than a hundred members of an evangelical church against *Folha de São Paulo*, *A Tarde* de Salvador and *Extra* of Rio de Janeiro newspapers, which questioned, among other things, the management of the resources of such congregation.<sup>65</sup>

45. The Office of the Special Rapporteur is particularly concerned with the case of the criminal conviction imposed in January 2008, on Maria da Glória Costa Reis, editor of a newspaper written by persons deprived of liberty in the city of Leopoldina. She was sentenced to four months in prison, a sentence subsequently commuted to a fine, for having published an article critical of the living conditions suffered by prisoners in her city and the "connivance of judges and lawyers" with "such barbarity." The article written by Costa Reis did not mention names nor specific positions. Nevertheless, Judge José Alfredo Jünger de Souza Vieira, the man charged with supervising local

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<sup>63</sup> Article 19. February 21, 2008. *Article 19 condemns criminal defamation sentence against teacher who reported on prison conditions*. Available at: <http://www.article19.org/pdfs/press/brazil-def-teacher-eng.pdf>.

<sup>64</sup> According to information received, on December 5, 2008 *Pioneiro* newspaper and businessman Airon Zanandrea were convicted and fined by the second instance Tribunal of Justice of the State of Rio Grande do Sul for having insulted the honor of Judge Sérgio Fusquine Gonçalves. In the court's opinion confirming a conviction handed down by the first instance court on September 26, 2008, the insult against the judge's honor resulted from the November 2007 publication in the newspaper of a letter to the editor from Zanandrea. The letter was sent in reaction to the publication of a report in the same newspaper (*Pioneiro*) about Judge Gonçalves' decisions, specifically a decision to let an individual accused of theft out on bail. Instituto Prensa y Sociedad. December 16, 2008. *Condenan a diario a pagar indemnización por publicar carta de lector*. Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1681>. Espaço Vital. December 12, 2008. *Juiz gaúcho receberá indenização de R\$ 64 mil*. Available in Portuguese at: [http://www.espacovital.com.br/noticia\\_ler.php?id=13768](http://www.espacovital.com.br/noticia_ler.php?id=13768).

<sup>65</sup> According to information received, in the first two months of 2008, more than one hundred equal or similar judicial actions were filed in multiples places across the country by an equal number of members of the Universal Church of the Kingdom of God against three communications media outlets: *Folha de São Paulo*, *A Tarde* of Salvador, and *Extra* of Rio de Janeiro. In January 2009, practically all of the lawsuits that have been resolved have been rejected, either through inadmissibility or because the plaintiffs, by filing them, acted in bad faith. In the latter instances, the petitioners were fined to the benefit of the newspapers. Nevertheless, at the time of publication, more than forty of these lawsuits are still pending resolution. Inter American Press Association. February 25, 2008. *"A Tarde", "Extra" and their journalists also targets of barrage of lawsuits by evangelical church's members; IAPA warns of attempt to silence media*. Available at: <http://www.ifex.org/en/layout/set/print/content/view/full/91062>. Article 19/IFEX. January 31, 2008. *Wave of defamation lawsuits filed by evangelical church members a clear attempt to intimidate the press*. Available at: <http://www.ifex.org/en/layout/set/print/content/view/full/90392>. Committee to Protect Journalists. February 18, 2008. *More than 50 civil defamation suits filed against daily and reporter*. Available at: <http://cpj.org/2008/03/more-than-50-civil-defamation-suits-filed-against.php>. Instituto Prensa y Sociedad. February 25, 2008. *IPYS condena acoso judicial contra periodistas brasileiros*. Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1420>.

prisons at the time of the article's publication, filed a criminal complaint against her. Costa Reis was convicted based on the Press Law.<sup>66</sup>

46. Principle 10 of the Declaration of Principles states that, "privacy laws should not inhibit or restrict investigation and dissemination of information of public interest." Moreover, according to Principle 11, "public officials are subject to greater scrutiny by society".

47. The Office of the Special Rapporteur also manifests its concern regarding the prosecution of an adult magazine for committing the offence of "religious libel" (*injúria religiosa*). According to the information, in August 2008, a Rio de Janeiro judge ordered the Brazilian version of *Playboy* magazine to withdraw its August issue from circulation because the issue included photographs of a semi-nude model posing with religious symbols. The prosecution was promoted by the Youth for Life Institute (*Instituto Juventude Pela Vida*) and a priest from the state of Goiás, who argued that the photographs offended the religious sentiments of believers.<sup>67</sup>

48. In addition to this case, there are other examples of judicial restrictions on the diffusion of ideas or opinions that have come to the attention of the Rapporteur's Office. These examples include the judicial proceedings and orders promoted against *Tribuna das Águas* weekly newspaper,<sup>68</sup> and against *Folha de São Paulo*.<sup>69</sup>

49. Article 13(2) of the American Convention establishes that the exercise of freedom of expression may not be subjected to prior censorship. Principle 5 of the Declaration of Principles states that, "prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

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<sup>66</sup> Article 19. February 21, 2008. *Article 19 condemns criminal defamation sentence against teacher who reported on prison conditions*. Available at: <http://www.article19.org/pdfs/press/brazil-def-teacher-eng.pdf>. Epoca. March 14, 2008. *A professora que incomodou a Justiça*. Available at: <http://revistaepoca.globo.com/Revista/Epoca/1,,EDG82355-9554,00.html>.

<sup>67</sup> Instituto Prensa y Sociedad. August 29, 2008. *Juez ordena a la revista "Playboy" retirar edición de agosto a solicitud de sacerdote y organización católica*. Interprensa. January 16, 2009. *Bailarina y modelo desnudan a los censores de América Latina*. Available in Spanish at: [http://www.ipys.org/interprensa\\_detalle.php](http://www.ipys.org/interprensa_detalle.php). Agencia Digital de Noticias. August 2, 2008. *Prohíben en Brasil revista Playboy*. Available in Spanish at: <http://www.adnmundo.com/contenidos/actualidad/brasil-priguben-venta-playboy-polemica-fotos-ac-280808.html>.

<sup>68</sup> According to information received, on March 24, 2008, a civil court in the city of Aguas de Lindóia prohibited *Tribuna das Aguas*, a local weekly, from publishing the names or photographs of government officials in connection with services, public works, acts or programs provided by public administration. The court sentenced the weekly to hefty and numerous daily fines if it disobeyed the court's order. It has been informed that the weekly appealed the decision, the result of this appeal has not been confirmed as of the date of this report's publication. Committee to Protect Journalists. March 24, 2008. *São Paulo court bans local paper from printing officials' names*. Available at: <http://cpj.org/2008/03/são-paulo-court-bans-local-paper-from-printing-off.php>.

<sup>69</sup> According to information received, in October 2008, an electoral judge ordered *Folha de São Paulo* to delete a 2005 report about Luiz Marinho from its digital version, as Marinho was a candidate for re-election in the city of São Bernardo do Campo (São Paulo) in 2008. Although the contents of this report were not disputed at the time of its original publication, during the electoral season, the coalition supporting the candidate argued that his opponents were using the content of the article to hurt the candidate politically. In the opinion of the judge who granted the removal, his decision was justified by the fact that political propaganda may not benefit from information that may slander, defame or insult a candidate. ABRAJI/IFEX. October 22, 2008. *Electoral judge orders website to remove report on Worker's Party candidate*. Available in: <http://www.ifex.org/en/content/view/full/97808>. *Folha de São Paulo*. 11 de octubre de 2008. *Marinho obtém liminar para tirar da internet notícia publicada na Folha*. Available in Portuguese at: <http://www1.folha.uol.com.br/folha/brasil/ult96u455019.shtml>.



50. The Office of the Special Rapporteur received information about the adoption of judicial orders in May of 2008 in nine different Brazilian cities prohibiting the realization of public demonstrations seeking to promote modifications to current penal law. These decisions were justified by the judicial authorities under the argument that they would allegedly constitute advocacy or instigation of criminal activity. The Office of the Special Rapporteur recalls that, except in the case of forms of expression that, in the terms of Article 13(5) of the American Convention, clearly constitute “propaganda for war” or “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,” peaceful citizen marches in public areas are demonstrations protected by the right to freedom of expression.<sup>70</sup>

51. The Office of the Special Rapporteur takes note of the judicial proceeding currently before the Supreme Federal Tribunal in which the court is reviewing the requirement of a journalism diploma for the exercise of the profession established in Decree-Law 972/69, the regulation implementing the Press Law.<sup>71</sup> With regards to this case, it is recalled that, in conformity with the jurisprudence of the Inter-American Court, this type of requirement constitutes a restriction on freedom of expression incompatible with Article 13 of the American Convention. Principle 6 of the Declaration of Principles provides that “[e]very 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.”

52. Finally, the Office of the Special Rapporteur expresses its concern regarding information received about private controls on the exercise of freedom of expression in three significant cases. In the first case, *Jornal Atual* newspaper, of the city of Itaguaí, saw its distribution substantially reduced as a result of the refusal by several distribution centers to continue selling the newspaper. According to the information, all of the distribution centers were owned by the same person, who may have had an interest in preventing the circulation of several articles of political criticism published by this newspaper.<sup>72</sup> In the second case, armed men purchased approximately 30,000 issues of *Extra* newspaper of the *Baixada Fluminense* (“Fluminense Lowlands”) region. The men prevented the newspaper’s circulation and in some cases, threatened the distributors. According to the information received by the Special Rapporteur’s Office, the issue targeted by this act had published a front page article about the misconduct of several Congressional representatives seeking to run for re-election.<sup>73</sup> In the third case, 10,000 copies of *Foco Popular* newspaper of the city of Seropédica were stolen by unidentified individuals, preventing its distribution. The issue that was the subject of the robbery reprinted a report by *Extra* newspaper

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<sup>70</sup> Article 19. May 15, 2008. *Peaceful marches for legalization of marijuana suppressed, various demonstrators detained over pamphlets, other written material*. Available at: <http://www.article19.org/pdfs/press/brazil-marijuana-march.pdf>.

<sup>71</sup> Inter American Press Association. *Report Brazil. 64th General Assembly. Madrid, Spain*. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=20&infoid=307&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&infoid=307&idioma=us). Congreso em Foco. October 21, 2008. *STF pode derrubar diploma para jornalista*. Available in Spanish at: <http://congressoemfoco.ig.com.br/DetEspeciais.aspx?id=24984>.

<sup>72</sup> ABRAJI/IFEX. November 17, 2008. *Newspaper’s circulation reduced after it publishes articles criticizing mayor*. Available at: <http://www.ifex.org/en/content/view/full/98590/>. Jornal da ABI. November 2008. *Prefeito de Itaguaí ameaça jornalista*. Available at: <http://issuu.com/uca/docs/jonaldabi335/32>.

<sup>73</sup> ABRAJI. October 1, 2008. *Abraji considera atentado a democracia compra maciça de exemplares do Extra no RJ*. Available in Portuguese at: [http://www.abraji.org.br/?id=90&id\\_noticia=752](http://www.abraji.org.br/?id=90&id_noticia=752). Committee to Protect Journalists. September 29, 2008. *Edition of Brazilian daily bought by force*. Available at: <http://cpj.org/2009/01/brazilarmed-men-attempt-to-buy-entire-edition-of-r.php>. Extra. 29 de septiembre de 2008. *Polícia monta operação de guerra e Extra chega às mãos dos leitores da Baixada Fluminense nesta segunda-feira*. Available in Portuguese at: [http://extra.globo.com/rio/materias/2008/09/29/policia\\_monta\\_operacao\\_de\\_guerra\\_extra\\_chega\\_as\\_maos\\_dos\\_leitores\\_da\\_baixada\\_fluminense\\_nesta\\_segunda-feira-548447856.asp](http://extra.globo.com/rio/materias/2008/09/29/policia_monta_operacao_de_guerra_extra_chega_as_maos_dos_leitores_da_baixada_fluminense_nesta_segunda-feira-548447856.asp).

about irregularities committed by a state public official.<sup>74</sup> The Office of the Special Rapporteur was informed that in the last two cases, police authorities are currently conducting investigations.

## 5. Canada

53. The Office of the Special Rapporteur views positively the decision of the Court of Appeals of Ontario on March 14, 2008, annulling the conviction for contempt of court and the fine of 31,600 Canadian Dollars against Ken Peters, of the *Hamilton Spectator* newspaper. The reporter had been summoned as a witness in a proceeding in order to compel him to reveal the name of a public official who had given him some confidential documents. Peters refused to reveal his identity.<sup>75</sup> The Special Rapporteurship also highlights the solution in the case of journalist Lon Appleby, who was summoned to hand over his notes from a journalistic investigation about the murder of a minor, published 11 years earlier. On February 28, 2008, Appleby came to an agreement with the defense to respond to questions about his article, without having to hand over his notes.<sup>76</sup>

54. The Office of the Special Rapporteur observes that on January 18, 2008, the Federal Court of Montreal ordered journalists Joël-Denis Bellavance and Gilles Toupin, of the newspaper *La Presse*, to reveal the identity of the source who leaked a document of the Canadian Security Intelligence Service, which accused a person of being a member of Al Queda.<sup>77</sup> The Office of the Special Rapporteur also received information about the police raid of the headquarters of the *Hamilton Spectator* on May 6, 2008, to obtain photographs taken during a public protest a few days earlier. The newspaper appealed the judicial decision that authorized the raid, but it was affirmed on June 12, 2008. According to the information received, the Police wanted to obtain the photographs in order to identify persons who had threatened police officials during the protest.<sup>78</sup> The Office of the Special Rapporteur urges the State to take into account Principle 8 of the Declaration of Principles, which states, "Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."

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<sup>74</sup> ABRAJI/IFEX. October 7, 2008. *Journalist reportedly targeted in bomb attack; bandits obstruct the circulation of newspapers in two more cities*. Available at: <http://www.ifex.org/en/content/view/full/97488>. The Guardian. November 19, 2008. *Brazil papers disrupted by gangsters*. Available at: <http://www.guardian.co.uk/media/greenslade/2008/oct/08/latinamerica>.

<sup>75</sup> Reporters Without Borders. March 19, 2008. *"Victory for protection of sources" as court overturns contempt ruling against Ken Peters*. Available at: [http://www.rsf.org/article.php3?id\\_article=26279](http://www.rsf.org/article.php3?id_article=26279). Canadian Journalists for Free Expression. March 20, 2008. *CJFE Calls Decision in Source Protection Case an Important Step Forward*. Available at: <http://www.cjfe.org/releases/2008/2008-03-10sourceprotection.html>. Court of Appeal for Ontario. March 14, 2008. *St. Elizabeth Home Society v. Hamilton*. Available at: <http://www.ontariocourts.on.ca/decisions/2008/march/2008ONCA0182.pdf>.

<sup>76</sup> Canadian Journalists for Free Expression. March 3, 2008. *CFJE is Relieved by Swift Resolution to Lon Appleby Subpoena Case*. Available at: <http://www.cjfe.org/releases/2008/03032008appleby.html>. The Star. February 29, 2008. *Court allows writer to hang on to his notes*. Available at: <http://www.thestar.com/News/GTA/article/308077>.

<sup>77</sup> Reporters Without Borders. January 21, 2008. *Federal Court wants to violate "Basic Right" of journalists to Project their sources*. Available at: [http://www.rsf.org/article.php3?id\\_article=25127](http://www.rsf.org/article.php3?id_article=25127). Inter-American Press Association. *Canada Report. Midyear Meeting, Caracas, Venezuela*. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=5&infoid=281&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=5&infoid=281&idioma=us). CNW Group. January 18, 2008. *CAJ disturbed by court ruling*. Available at: <http://www.newswire.ca/en/releases/archive/January2008/18/c2432.html>. Federal Court. January 18, 2008. *Charkaoui Re (2008 FC 61) DES-3-O*. Available at: <http://decisions.fct-cf.gc.ca/en/2008/2008fc61/2008fc61.html>.

<sup>78</sup> Canadian Journalists for Free Expression. June 18, 2008. *CJFE Distressed by Court Approval of Seizure of Photographs*. Available at: <http://www.cjfe.org/releases/2008/18062008photographs.html>. Inter-American Press Association. *Canada Report. 64<sup>th</sup> General Assembly, Madrid, Spain*. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=20&infoid=308&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&infoid=308&idioma=us). The Spect. June 13, 2008. *Judge orders Spectator to give OPP protest photos*. Available at: <http://www.thespec.com/News/Local/article/385631>.

55. On the other hand, journalist Innocent Madawo denounced that he had received threatening telephone calls in January of 2008 because of an article about Zimbabwe, his country of origin.<sup>79</sup> The Special Rapporteurship emphasizes that Principle 9 of the Declaration of Principles states that threats to social communicators “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.”

56. Additionally, the Office of the Special Rapporteur has received information according to which the State notified its dependencies of the nullification, of April 1, 2008, of the order to update the database known as the Coordination of Access to Information Requests System (CAIRS), which contains an electronic list of the requests for information presented to agencies and departments of the federal government. According to the information received, government functionaries stated that this measure was taken because of the costs of maintaining CAIRS and the delays it generated.<sup>80</sup> The Special Rapporteurship considers it opportune to recall Principle 4 of the Declaration of Principles, which states that “Access to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right.”

57. The Office of the Special Rapporteur also highlights the decision of the Supreme Court of Canada of June 27, 2008, which rejected the civil complaint for defamation against journalist Rafe Mair and the radio station *CKNW*, for an editorial that strongly criticized social activist Kari Simpson. The complaint had been rejected, but the Court of Appeals of British Columbia revoked that decision and characterized the reporter’s comments as defamation. The Supreme Court’s ruling overturned this judgment with the defense of the doctrine of “fair comment”.<sup>81</sup> The Special Rapporteurship recalls that Principle 10 of the Declaration of Principles states 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.”

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<sup>79</sup> Canadian Journalists for Free Expression. January 11, 2008. *CJFE Concerned by Threats Made to Toronto Journalist*. Available at: <http://www.cjfe.org/releases/2008/11012008madawo.html>. Inter-American Press Association. *Canada Report. Midyear Meeting, Caracas, Venezuela*. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=5&infoid=281&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=5&infoid=281&idioma=us).

<sup>80</sup> Canadian Journalists for Free Expression. May 6, 2008. *CJFE Dismayed by Discontinuation of Access to Information Database*. Available at: <http://www.cjfe.org/releases/2008/07052008cairs.html>. Inter-American Press Association. *Canada Report. 64<sup>th</sup> General Assembly, Madrid, Spain*. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=20&infoid=308&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&infoid=308&idioma=us). CBC. May 2, 2008. *Tories kill access to information database*. Available at: <http://www.cbc.ca/canada/story/2008/05/02/cairs.html>. Globe and Mail. May 5, 2008. *Harper defends database shutdown*. Available at: [http://www.theglobeandmail.com/servlet/story/RTGAM.20080505.wgp\\_foi0505/BNSStory/National/home?cid=al\\_gam\\_mostvi](http://www.theglobeandmail.com/servlet/story/RTGAM.20080505.wgp_foi0505/BNSStory/National/home?cid=al_gam_mostvi). House of Commons Committees. 39<sup>th</sup> Parliament, 2<sup>nd</sup> Session. Committee on Access to Information, Privacy and Ethics Sixth Report. Available at: <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3471409&Language=E&Mode=1&Parl=39&Ses=2>.

<sup>81</sup> Canadian Journalists for Free Expression. June 27, 2008. *CJFE Welcomes Supreme Court’s Decision in Defamation Case as an important victory for Free Expression*. Available at: <http://www.cjfe.org/releases/2008/27062008appealapproved.html>. Inter-American Press Association. *Canada Report. 64<sup>th</sup> General Assembly, Madrid, Spain*. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=20&infoid=308&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&infoid=308&idioma=us). Supreme Court of Canada. June 27, 2008. *WIC Radio Ltd. and Rafe Mair v. Kari Simpson*. Available at: <http://scc.lexum.umontreal.ca/en/2008/2008scc40/2008scc40.html>.

## 6. Chile

58. On November 24, 2008, the Inter-American Court “considered that the Case of *Claude Reyes et al* is closed because the State of Chile has complied [...] with the measures ordered in the Judgment rendered [...] on September 19, 2006”.<sup>82</sup> As part of this process, on August 11, 2008, the State promulgated Law No. 20.285 – *Ley de Transparencia de la Función Pública y el Derecho de Acceso a la Información de los Órganos de la Administración del Estado* (Law on Transparency of Public Functions and Access to Information of the State Administration).<sup>83</sup> The Office of the Special Rapporteur welcomes these advancements towards the implementation of the right to access to information in conformity with the standards of the inter-American system.<sup>84</sup>

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<sup>82</sup> I/A Court H.R. *Case of Claude Reyes et al*. Monitoring Compliance with Judgment. Order of November 24, 2008. Available only in Spanish at: [http://www.corteidh.or.cr/docs/supervisiones/reyes\\_24\\_11\\_08.pdf](http://www.corteidh.or.cr/docs/supervisiones/reyes_24_11_08.pdf).

<sup>83</sup> Official Journal of the Republic of Chile. August 20, 2008. *Law No. 20.285: On Access to Public Information*. Page 3.

<sup>84</sup> While monitoring compliance with the judgment, the IACHR signaled that it “welcomed the advancements achieved by the State in this case and the spirit of cooperation that exists between the victims’ representatives and those of the State with regards to the reparations ordered by the Court”. On the other hand, the victims’ representative provided criticisms relating to Articles 22.3, 29 and First Transitory Article of Law No. 20.285. These articles are transcribed below:

Article 22. Actions designated as confidential or privileged by law passed by a set quorum shall maintain this designation until another law of equal or greater force supersedes said designation.

[...]

Nevertheless, the confidential or privileged designation shall continue indefinitely for actions or documents that, in the area of national security, provide for military planning or strategy, as well as those whose knowledge or diffusion could affect:

- a) The territorial integrity of Chile;
- b) The interpretation of, or compliance with, an international treaty subscribed by Chile;
- c) The international defense of Chile’s rights, and
- d) The country’s foreign policy in a serious manner.

Documents that prove the existence of actions designated privileged or confidential by qualified quorum law should be safeguarded in conditions that guarantee their preservation and security by the corresponding body or body.

Documents that prove the existence of actions designated as confidential or privileged by a government body or agency should be safeguarded in conditions that guarantee their preservation and security by the respective body or agency for a period of ten years without prejudice to the norms regulating their introduction into the National Archives.

In order to safeguard their effective function and use, the results of opinion polls or of surveys of public opinion commissioned by the bodies of State Administration responsible for these shall be reserved from public view until the end of the presidential term during which the results were produced.

Article 29. In the event that a court decision would grant access to information previously denied by an agency of the State Administration, the filing of the appeal, when properly filed according to law, will immediately suspend the delivery of the information requested, and the Court will not have the power to decree any measure that would provide knowledge of the information or access to it until the appeal is resolved.

Article 1. In accordance with the fourth transitory article of the Political Constitution, actions or documents designated as confidential or privileged by qualified quorum law prior to the passage of Law No. 20.285 shall remain designated as such so long as they comply with the terms set forth in Article 8 of the Political Constitution.

It should be highlighted that the representative of the victims also explained that his observations were not “presented as a requirement for compliance with the judgment” and that “with what it has proposed and completed, it should be understood that the State of Chile has complied with the judgment of this [...] Tribunal”.

Principle 4 of the Declaration of Principles establishes that “access to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right”.

59. The Office of the Special Rapporteur also celebrates the decision of the State Defense Council on September 9, 2008 to provide reparations to journalist Alejandra Matus for the 1999 seizure of her book, “El Libro Negro de la Justicia Chilena”.<sup>85</sup> In October 2005, the IACHR recommended that the State “provide adequate reparations to Alejandra Marcela Matus Acuña for the consequences she suffered due to the violations of the right to freedom of expression and the right to property”.<sup>86</sup> Principle 5 of the Declaration of Principles stipulates 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 violate the right to freedom of expression.”

60. On November 30, 2007, the Inter-American Court decided to continue to monitor compliance with its judgment in the *Case of Palamara-Iribarne v. Chile*. The Court considered that the State has yet to comply with its resolution in the judgment, which ordered the State to “take all the necessary measures to annul and amend, within a reasonable period of time, any domestic provisions which are incompatible with the international standards regarding freedom of thought and expression”. The Office of the Special Rapporteur urges the State to take all measures necessary to provide for full compliance with the judgment of the Inter-American Court. The Special Rapporteurship hopes to receive information about advancement in this process.

61. On July 10, 2008, a bill proposing the addition of new language to Article 417 of the Code of Military Justice was presented to the Congress of the Republic. The text of the bill stipulates that “whosoever mistreats by written or spoken word one of the members of the *Carabineros* (Armed Police) of Chile in the exercise of his official function or with knowledge of his status as a member of this Institution shall be punished by imprisonment under the minimum sentence and by a fine of 3 UTM (*Unidad Tributaria Mensual* – Monthly Tax Unit) payable to the public prosecutor’s office”. According to the information received, the bill was approved by the Chamber of Deputies on December 3, 2008, and is currently under revision of the Senate.<sup>87</sup> The Office of the Special Rapporteur expresses its grave concern regarding this initiative and reminds the State that Principle 11 of the Declaration of Principles provides that “laws that penalize offensive

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<sup>85</sup> State Defense Council of Chile. *Council Agreements, September 2008 Sessions*. Available in Spanish at: [http://www.cde.cl/wps/portal/!ut/p/c1/04\\_SB8K8xLLM9MSSzPy8xBz9CP0os\\_hg\\_yAjT2czYwMLQ09TAyOvADPPMD\\_TQA9DM6B8pFI8GAYyH4UYGBgZ-lt4WpoHG7i7GBPQH06yD79-kLwBDuBooO\\_nkZ-bql-QG2GQZeKoCACicrVi/dl2/d1/LOIDU0IKSWdra0EhIS9JTIJBQUlpQ2dBek15cUEhL1CSkoxTkExTk1MC13ISEvN19TT1lySUM2MzAwTTJEMDJORzIGQjhVQjNPMA!!/?PC\\_7\\_SOR2IC6300M2D02NG9F8UB300\\_WCM\\_CONTEXT=/wps/wcm/connect/Expres%20Web%20Content/cde+web/acuerdos+de+consejo/acuerdos+de+consejo+-+sesiones+septiembre+de+2008](http://www.cde.cl/wps/portal/!ut/p/c1/04_SB8K8xLLM9MSSzPy8xBz9CP0os_hg_yAjT2czYwMLQ09TAyOvADPPMD_TQA9DM6B8pFI8GAYyH4UYGBgZ-lt4WpoHG7i7GBPQH06yD79-kLwBDuBooO_nkZ-bql-QG2GQZeKoCACicrVi/dl2/d1/LOIDU0IKSWdra0EhIS9JTIJBQUlpQ2dBek15cUEhL1CSkoxTkExTk1MC13ISEvN19TT1lySUM2MzAwTTJEMDJORzIGQjhVQjNPMA!!/?PC_7_SOR2IC6300M2D02NG9F8UB300_WCM_CONTEXT=/wps/wcm/connect/Expres%20Web%20Content/cde+web/acuerdos+de+consejo/acuerdos+de+consejo+-+sesiones+septiembre+de+2008). Periodistas-es. September 29, 2008. *Chile indemnizará a la periodista Alejandra Matus por la censura del “Libro Negro de la Justicia Chilena*. Available in Spanish at: [http://www.p-es.org/index.php?option=com\\_content&view=article&id=1520:chile-indemnizara-a-la-periodista-alejandra-matus-por-la-censura-del-libro-negro-de-la-justicia-chilena&catid=37:libertad-expresion&Itemid=61](http://www.p-es.org/index.php?option=com_content&view=article&id=1520:chile-indemnizara-a-la-periodista-alejandra-matus-por-la-censura-del-libro-negro-de-la-justicia-chilena&catid=37:libertad-expresion&Itemid=61).

<sup>86</sup> IACHR. *Report No. 90/05. Case 12.142 (Merits)*. October 24, 2005. Paragraphs 58 and 60. Available in Spanish at: <https://www.cidh.oas.org/annualrep/2005sp/Chile12142.sp.htm>.

<sup>87</sup> Sistema de Tramitación de Proyectos del Congreso Nacional (Legislative Process System of the National Congress). *Boletín No. 5969-02: Sanciona el maltrato de palabra a Carabineros de Chile*. Available in Spanish at: <http://sil.senado.cl/docsil/proy6353.doc>. Library of the Chilean National Congress. December 9, 2008. *Avanza proyecto que sanciona el maltrato de palabra a carabineros*. Available in Spanish at: <http://www.bcn.cl/actualidad/legislativa/maltrato-palabra-carabineros>. *El Mercurio*. December 3, 2008. *Cámara aprobó proyecto que sanciona el maltrato verbal a carabineros*. Available in Spanish at: <http://www.emol.com/noticias/nacional/detalle/detallenoticias.asp?idnoticia=333651>.



expressions directed at public officials, generally known as ‘desacato laws,’ restrict freedom of expression and the right to information.”

62. During 2008, the Office of the Special Rapporteur received reports of acts of aggression and threats against journalists allegedly caused by private actors. On March 19, 2008, a bomb threat was allegedly made against the facilities of *Chilevisión*.<sup>88</sup> On June 22, 2008, private individuals who allegedly passed themselves off as state officials entered the facilities of *Radio 1 de Mayo* with the alleged intention of taking photographs of the building’s interior. The same media outlet has allegedly received threatening phone calls and physical attacks against its workers, presumably motivated by its investigations of the Mapuche people.<sup>89</sup> On October 23, 2008, social communicator Javiera López allegedly received death threats over the phone and a beating following her completion of a series of reports on drug trafficking for *Nor TV*.<sup>90</sup>

63. The Office of the Special Rapporteur also received information about the case of Víctor Salas, a photographer for the *EFE News Agency*, who was attacked on May 21, 2008 by a armed police officer in Valparaíso as he was covering a demonstration. The graphic reporter allegedly lost his right eye.<sup>91</sup>

64. Principle 9 of the Declaration of Principles signals that the “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”.

65. On another note, on October 12, 2008, Law No. 20.292 was promulgated by the State. This law introduces modifications to Law No. 18.168 – *Ley General de Telecomunicaciones* (General Telecommunications Law). According to the information received by the Special Rapporteurship, these reforms of the broadcast frequency concession mechanism allegedly created

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<sup>88</sup> Instituto Prensa y Sociedad/IFEX. March 20, 2008. *Santiago-based television station receives call criticising coverage, warning of a bomb*. Available at: <http://www.ifex.org/en/content/view/full/91861>. El Mercurio. March 19, 2008. *Chilevisión es evacuado por amenaza de bomba*. Available in Spanish at: <http://www.emol.com/noticias/nacional/detalle/detallenoticias.asp?idnoticia=296903>.

<sup>89</sup> International Association of Community Radio Broadcasters. July 29, 2008. *Preocupación por falsa fiscalización a radio comunitaria*. Available in Spanish at: <http://legislaciones.item.org.uy/index?q=node/708>; October 20, 2008. *Radio 1 de Mayo presenta querrela por hostigamientos y amenazas*. Available in Spanish at: <http://legislaciones.item.org.uy/index?q=node/784>. El Ciudadano. October 27, 2008. *Radio Primera de Mayo declara preocupación ante amenazas de muerte a su equipo*. Available in Spanish at: <http://www.elciudadano.cl/2008/09/29/radio-primer-de-mayo-declara-preocupacion-ante-amenazas-de-muerte-a-su-equipo/>.

<sup>90</sup> Reporters Without Borders/IFEX. October 27, 2008. *Journalist attacked and threatened after reporting on drug trafficking*. Available at: <http://www.ifex.org/en/content/view/full/97975>. Colegio de Periodistas de Chile (Chilean College of Journalists). October 24, 2008. *Colegio de Periodistas condena criminal agresión a reportera*. Available in Spanish at: [http://www.colegiodeperiodistas.cl/index.php?action=actualidad\\_nacional&noticia\\_id=339](http://www.colegiodeperiodistas.cl/index.php?action=actualidad_nacional&noticia_id=339). Cooperativa. October 24, 2008. *Periodista fue agredida por investigar el narcotráfico en Iquique*. Available in Spanish at: [http://www.cooperativa.cl/prontus\\_notas/site/artic/20081024/pags/20081024142051.html](http://www.cooperativa.cl/prontus_notas/site/artic/20081024/pags/20081024142051.html).

<sup>91</sup> Committee to Protect Journalists. May 23, 2008. *Chilean police officer strikes photographer*. Available at: <http://cpj.org/2008/05/chilean-police-officer-strikes-photographer.php>. Reporters Without Borders. May 22, 2008. *Un fotógrafo de la agencia española EFE podría perder un ojo tras sufrir una agresión policial en una manifestación*. Available in Spanish at: [http://www.rsf.org/article.php3?id\\_article=27148](http://www.rsf.org/article.php3?id_article=27148). El Mercurio. June 24, 2008. *Unión de reporteros gráficos estampa denuncia en Fiscalía Militar por fotógrafo*. Available in Spanish at: <http://www.emol.com/noticias/nacional/detalle/detallenoticias.asp?idnoticia=310064>. La Tercera. June 24, 2008. *Reporteros gráficos denuncian ante fiscalía militar agresión contra fotógrafo*. Available in Spanish at: [http://www.tercera.cl/contenido/25\\_24848\\_9.shtml](http://www.tercera.cl/contenido/25_24848_9.shtml). El Ciudadano. July 10, 2008. *Identificado agresor de fotógrafo Víctor Salas: Carabineros diluye, dilata y encubre*. Available in Spanish at: <http://www.elciudadano.cl/2008/07/10/identificado-agresor-de-fotografo-victor-salas-carabineros-diluye-dilata-y-encubre/>.

a system that provides for nearly automatic renewal of existing frequencies.<sup>92</sup> The Office of the Special Rapporteur reminds the State that in accordance with Principle 12 of the Declaration of Principles, “the concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals”.

## 7. Colombia<sup>93</sup>

66. The IACHR celebrates the release of journalists Mario Alfonso Puello<sup>94</sup> and Javier García Rangel,<sup>95</sup> who were held by the National Liberation Army (ELN) for four years and two months, respectively. The IACHR has repeatedly indicated that the taking of hostages constitutes a serious breach of International Humanitarian Law. Furthermore, the IACHR notes with satisfaction the continued implementation of the Journalist Protection Program by the Ministry of the Interior and Justice and draws attention to a recent decision of the Constitutional Court of Colombia ordering the Ministry to bring said program into line with the professional needs of journalists and the requirements of legal due process.<sup>96</sup>

67. The IACHR highlights the recent case law of the Supreme Court of Justice on access to information, which requires public entities to justify their decision when they refuse to disclose information citing reasons of national security. In its decision, the Court ruled that the Army had violated a journalist’s rights of petition by its refusal to provide him with information about the circumstances in which 10 persons said to be members of armed groups had met their deaths, on the grounds that those were matters pertaining to national defense and security.<sup>97</sup>

68. The IACHR also notes that in 2008 there were no murders directly relating to the practice of journalism and it values the progress in the investigation of a number of facts connected

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<sup>92</sup> Library of the National Congress. *Ley N° 20.292. Modifica la Ley 18.168, General de Comunicaciones, con el fin de perfeccionar el régimen legal de asignación y otorgamiento de concesiones de radiodifusión sonora*. [Law No. 20.292. Modifies Law 18.168, General Communications Law, with the end of perfecting the legal regime of assigning of frequencies and granting of licenses to radio and television stations]. Available in Spanish at: <http://sil.senado.cl/docsil/ley6387.txt>. Periodistas-es. September 3, 2008. *Preocupación por la renovación Express de concesiones de radio en Chile*. Available in Spanish at: [http://www.p-es.org/index.php?option=com\\_content&view=article&id=1389:preocupacion-por-la-renovacion-qexpressq-de-concesiones-de-radio-en-chile&catid=36:medios&Itemid=60](http://www.p-es.org/index.php?option=com_content&view=article&id=1389:preocupacion-por-la-renovacion-qexpressq-de-concesiones-de-radio-en-chile&catid=36:medios&Itemid=60). International Association of Community Radio Broadcasters. September 15, 2008. *Escandalosa aprobación de Ley que regula concesiones de radio*. Available in Spanish at: <http://amarcchile.wordpress.com/2008/09/12/amarc-chile-denuncia-escandalosa-aprobacion-de-ley-que-regula-concesiones-de-radio/>.

<sup>93</sup> This section corresponds to the chapter on freedom of expression in Colombia, part of Chapter IV, Volume I of the Annual Report of the IACHR.

<sup>94</sup> Reporters Without Borders. 6 June 2008. *Captured guerrilla says ELN was responsible for journalist’s abduction in February*. Available at [http://www.rsf.org/article.php3?id\\_article=25879](http://www.rsf.org/article.php3?id_article=25879). FLIP. June 19, 2008. *Journalist freed four months after abduction by guerrilla group*. Available at <http://www.flip.org.co/veralerta.php?idAlerta=303>. The State reports that Investigation No. 440016001139200880302 has been launched and is being conducted by the Office of Special Prosecutor 1 with the Riohacha Anti-Kidnapping Unit. Note DDH No. 5717/0223 from the Office of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs of the Republic of Colombia, February 5, 2009, page 55.

<sup>95</sup> The State reports that investigation No. 540016000727200800003 is underway and is being conducted by the Office of Special Prosecutor 2 with the Cúcuta Anti-Kidnapping Unit. Note DDH No. 5717/0223 from the Office of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs of the Republic of Colombia, February 5, 2009, page 55.

<sup>96</sup> Constitutional Court of Colombia. Decision T-1037 of 2008, Magistrate Jaime Córdoba Triviño. The judgment also ordered protection measures to be reinstated for the journalist Claudia Julieta Duque, who had received serious threats following investigations into the murder of the journalist Jaime Garzón on August 13, 1999, which measures were withdrawn without complying with the requirements of legal due process.

<sup>97</sup> Decision of the Supreme Court, Civil Cassation Chamber, of August 21, 2008. Magistrate Pedro Octavio Munar Cadena.

with murders of journalists.<sup>98</sup> However, notwithstanding the progress made, the impunity that surrounds crimes committed against journalist remains especially serious and,<sup>99</sup> therefore, the IACHR urges once again the Colombian authorities to investigate these crimes, impose appropriate penalties on those responsible, and provide adequate reparations to the victims.

69. Throughout 2008, the IACHR has received information about assaults on journalists and other persons who exercise their right to free expression to voice critical or dissenting opinions, such as Pedro Antonio Cárdenas,<sup>100</sup> Pedro José Severiche Acosta,<sup>101</sup> Sandra Patricia Troncoso,<sup>102</sup> Lila Leyva and Evelin Coba Vides.<sup>103</sup> In some cases the attacks were incited by public officials who sought to prevent certain information from coming to light. The IACHR has also received information about assaults committed during marches or public demonstrations by private citizens.<sup>104</sup>

70. The IACHR was also informed of at least 20 cases of journalists who were allegedly threatened for reasons to do with practicing their profession. In most cases the threats came following the publication or broadcast of reports of alleged local government corruption.<sup>105</sup> In this

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<sup>98</sup> Indeed, one of the alleged perpetrators of the murder of journalist Nelson Carvajal Carvajal was apprehended in 2008 and the Supreme Court of Justice was requested to reopen the case.

<sup>99</sup> According to a report of the Rapid Response Unit of the Inter-American Press Association, 125 journalists were murdered in Colombia between 1983 and 2007. In 57 of these cases the journalists were clearly killed because they were practicing their profession and in the remainder there have been no investigations by which to rule out that the crimes were professionally motivated. Of the 57 cases of journalists murdered for doing their jobs, 25 cases are at the preliminary stage without any evidence collected or persons charged. In 16 other instance the order was given to suspend or close the case. These cases involve local journalists who were reporting on administrative corruption in their respective areas. In all cases the proceedings were instituted by regional prosecutors and suspended or closed a short time after the events. Convictions have been handed down on the perpetrators in 12 cases; however, in the majority of them the masterminds were not identified and the persons who carried out the crimes were let out of prison after a few years upon qualifying for early release. Rapid Response Unit, Inter-American Press Association, 2008.

<sup>100</sup> IFEX. June 16, 2008. *Journalist assaulted in Bogotá, threatened with murder, obliged to cease distributing magazine in Honda*. Available at <http://www.ifex.org/es/content/view/full/94511> Pedro Antonio Cárdenas is a beneficiary of precautionary measures ordered by the IACHR. The State reported that investigation No. 110016000049200803607 is currently underway and is in the hands of the Office of Bogotá Sectional Prosecutor 330. Note DDH No. 5717/0223 from the Office of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs of the Republic of Colombia, February 5, 2009, page 56.

<sup>101</sup> FIP. January 15, 2008. *Iracundos concejales obstaculizan trabajo de periodista colombiano y hurtan material, y la FIP alerta a Procuraduría sobre caso de agresor de periodistas en Montería*. Available at <http://ameralatina.ijf.org/es/articles/fecolper-iracundos-concejales-obstaculizan-trabajo-de-periodista-colombiano-y-hurtan-material-y-la-f>

<sup>102</sup> IFEX. February 29, 2008. *Honda city councillor assaults woman television station director*. Available at <http://egypt.ifex.org/es/content/view/full/91234/index.html>.

<sup>103</sup> IFEX. August 5, 2008. *Mayor harasses radio station employees, assaults journalist following report on new traffic regulation*. Available at <http://egypt.ifex.org/es/content/view/full/95937.1.html>. FLIP. October 17, 2008. *Mayor verbally assaults journalists*. <http://www.flip.org.co/veralerta.php?idAlerta=318>.

<sup>104</sup> Oscar Gerardo Hernández and Antonio Campillo, FIP. March 7, 2008. *Atacados periodistas por encapuchado durante manifestación pacífica en Colombia*. Available at <http://ameralatina.ijf.org/es/articles/fecolper-atacados-periodistas-por-encapuchado-durante-manifestacin-pacifica-en-colombia>; Humberto Porto Molina, FLIP. April 3, 2008. *Journalists assaulted and threatened with murder during disturbances in Sincelejo*. Available at <http://www.flip.org.co/veralerta.php?idAlerta=290>; Daniela Bracamonte Rodríguez, IFEX. March 4, 2008. *Colombia: Venezuelan newspaper journalist assaulted by Maicao merchants*. Available at <http://egypt.ifex.org/en/content/view/full/91346/>; Mishelle Johana Muñoz, FLIP. October 6, 2008. *Journalist assaulted and threatened in Putumayo*. Available at <http://www.flip.org.co/veralerta.php?idAlerta=314>.

<sup>105</sup> Humberto Bedoya Henao, FIP. January 25, 2008. *FECOLPER: Amenazan de muerte a periodista en Villavicencio, Colombia*. Available at <http://www.ijf.org/es/articles/fecolper-amenazan-de-muerte-a-periodista-en-villavicencio-colombia>; William Salleg Taboada, FLIP. February 5, 2008. *Córdoba newspaper employees receive death threats over reports on corruption*. Available at <http://www.flip.org.co/veralerta.php?idAlerta=275>; Alberto Borda Martelo, IFEX. February 19, 2008. *Critical radio journalist receives death threat in Cartagena*. Available at <http://www.ifex.org/es/content/view/full/90849/>; Mario Ruiz, FLIP. November 21, 2008. *Two journalists receive death*

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connection, the IACHR expresses its concern at the circulation of pamphlets signed by alleged members of armed groups. On March 11, 2008, a pamphlet allegedly authored by the armed group known as the Águilas Negras was circulated in the Municipality of Manaure, Guajira, in which the journalist Kenneth Rivadeneira and eight other persons in the region were declared military targets.<sup>106</sup> Similarly, the IACHR has been told that in several cases the threats have prompted the communicators to leave their homes. The state's observations indicate that the Ministry of the Interior's Protection Program devotes approximately US\$ 764.000.00 per annum to the protection of journalists under threat<sup>107</sup>.

71. The IACHR notes with concern that most of these threats are designed to intimidate not only the journalists, but also the media outlets for which they work. This, combined with the fact that most of the threats occur in provincial areas, leads to the conclusion that the warnings may be intended to close down community radio stations. The IACHR reiterates that, as stated 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." The IACHR also reiterates that, as the Office of the Rapporteur for Freedom of Expression has noted, threats of this type help to create a climate conducive to self-censorship.<sup>108</sup>

72. The IACHR notes with concern that high-ranking public officials make statements that tend to generate an atmosphere of intimidation that may dramatically curb freedom of expression by persons who do not agree with government policies and lead to extremely serious situations such as the ones described the following. On February 10 and 11 2008, a presidential adviser<sup>109</sup>, spoke dismissively about a march announced for March 6, 2008, to commemorate victims of paramilitary groups, claiming that it had been convened by the FARC. This high-ranking official also associated the organizers of the demonstration with that outlawed group.<sup>110</sup> Subsequently, the Office of the President issued press releases in which it undertook to ensure the safety of those taking part in the demonstration but did not refute the serious claims made by the senior adviser, who continued to hurl accusations, especially at the human rights defender Iván Cepeda, one of the organizers of the march.

73. Following these declarations, the AUC issued similar statements about the organizing committee of the demonstration. A number of visible organizers of the demonstration were the victims of serious assaults and Edgar José Molina, Manuel José Reina Collazos, Leonidas Gómez

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threats. Available at: <http://www.flip.org.co/veralerta.php?idAlerta=329>; María Victoria Bustamante, FLIP. October 30, 2008. *Amenaza periodista del diario 'El Meridiano de Sucre'*. Available at: [www.flip.org.co](http://www.flip.org.co).

<sup>106</sup> IFEX. April 1, 2008. *Paramilitary death threats against radio journalist in Manaure*. Available at <http://egypt.ifex.org/es/content/view/full/92127/index.html>. The Commission presented a request for information to the State on the situation of Kenneth Rivadeneira.

<sup>107</sup> Note DDH No. 5717/0223 from the Office of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs of the Republic of Colombia, February 5, 2009, page 56.

<sup>108</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. "Impunity, Self-censorship and Armed Internal Conflict: An Analysis of the State of Freedom of Expression in Colombia" (2005). Available at <http://www.cidh.oas.org/relatoria/listDocuments.asp?categoryID=1&IID=1>

<sup>109</sup> José Obdulio Gaviria Escobar.

<sup>110</sup> Among other things, he said, "I, personally, won't be taking... the Colombian public can scarcely take part in a demonstration of this type when the ones organizing it are precisely those we would be marching against." *El País* newspaper, available at <http://www.elpais.com.co/paionline/notas/Febrero112008/obdulio.html>.

Rozo and Carlos Burbano were murdered, all between February 23 and March 5, 2008.<sup>111</sup> The State indicates that these murders are being investigated. Furthermore, a threat e-mailed on March 11, 2008, labeled 28 human rights defenders taking part in the March as military targets, saying that they had links to guerrilla groups.

74. The IACHR is troubled by the emergence of a pattern of sweeping negative statements about dissenting grassroots movements that link them to outlawed armed groups or “terrorist organizations” and suggest that behind their public demonstrations lurk their intent on destabilizing the State. This situation recurred during the cane cutters’ strike called in southwest Colombia on September 15, 2008, to denounce and renegotiate working conditions in this sector. High-ranking government officials –including the President of the Republic<sup>112</sup> and the Minister of Agriculture and Rural Development–<sup>113</sup> and senior representatives of the sugar growers association, including the president of ASOCAÑA,<sup>114</sup> told the media and the public that the strike was infiltrated by “dark forces”, “alien forces,” or, more explicitly, the FARC guerrilla movement.

75. Apropos of this protest, the Colombian intelligence authorities –the Administrative Security Department (DAS)– arrested and expelled from the country two French documentary filmmakers (Julien Dubois and Damien Fellous), banning them from entering the country for five years.<sup>115</sup> Senior government officials have referred to journalists who cover demonstrations as criminals in spite of the absence of any evidence or investigations to support these allegations. In the case of the aforementioned French journalists, notwithstanding the fact that the Director of the Administrative Security Department had said that there was no evidence of their involvement in outlawed groups,<sup>116</sup> the President of the Republic referred to this incident as follows: “[s]ome foreigners came and violated Colombian immigration laws. They came, consorted with terrorists and, taking advantage of the indigenous protest, helped to disrupt law and order there [...] Those foreigners ought to be in jail. We should not have deported them but prosecuted them and put them in prison because they are guilty of inciting violence [...] These visitors are criminals and act

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<sup>111</sup> The Colombia Office of the United Nations High Commissioner for Human Rights issued a press release on March 13, 2008, in which it said the following: “Decisive action is needed immediately to investigate and solve the February 28 incident in which shots were fired at the home of Ms. Luz Adriana González, a member of the Permanent Committee for the Defense of Human Rights and a promoter of the March 6 demonstration in Pereira; and to investigate and solve the murders of Messrs. Edgar José Molina (a Huipaz coordinator) in Algeciras, Huila, on February 23; Manuel José Reina Collazos (a member of the Partido Conservador) in Vijes, Valle, on February 25; Leonidas Gómez Rozo (leader of the UNEB union), in Bogotá on March 5; and Carlos Burbano (leader of the ANTHOC union) whose body was found in San Vicente de Caguán, Caquetá, on March 11. Colombia Office of the United Nations High Commissioner for Human Rights, press release dated March 13, 2008 <http://www.hchr.org.co/publico/comunicados/2008/comunicados2008.php3?cod=8&cat=73>.”

<sup>112</sup> Statements made by President Álvaro Uribe at a community council meeting in the city of Armenia, reported in *El Espectador* newspaper on September 27, 2008: “Uribe dice que el paro de corteros de caña sí está infiltrado por las FARC”, available at: <http://www.elespectador.com/articulo-uribe-dice-el-paro-de-corteros-de-cana-si-esta-infiltrado-farc>.

<sup>113</sup> See in this regard, an editorial published in *El Espectador* newspaper on September 25, 2008, available at: <http://www.elespectador.com/opinion/editorial/articulo-el-paro-de-los-corteros-de-cana>.

<sup>114</sup> Statements reported in an article published in *El Espectador* newspaper on September 25, 2008, available at: <http://www.elespectador.com/opinion/editorial/articulo-el-paro-de-los-corteros-de-cana>.

<sup>115</sup> See report published in *El Espectador* newspaper on September 25, 2008: “Expulsar, acusar y desinformar – Julien Dubois cuenta cómo fue desterrado de Colombia”, available at <http://www.elespectador.com/impreso/articuloimpreso86017-expulsar-acusar-y-desinformar>

<sup>116</sup> “We cannot confirm that the foreigners belong to any of these groups; the reason they were expelled is that they broke the immigration laws and the conditions under which they were authorized by the Colombian state to say in the country”, Hurtado added. <http://www.elespectador.com/noticias/judicial/audio-extranjeros-infiltrados-protestas-fueron-expulsados-del-pais>.

under false pretenses because here they are apologists for criminal acts and abroad they distort the facts. This cannot be allowed.”<sup>117</sup>

76. In this connection, the IACHR deems it pertinent to remind the State that the Inter-American Court has consistently held that freedom of expression (which also covers political criticism and social protest) is a fundamental right that should be guaranteed not only with respect to the circulation of information or ideas that are received favorably or considered inoffensive or indifferent, but also to those that offend, shock or disturb the State or any other sector of the population; such are the demands of pluralism, tolerance and the spirit of openness, which are essential in a democratic society.<sup>118</sup> Furthermore, in a recent ruling on the scope of the freedom of expression of public officials in the performance of their duties, the court held that it is not an absolute right and, therefore, may be subject to restrictions when it interferes with other rights recognized by the Convention, and particularly with the duties of the State with respect to all of the inhabitants of a particular territory.<sup>119</sup> In this case, the Court noted that while on certain occasions state authorities have a duty to make a statement on public-interest matters, “in making such statements the authorities are subject to certain restrictions such as having to verify in a reasonable manner, although not necessarily exhaustively, the truth of the facts on which their opinions are based, and this verification should be performed subject to a higher standard than that used by private parties, given the high level of credibility the authorities enjoy and with a view to keeping citizens from receiving a distorted version of the facts.”<sup>120</sup> Furthermore, they should bear in mind that, as public officials, they are in a position of guarantors of the fundamental rights of the individual and, therefore, their statements cannot be such that they disregard said rights.”

77. In 2008, the IACHR has also been informed about the frequent use of legal action to punish journalists for their opinions, which, in practice, can inhibit democratic and pluralistic debate about public affairs and give rise to self-censorship among journalists in the practice of their profession. In this regard, the IACHR warns against the possible opening of criminal investigations against journalists who refuse to reveal the source of information disclosed to them in confidence in the pursuit of their professional activities, and which could give rise to the presumption that a crime had been committed. For instance, in August 2008, President Álvaro Uribe Vélez asked that a criminal investigation be opened into the journalist Daniel Coronell for failing to publicly disclose in a timely manner the existence of a video that contained an interview apparently tying President Uribe’s administration to a bribery scandal.<sup>121</sup> It is worth recalling in this respect that Principle 8 of the Declaration of Principles on Freedom of Expression provides that “[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.”

78. The IACHR is also disturbed by the issuing of court orders to prevent news from being broadcasted. In May 2008, a government prosecutor requested the reporters for the investigative program “Séptimo Día” to surrender all the material they had in connection with one of

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<sup>117</sup> Remarks of the President of the Republic at a meeting of the Community Council in Quetame, October 18, 2008, [http://web.presidencia.gov.co/discursos/discursos2008/octubre/cc215\\_18102008.html](http://web.presidencia.gov.co/discursos/discursos2008/octubre/cc215_18102008.html).

<sup>118</sup> See, inter alia, I/A Court H.R., *Case of Herrera Ulloa*. Judgment of July 2, 2004. Series C No. 107; I/A Court H.R., *Ivcher Bronstein Case*. Judgment of February 6, 2001. Series C No. 74, and I/A Court H.R., “*The Last Temptation of Christ*” *Case (Olmedo Bustos et al.)*. Judgment of February 5, 2001. Series C No. 73.

<sup>119</sup> I/A Court H.R., *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”)*. Judgment of August 5, 2008. Series C No. 182.

<sup>120</sup> Cf. I/A Court H.R., *Case of Kimel*. Judgment of May 2, 2008 Series C No. 177, par. 79.

<sup>121</sup> CPJ. August 22, 2008. *El CPJ rechaza solicitud de Uribe de investigar a Coronell*. Available at <http://cpj.org/es/2008/08/colombia-el-cpj-rechaza-solicitud-de-uribe-de-inve.php>

their shows and ordered them not to air it. The order was issued as part of a criminal proceeding that was investigating allegations made by the program, according to which, a beautician was irregularly performing surgical procedures. In that regard Principle 5 of the Declaration of Principles on Freedom of Expression provides, "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."

## 8. Costa Rica

79. The Office of the Special Rapporteur welcomes the resolution on August 19, 2008 by the Third Chamber of the Supreme Court of Justice, which handed down a definitive decision in the homicide case of social communicator Parmenio Medina Pérez, who was murdered in July 2001.<sup>122</sup>

80. The Special Rapporteurship further applauds the decision of the Constitutional Chamber of the Supreme Court of Justice on April 30, 2008. In this decision, the Constitutional Chamber denied Former President Miguel Angel Rodríguez's request that the court force *La Nación* newspaper to turn over documents to him that had served as evidence for a publication citing his involvement in a corruption scandal.<sup>123</sup> In the case, the Constitutional Chamber remarked that "the fundamental right of journalists to maintain the secrecy of their sources [...] protects [...] the social conglomerate that owns the right to receive information [...] as such, this right guarantees a free, responsible and independent press". Nevertheless, the Office of the Special Rapporteur expresses concern that in the same decision, the tribunal sustained that "in the case of criminal jurisdiction, eventually and in certain fact situations, the right to maintain the secrecy of sources must cede in order to facilitate criminal investigations and the guarantee of certain fundamental rights. Absolute protections do not exist with respect to the secrecy of the social communicator's information sources. [...] The circumstances and situations in which secrecy of sources must yield before the necessities imposed by a criminal investigation will continue to be defined on a case by case basis by this Constitutional Tribunal".<sup>124</sup> The Office of the Special 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."

81. On another note, on September 5, 2008, the Constitutional Chamber of the Supreme Court of Justice ordered the Treasury Ministry to hand over "a copy of a contract to sell bonds of the State's debt to a financial entity of the People's Republic of China" to journalists Jorge Robert Lara and Alvaro Murillo of *La Nación* newspaper.<sup>125</sup> In its decision, the tribunal held that

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<sup>122</sup> Crimes Against Journalists. September 25, 2008. *Impunity - Costa Rica, Haití, Nicaragua, República Dominicana*. Available at: <http://www.impunidad.com/index.php?showresoluciones=285&idioma=us&id=5&idres=285>. *La Nación*. August 20, 2008. *Sala III ratifica condenas contra padre Calvo y Omar Chávez*. Available in Spanish at: [http://www.nacion.com/ln\\_ee/2008/agosto/20/sucesos1668543.html](http://www.nacion.com/ln_ee/2008/agosto/20/sucesos1668543.html).

<sup>123</sup> Inter American Press Association. *Costa Rica Report. 64th General Assembly, Madrid, Spain*. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=20&inford=314&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&inford=314&idioma=us). *La Nación*. 1 de mayo de 2008. *Sala IV confirma secreto profesional de periodistas*. Available in Spanish at: [http://www.nacion.com/ln\\_ee/2008/mayo/01/pais1520192.html](http://www.nacion.com/ln_ee/2008/mayo/01/pais1520192.html).

<sup>124</sup> Constitutional Chamber of the Supreme Court of Justice of Costa Rica. Judgment of April 30, 2008. *Expediente No. 07-005291-0007-CO. Res. 7548-2008*. Clauses (*Considerandos*) IV and V. Available in Spanish at: [https://www.u-cursos.cl/derecho/2008/2/DIPMUJ/1/material\\_alumnos/previsualizar.php?id\\_material=20967](https://www.u-cursos.cl/derecho/2008/2/DIPMUJ/1/material_alumnos/previsualizar.php?id_material=20967).

<sup>125</sup> According to the information received, in the case, representatives of the State alleged that the information constituted a "stock market secret" and that, at any rate, the reservation of the information was a requirement for negotiating the sale price. Inter American Press Association. *Costa Rica Report. 64th General Assembly, Madrid, Spain*. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=20&inford=314&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&inford=314&idioma=us). *La Nación*. September 6, 2008. *Sala IV exige al Gobierno dar información de bonos chinos*. Available in Spanish at: [http://www.nacion.com/ln\\_ee/2008/septiembre/06/pais1690988.html](http://www.nacion.com/ln_ee/2008/septiembre/06/pais1690988.html).

once these figures “go deep into matters of public investment and commitment of future public funds”, they should therefore “be subjected to the implicit principles of transparency and public administration, particularly when dealing with aspects that generally affect the national collective.” According to the tribunal, the “refusal to provide this information [would result] in a violation of the right of access to public information as is established in [...] the Constitution”.<sup>126</sup> Principle 4 of the Declaration of Principles indicates that “access to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right”.

82. While the Office of the Special Rapporteur clearly values these important advances, the Office has also received information about legal reform processes that could unduly restrict the exercise of freedom of expression. In October 2008, the Commission on Electoral Reform allegedly included a provision within the Electoral Code bill that would criminalize the publication of opinion polls in the three days prior to popular elections and punish the directors of media outlets that violate this provision with jail time.<sup>127</sup> The Office of the Special Rapporteur recalls that Principle 5 of the Declaration of Principles 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.”

## 9. Cuba<sup>128</sup>

83. The IACHR has repeatedly held that Cuba is the only country in the Hemisphere where it can be stated categorically that there is no freedom of expression.<sup>129</sup> Such statements are based essentially on the persistent problems reflected in the following conditions: a) deprivation of personal freedom as a result of expression of opinions or criticism by journalists and dissidents; b) restrictions to the right of access to information over the Internet; c) indirect restrictions on the practice of journalism; and, d) the criminalization of public demonstrations.

84. The IACHR observes with concern that in Cuba there are still more than 20 journalists in prison and that the health of a number of them has deteriorated as a result of the conditions in which they are held. This makes Cuba the country with the highest number of imprisoned journalists in the region.

85. Having said that, the IACHR notes the release of two independent journalists: Alejandro González Raga, a freelancer reporter; and José Gabriel Ramón Castillo, the director of the press agency *Instituto Cultura y Democracia* Press. Both of them were arrested in March 2003 during the so-called “Black Spring” operation.<sup>130</sup>

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<sup>126</sup> Constitutional Chamber of the Supreme Court of Justice of Costa Rica. Judgment of September 5, 2008. *Expediente No. 08-003718-0007-CO. Res. No. 2008-013658*. Clause (*Considerando*) IV.

<sup>127</sup> According to the information received, on November 20, 2008, the bill had been approved by the Congressional Commission on Electoral Reform, yet has not yet been debated on the floor of Congress. *La Nación*. November 20, 2008. *Diputados dan primer aval a cambios en Código Electoral*. Available in Spanish at: [http://www.nacion.com/ln\\_ee/2008/noviembre/20/pais1782195.html](http://www.nacion.com/ln_ee/2008/noviembre/20/pais1782195.html). *La Prensa Libre*. October 10, 2008. *Diputados avalan prisión para directores de medios en proyecto de reformas electorales*. Available in Spanish at: <http://www.prens Libre.co.cr/2008/octubre/10/nacionales02.php>. *La Nación*. October 9, 2008. *Colegio de Periodistas opuesto a cárcel para directores de medios*. Available in Spanish at: [http://www.nacion.com/ln\\_ee/2008/octubre/09/pais1731483.html](http://www.nacion.com/ln_ee/2008/octubre/09/pais1731483.html).

<sup>128</sup> This section corresponds to the chapter on freedom of expression in Cuba, part of Chapter IV, Volume I of the Annual Report of the IACHR.

<sup>129</sup> IACHR, *Annual Report 2004*, Volume II, Chapter IV, paragraph 84. See also CIAHR, report No. 67/06. Case 12.476. Merits; Oscar Elías Biscet *et al.*; Cuba. October 21, 2006, paragraph 189.

<sup>130</sup> Committee for the Protection of Journalists (CPJ). “*The CPJ Applauds the Imminent Release of Two Cuban Journalists*.” Available at: <http://cpj.org/es/2008/02/31-cpj-saluda-la-liberación-inminente-de-dos-perio.php>. Reporters Without

86. The IACHR has also been told that the director of the independent newsletter *Porvenir*, Yordi García Fournier, was arrested in Guantanamo province and convicted in a summary trial on September 3, charged with resistance and disobedience. According to the information received, the reporter had gone to visit a friend in jail and was arrested after shouting anti-government slogans.<sup>131</sup>

87. As in previous reports, the IACHR observes that the State uses criminal proceedings as a mechanism to punish and restrict free expression of opinions. Many of the journalists who are currently incarcerated were tried criminally for violations of Section 91 of the Criminal Code, and Law No. 88, and also the utilization of the figure "potentially criminally dangerous to society". The IACHR has established that such criminal offenses and descriptions "constitute a means of silencing ideas and opinions, as they deter any type of criticism out of fear of the punishment described above. In the opinion of the IACHR, practices of this sort affect the very essence of the right to freedom of investigation, opinion, expression, and dissemination established in Article IV of the American Declaration. The IACHR further emphasizes that by virtue of the collective dimension of this right, these provisions affect not only the persons who are punished by the Cuban courts that apply them, but also Cuban society as a whole."<sup>132</sup> According to information available to date, these legal provisions continue to be in effect.

88. The IACHR reiterates that criminal proceedings and sentences issued on the basis of this provision, are incompatible with the exercise of the right to freedom of investigation, opinion, expression, and dissemination, constitutes violation of Article IV of the American Declaration, *inter alia*, to the detriment of all the victims.

89. Restrictions on the right to access information continue to be of concern to the IACHR. These restrictions are reflected, in part, by the difficulty in obtaining information about the situation as regards freedom of expression, which makes it complicated to record all the possible violations of this right and any possible progress in terms of guarantees for the exercise of this right.

90. The IACHR recognizes that in 2008 it was made possible for Cubans to have access to cell phones and electronic devices, such as computers. However, according to information received, certain rules that restrict full Internet access remain in place.<sup>133</sup> Public connections are available at cyber cafés (which are government-controlled) and hotels, but reportedly the cards or

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Borders (RWB). "Reporters Without Borders Hopes More People Will Be Released After the Release of Four Dissidents Arrested During 'Black Spring', Including One Journalist." Published on February 18, 2008. Available at: <http://www.rsf.org/article.php3?idarticle=25783>. Inter-American Press Association. "IAPA Reiterates Request for Release in Cuba of All Independent Journalists." Published on February 15, 2008. Available at: <http://www.sipiapa.com/cuba/espanol/15febrero2008.htm>.

<sup>131</sup> IAPA. Sixth-Fourth General Assembly, October 2-7, 2008, Madrid Spain. Report on Cuba. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=20&infoid=315&idioma=sp](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&infoid=315&idioma=sp). La Nueva Cuba. September 4, 2008. "Youths arbitrarily arrested in Guantanamo. Prison authorities use tear gas to quiet anti-government cries". Available at <http://www.lanuevacuba.com/archivo/angelica-mora-205.htm> Agencia de Prensa Libre Oriental. *Por Yordis e Israel*. <http://www.aplopress.com/Yordisrael.pdf>.

<sup>132</sup> IACHR, Case 12.476 Oscar Elías Biscet *et al.*, Cuba, Report on Merits No. 67/06 dated November 21, 2006, paragraph 209.

<sup>133</sup> RSF. "Internet enemies: Cuba". Available at: [http://www.rsf.org/article.php3?id\\_article=10611&Validar=OK](http://www.rsf.org/article.php3?id_article=10611&Validar=OK). IAPA. Sixth-Fourth General Assembly, October 2-7, 2008, Madrid Spain. Report on Cuba. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=20&infoid=315&idioma=sp](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&infoid=315&idioma=sp).



passes needed to use these connections are expensive and sometimes hard to find.<sup>134</sup> Bloggers<sup>135</sup> sometimes use these public connections or those of foreign agencies, for example, to publish their reports. Certain servers, such as Yahoo and Hotmail MSN continue to be hard to access.<sup>136</sup>

91. According to information received by the IACHR, after the Cuban government announced this lifting of measures in March of this year, there were problems for several days in the ability to access blogs on the *desdecuba.com* platform, including one of the most popular in the country, Yoani Sánchez's *Generation Y*.<sup>137</sup> In May, Sánchez won the Ortega and Gasset award given by the Spanish newspaper *El País de Madrid* in the Digital Journalism category but he was denied permission to leave Cuba to attend the award ceremony in Spain.<sup>138</sup> In addition, in May of 2008, the television program "Round Table" showed photographs, private electronic mail and telephonic recordings that, according to government officials, were part of a criminal investigation against opposition leaders. According to the information received, the Ministry of the Interior used its authority to violate postal and electronic correspondence without prior judicial permission.<sup>139</sup> The display of private electronic mail on the program, had an impact on the users of *Cuba Morón Mail*. According to the information received, many users stopped going to the navigation room and stopped accessing their electronic mail accounts.<sup>140</sup>

92. With regard to the Internet, the IACHR recalls that it

[...] is an instrument that is capable of strengthening the democratic system, contributing to the economic development of the countries of the region, and strengthening the full exercise of freedom of expression. The Internet represents a technology unprecedented in the history of communications, that provides for rapid access and transmission to a universal network of multiple and varied information. Maximizing citizens' active participation by promoting use of the Internet contributes to the political, social, cultural, and economic development of countries, and strengthens democratic society. The Internet in turn has the potential to be an ally in promoting and disseminating human rights and democratic ideals and a significant tool for activating human rights organizations, since its speed and scope make it possible to

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<sup>134</sup> CPJ. February 5, 2008. "Attacks on the press 2007: Cuba". Available at: <http://cpj.org/2008/02/attacks-on-the-press-2007-cuba.php>. RWB. "Restricted Access to a Blog Platform: "Access to the Media Cannot be Provided Without Granting More Freedom of Expression." Published on March 31, 2008. Available at: [http://www.rsf.org/article.php3?id\\_article=26397](http://www.rsf.org/article.php3?id_article=26397).

<sup>135</sup> Bloggers are persons who periodically publish and update written, photographic, music and film material on an individual or collective Internet website.

<sup>136</sup> RWB. "Restricted Access to a Blog Platform: "Access to the Media Cannot be Provided Without Granting More Freedom of Expression." Published on March 31, 2008. Available at: [http://www.rsf.org/article.php3?id\\_article=26397](http://www.rsf.org/article.php3?id_article=26397). IAPA. Report on Cuba. General Assembly, October 3-7, 2008. Madrid, Spain. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=20&inforid=315&idioma=sp](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&inforid=315&idioma=sp). CPJ. February 5, 2008. "Attacks on the press 2007: Cuba". Available at: <http://cpj.org/2008/02/attacks-on-the-press-2007-cuba.php>; RSF. "Internet enemies: Cuba". Available at: [http://www.rsf.org/article.php3?id\\_article=26109&Validar=OK](http://www.rsf.org/article.php3?id_article=26109&Validar=OK).

<sup>137</sup> RWB. "Restricted Access to a Blog Platform: "Access to the Media Cannot be Provided Without Granting More Freedom of Expression." Published on March 31, 2008. Available at: [http://www.rsf.org/article.php3?id\\_article=26397](http://www.rsf.org/article.php3?id_article=26397). Reuters: "Cuba Blocks Access to Top Cuban Blog". Article published on March 24, 2008. Available at: <http://www.reuters.com/article/technologyNews/idUSN2432888520080324>.

<sup>138</sup> IAPA/IFEX. "Founder of Cuban Web Site Denied Permission to Leave; Uruguayan Journalist Threatened; Other Bolivian Reporters Attacked." Published on May 7, 2008. Available at: <http://www.ifex.org/fr/content/view/full/93374>.

<sup>139</sup> IAPA. Report on Cuba. General Assembly, October 3-7, 2008, Madrid, Spain. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=20&inforid=315&idioma=sp](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&inforid=315&idioma=sp).

<sup>140</sup> Cubanet: "Electronic Fear". Alert issued on June 17, 2008, available at: <http://www.cubanet.org/CNews/y08/junio08/17noticias4.html>.

transmit and receive immediately situations affecting the fundamental rights of individuals in different regions of the world.”<sup>141</sup>

93. The IACHR would like to emphasize that Principle 4 of the 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.”

94. In addition, the IACHR has received information in 2008 of instances of intimidation and harassment of journalists by police agents, which constitute restrictions on the exercise of the freedom of expression. As an example, in April of this year journalist Ernesto Corría Cabrera working for press agency *Nueva Prensa Cubana*, was arrested and expelled from Havana to Camaguey after printing a news report in the United States Interests Section at the Swiss Embassy. According to information received, the journalist was accused of violating a decree that requires that anyone who does not live in the Cuban capital must request special permission if they remain for more than 24 hours. On several occasions State Security agents had warned the reporter that if he did not cease his journalistic efforts, he would be subject to prosecution for violations of Law 88.<sup>142</sup>

95. In addition, Carlos Serpa Maceira, a journalist working for the *Prensa Sindical Press Agency* and correspondent for *Misceláneas de Cuba*, denounced that in June 2008 he was arrested by State Security agents and moved to a police station where he was charged with promoting “provocative and mercenary actions under the direction of the United States of America’s Interests Section in Cuba.” Serpa Maceira was warned by the police that he should cease his journalistic effort and they threatened him with deportation to Isla de la Juventud for not having official permission to reside in Havana.<sup>143</sup>

96. In this regard, Principle 9 of the Declaration of Principles for the Freedom of Expression provides, among other things, that intimidation and threats constitute a violation of fundamental individual rights and “severely limits the freedom of expression.” The IACHR understands that the arrest and subsequent restrictions and intimidations to which the reporters were subjected are clear cases of limiting journalistic efforts and, therefore, the exercise of the freedom of expression.

97. The IACHR observes that actions taken to repress social demonstrations continue. This situation has particularly affected the so-called Ladies in White, a group that is permanently repressed for the protests it stages.<sup>144</sup>

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<sup>141</sup> IACHR, *Annual Report 1999*; Annual Report of the Office of the Special Rapporteur for Freedom of Expression 1999; Chapter II. Evaluation of the Status of Freedom of Expression in the Hemisphere; D. Internet and Freedom of Expression.

<sup>142</sup> CPJ. “Provincial Journalist Detained and Expelled from Havana.” Alert published on April 11, 2008, available at: <http://www.cpj.org/news/2008/americas/cuba11apr08na.html>. RWB. “Reporters Without Borders is Concerned for the Health of a Journalist Who Has Been Imprisoned for Five Years”. Published on August 1, 2008. Available at: <http://www.rsf.org/article.php3?idarticle=28038>.

<sup>143</sup> IAPA. “IAPA’ Condemns Repression of Independent Journalist in Cuba.” Published on June 6, 2008. Available at: [http://www.sipiapa.com/v4/index.php?page=cont\\_comunicados&seccion=detalles&idioma=br](http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&idioma=br). El Caribe: “Arrest of Journalists in Cuba Condemned.” Article published on June 7, 2008, available at: [http://www.elcaribecdn.com/articulo\\_caribe.aspx?id=170414&quid=ED68C834C5AB4FD5B5AE58990A4B6DE&Seccion=14](http://www.elcaribecdn.com/articulo_caribe.aspx?id=170414&quid=ED68C834C5AB4FD5B5AE58990A4B6DE&Seccion=14).

<sup>144</sup> El Tiempo. “Cuban Police Disperse Protest of Ladies in White.” Article published on April 22, 2008, available at: [http://www.eltiempo.com/internacional/lacionamerica/noticias/ARTICULO-WEB-NOT\\_INTERIOR-4111791.html](http://www.eltiempo.com/internacional/lacionamerica/noticias/ARTICULO-WEB-NOT_INTERIOR-4111791.html).



98. The IACHR points out that “participation of societies through public demonstrations is important to strengthen the democratic life of societies. Generally speaking, as a manifestation of freedom of expression and freedom of assembly, it plays a key social role, which leaves the state little room to justify a restriction of this right.”<sup>145</sup>

99. In this regard, the IACHR reiterates the opinion of its Office of the Special Rapporteur for Freedom of Expression which, in its 2002 Report, stated that

the *per se* criminalization of public demonstrations is, in principle, inadmissible, provided they take place in accordance with the right of free expression and the right of assembly. In other words, the question is whether the application of criminal sanctions is justified under the Inter-American Court’s stance whereby such a restriction (i.e. criminalization) must be shown to satisfy an imperative public interest that is necessary for the functioning of a democratic society. Another question is whether the imposition of criminal sanctions is the least harmful way of restricting the freedom of expression and right of assembly exercised through a demonstration in the streets or other public space. It should be recalled that in such cases, criminalization could have an intimidating effect on this form of participatory expression among those sectors of society that lack access to other channels of complaint or petition, such as the traditional press or the right of petition within the state body from with the object of the claim arose. Curtailing free speech by imprisoning those who make use of this means of expression would have a dissuading effect on those sectors of society that express their points of view or criticism of the authorities as a way of influencing the processes whereby state decisions and policies that directly affect them are made.<sup>146</sup>

100. In this sense, the IACHR reiterates the pressing need that States, when imposing restrictions on this form of expression, conduct a rigorous analysis of the interests it intends to protect by way of the restriction, taking into account the high level of protection merited by the right to assembly and the freedom of expression as rights that give form to citizen participation and to the oversight of State actions in public matters.<sup>147</sup>

## 10. Dominica

101. The Office of the Special Rapporteur was informed that on June 24, 2008, Carlisle Jno-Baptistem, a journalist with the *Chronicle Newspaper*, was prevented from entering the Parliament of Dominica, by order of the Speaker of the House of Assembly, Alix Boyd Knights. According to the information received, the parliamentarian used the criticisms the journalist had made against her as the justification for her decision and conditioned the journalist’s entry upon him apologizing to her.<sup>148</sup> The Special Rapporteurship highlights what is indicated in Principle 5 of the Declaration of Principles, when it states that “the imposition of obstacles to the free flow of information violate[s] the right to freedom of expression.”

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<sup>145</sup> IACHR; *Annual Report 2005*; Vol II. Report from the Office of the Special Rapporteur for Freedom of Expression; Chapter V. Public Demonstrations as an Exercise of the Freedom of Expression and Freedom of Assembly.

<sup>146</sup> IACHR, *Report on the Situation of the Human Rights Defenders in the Americas*, OAS/Ser.L/V/II.124/Doc. 5 rev. 1, 7 March 2006, paragraph 62.

<sup>147</sup> IACHR, *Report on the Situation of the Human Rights Defenders in the Americas*, OAS/Ser.L/V/II.124/Doc. 5 rev. 1, 7 March 2006, paragraph 62.

<sup>148</sup> Dominica News Online. July 25, 2008. *Carlisle banned from the House! ... Speaker demands apology*. Available at: <http://dominicanewsonline.com/default.asp?sourceid=&smenu=1&twindow=&mad=&sdetail=723&wpage=1&skeyword=&sdate=&ccat=&ccatm=&restate=&restatus=&reoption=&retype=&repmin=&repmax=&rebed=&rebath=&subname=&pform=&sc=2554&hn=dominicanewsonline&he=.com>. Nation News. July 28, 2008. *Reporter banned from Parliament*. Available at: <http://www.nationnews.com/301303308267808.php>. Dominica News. July 25, 2008. *Journalist Carlisle Jno-Baptiste banned from the House of Assembly – Unless he apologizes to the Speaker*. Available at: <http://www.dominica-weekly.com/news/journalist-carlisle-jno-baptiste-banned-from-the-house-of-assembly-unless-he-apologies-to-the-speaker/>.

## 11. Dominican Republic

102. The Office of the Special Rapporteur celebrates the advancement represented by the decision of the Supreme Court of Justice on December 19, 2007 to definitively convict the authors of the murder of journalist Orlando Martínez Howley on March 17, 1975.<sup>149</sup>

103. Despite this positive development, on August 7, 2008, the assassination of Vicente Normando García, a cameraman and musical producer, took place. According to the information received, García covered police information. Several months prior to his death, he allegedly received death threats in connection with his work. The Special Rapporteurship deplores this crime and exhorts the State to identify and punish the perpetrators.<sup>150</sup>

104. Throughout the year, there were diverse reports of attacks and threats allegedly related to the exercise of journalistic activity.<sup>151</sup> Some of these attacks may constitute presumptive reprisals by State agents. In August 2008, journalist Héctor Gerardo reported that he was attacked and stripped of his identification and work product by members of the Police.<sup>152</sup> In that same month, journalist Félix Rubio claimed to have been attacked by the new public relations officer of the Armed Forces.<sup>153</sup>

105. The attack suffered by the presenter of the television station *Canal Mega Visión 43*, Juan Bonilla Martínez, generates special concern. In an incident occurring in the context of the tensions surrounding the presidential race, Mr. Bonilla Martínez's vehicle was the target of gunfire while parked in front of the headquarters of his media outlet.<sup>154</sup> Another notorious case was that of journalist Carlos Corporan. According to Domingo Porfirio Rojas Nina, the High Commissioner of the

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<sup>149</sup> Inter American Press Association. April 25, 2008. *La SIP mantiene reunión sobre impunidad con el Poder Judicial de República Dominicana*. Available in Spanish at: [http://www.sipiapa.org/v4/index.php?page=cont\\_comunicados&seccion=detalles&id=3916&idioma=sp](http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=3916&idioma=sp). Listín Diario. December 20, 2007. *Suprema aumenta de 20 a 30 años condena de Pou Castro*. Available in Spanish at: <http://listindiario.com/app/article.aspx?id=41477>.

<sup>150</sup> Office of the Special Rapporteur - IACHR. August 14, 2008. *Press Release R37/08*. Available at: <https://www.cidh.oas.org/relatoria/showarticle.asp?artID=732&IID=1>. Committee to Protect Journalists. August 8, 2008. *Cameraman who covered crime shot dead*. Available at: <http://cpj.org/2008/08/cameraman-who-covered-crime-shot-dead.php>. Reporters Without Borders. August 8, 2008. *TV cameraman gunned down in Santiago*. Available at: [http://www.rsf.org/article.php3?id\\_article=28108](http://www.rsf.org/article.php3?id_article=28108).

<sup>151</sup> Reporters Without Borders. October 7, 2008. *Surprising silence from authorities about disturbing surge in press freedom violations*. Available at: [http://www.rsf.org/article.php3?id\\_article=28857](http://www.rsf.org/article.php3?id_article=28857). International Federation of Journalists. November 11, 2008. *La FIP expresa su preocupación por la ola de amenazas contra periodistas de República Dominicana*. Available in Spanish at: <http://www.fipcolombia.com/noticiaAmpliar.php?noticia=2681>. Medios Latinos. September 19, 2008. *Colegio dominicano de periodistas realizará campaña en el país y en el exterior para denunciar acoso y hostilidad hacia la prensa*. Available in Spanish at: <http://www.medioslatinos.com/modules/news/article.php?storyid=1608>. La Verdad Dominicana. November 25, 2008. *SNTP denuncia y condena amenazas de muerte a miembros*. Available in Spanish at: <http://laveraddominicana.wordpress.com/2008/11/25/sntp-denuncia-y-condena-amenazas-de-muerte-a-miembros/>.

<sup>152</sup> Diario a Diario. August 15, 2008. *Periodista relata agresión*. Available in Spanish at: [http://www.diarioadiario.com/?module=displaystory&story\\_id=15427&format=html](http://www.diarioadiario.com/?module=displaystory&story_id=15427&format=html). Medios Latinos. September 19, 2008. *Colegio dominicano de periodistas realizará campaña en el país y en el exterior para denunciar acoso y hostilidad hacia la prensa*. Available in Spanish at: <http://www.medioslatinos.com/modules/news/article.php?storyid=1608>.

<sup>153</sup> El Nuevo Diario. August 20, 2008. *Periodista Félix Rubio denuncia agresión*. Available in Spanish at: <http://www2.elnuevodiario.com.do/app/article.aspx?id=116253>. Medios Latinos. September 19, 2008. *Colegio dominicano de periodistas realizará campaña en el país y en el exterior para denunciar acoso y hostilidad hacia la prensa*. Available in Spanish at: <http://www.medioslatinos.com/modules/news/article.php?storyid=1608>.

<sup>154</sup> Reporters Without Borders. May 22, 2008. *Journalist's car fired at in post-electoral tension*. Available at: [http://www.rsf.org/article.php3?id\\_article=27150](http://www.rsf.org/article.php3?id_article=27150). Diario Digital. May 21, 2008. *Gremio advierte sobre agresión a periodista Bonilla*. Available in Spanish at: [http://diariodigital.com.do/?module=displaystory&story\\_id=29010&format=html](http://diariodigital.com.do/?module=displaystory&story_id=29010&format=html).

National Human Rights Commission of the Dominican Republic, a plot existed to discredit this communicator, assassinate him and attribute the crime to the drug trade.<sup>155</sup>

106. Other acts of violence perpetrated against social communicators were charged to specific individuals. In February 2008, journalist Johnny Alberto Salazar was beaten and threatened with death by an individual whom he had been investigating for alleged links to the drug trade.<sup>156</sup> In August 2008, journalist Vianco Martínez reported that he had been physically assaulted by two individuals responsible for the security of an artist as he waited to interview him.<sup>157</sup> In October 2008, communicator Manuel Antonio Vega was allegedly the victim of phone threats attributed to persons involved in the narcotics trade.<sup>158</sup> According to the information received, the journalist was also allegedly the victim of acts of intimidation by a local judge and a provincial representative.<sup>159</sup>

107. The Special Rapporteurship recalls that Principle 9 of the Declaration of Principles indicates that the “murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the State to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

108. On another note, the Office of the Special Rapporteur warns that several judicial decisions were handed down this year that could affect the right to keep sources of information confidential. Such was the case of an order handed down by the judge of the Second Criminal Court of the National District to seize videos and unedited documents related to the ongoing investigation of a dairy products company by journalists Nuria Piera and Luis Eduardo Lora. According to the information received, this judicial order occurred as a result of a suit for criminal defamation (*difamación e injuria*) filed by the company against the journalists.<sup>160</sup> The Office of the Special

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<sup>155</sup> Reporteros Without Borders. October 7, 2008. *Surprising silence from authorities about disturbing surge in press freedom violations*. Available at: [http://www.rsf.org/article.php3?id\\_article=28857](http://www.rsf.org/article.php3?id_article=28857). El Nuevo Diario. September 30, 2008. *Rojas Nina denuncia trama para asesinar al periodista; acusa a dos funcionarios judiciales*. Available in Spanish at: [http://www2.elnuevodiario.com.do/app/windows\\_various/print\\_news/print\\_display.aspx?article=121969&printPhotos=False](http://www2.elnuevodiario.com.do/app/windows_various/print_news/print_display.aspx?article=121969&printPhotos=False).

<sup>156</sup> Al Momento. February 10, 2008. *Periodista Jhonny Alberto Salazar, bajo amenazas del narcotráfico*. Available in Spanish at: <http://www.almomento.net/?c=120&a=4684>. International Federation of Journalists. November 11, 2008. *La FIP expresa su preocupación por la ola de amenazas contra periodistas de República Dominicana*. Available in Spanish at: <http://www.fipcolombia.com/noticiaAmpliar.php?noticia=2681>.

<sup>157</sup> Diario Digital RD. August 24, 2008. *Agreden a Vianco Martínez. SNTP denuncia periodista es amenazado por narcotráfico*. Available in Spanish at: <http://www.diariodigital.com.do/articulo,32194.html>. Reporters Without Borders. October 7, 2008. *Surprising silence from authorities about disturbing surge in press freedom violations*. Available at: [http://www.rsf.org/article.php3?id\\_article=28857](http://www.rsf.org/article.php3?id_article=28857).

<sup>158</sup> Reporteros sin Fronteras. October 7, 2008. *Surprising silence from authorities about disturbing surge in press freedom violations*. Available at: [http://www.rsf.org/article.php3?id\\_article=28857](http://www.rsf.org/article.php3?id_article=28857). Diario Digital RD. August 24, 2008. *Agreden a Vianco Martínez. SNTP denuncia periodista es amenazado por narcotráfico*. Available in Spanish at: <http://www.diariodigital.com.do/articulo,32194.html>.

<sup>159</sup> Listín Diario. September 19, 2008. *CDP pide a Suprema investigar caso periodista que denuncia amenaza por jueza Hato Mayor*. Available in Spanish at: <http://listindiario.com/app/article.aspx?id=74214>. La Verdad Dominicana. September 12, 2008. *Periodista de Hato Mayor denuncia amenazas*. Available in Spanish at: <http://laveraddominicana.wordpress.com/2008/09/12/periodista-de-hato-mayor-denuncia-amenazas/>.

<sup>160</sup> Inter American Press Association. September 19, 2008. *Court ruling on investigative reporting in Dominican Republic raises concern*. Available at: [http://siapiapa.com/v4/index.php?page=cont\\_comunicados&seccion=detalles&id=4031&idioma=sp](http://siapiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4031&idioma=sp). El Nuevo Diario. September 18, 2008. *Juez autoriza fuerza pública a incautar videos de Nuria Pereira*. Available in Spanish at: <http://www2.elnuevodiario.com.do/app/article.aspx?id=120263>. Hoy. September 18, 2008. *Juez autoriza incautar videos de Huchi y Nuria*. Available in Spanish at: <http://www.hoy.com.do/el-pais/2008/9/18/247830/Juez-autoriza-incautar-videos-de-Huchi-y-Nuria>.

Rapporteur expresses its concern about the adoption of these kind of decisions and notes that Principle 8 of the Declaration of Principles stipulates that “every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.”

109. The Special Rapporteurship applauds the decision of the Supreme Court of Justice on May 21, 2008 that recognized that access to information is a “fundamental right” derived from freedom of expression. The Court affirmed the decision being appealed, in which the Contentious Administrative Court held that while Law No. 200-04 (General Law of Free Access to Public Information) establishes certain limits to access to information, these limits did not apply to the documents solicited. The Court held that the information in question “does not qualify as classified information, nor does its delivery prejudice the national interest, as it is information of public interest”.<sup>161</sup> Notwithstanding the advancement represented by the preceding decision, the Office of the Special Rapporteur considers that several dispositions of Law No. 200-04 should be modified so as to conform to the standards of the Inter-American System in this area.<sup>162</sup> The Office of the Special Rapporteur reminds that Principle 4 of the Declaration of Principles establishes that “access to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right.”

110. The Special Rapporteur’s Office also highlights the decision of the Supreme Court of Justice on August 25, 2008 that overturned the convictions of journalist Miguel Antonio Franjul Bucarelli, journalist Ramón Antonio Cruz Benzán, and Editorial *Listín Diario* for a violation of Article 19 of Law No. 6132 (Law on Expression and Diffusion of Thought). The plaintiff had sought rectification in the newspaper for information that he considered erroneous. The newspaper published an article informing the public about the suit for rectification by the plaintiff and providing a note clarifying the information originally published. The party soliciting rectification then sued the journalists and the editorial company because they were unsatisfied with the text. The Supreme Court of Justice struck down the decision of the First Bench of the Criminal Chamber of the Court of Appeals of the National District. The Court held that a subsequent publication explaining the reasons that led the media outlet to publish the article in question does not violate the right of rectification.<sup>163</sup>

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<sup>161</sup> Supreme Court of Justice of the Dominican Republic. Judgment of May 21, 2008. *No. 003-2007-00745*. Pages 25 and 27. Available in Spanish at: [http://www.suprema.gov.do/sentsem/Laboral/2008/21mayo/Oficina%20Para%20el%20Reordenamiento%20del%20Transporte%20\(OPRET\)%20-%20Luis%20Eduardo%20Lora%20Iglesias%20\(COnt.%20Trib.\).pdf](http://www.suprema.gov.do/sentsem/Laboral/2008/21mayo/Oficina%20Para%20el%20Reordenamiento%20del%20Transporte%20(OPRET)%20-%20Luis%20Eduardo%20Lora%20Iglesias%20(COnt.%20Trib.).pdf). Article 19/IFEX. June 3, 2008. *ARTICLE 19 celebrates judicial decisions recognizing access to public information as a fundamental human right*. Available at: <http://www.ifex.org/es/content/view/full/94212>. Journalism for Access to Public Information. July 1, 2008. *República Dominicana: Suprema Corte falla a favor de periodista en caso de acceso a la información*. Available in Spanish at: <http://www.periodismo-aip.org/noticia.php?id=26>.

<sup>162</sup> For example, Article 17 (Limitations on Access due to prevailing public interests) establishes, among other exceptions, “information connected with the defense or security of the State which has been classified as ‘reserved’ [...] by decree of the Executive Power”; “when the delivery of said information could compromise the procedural strategy prepared for the administration in the process of a legal case”; “information that, if disseminated, could prejudice the strategy of the State in administrative investigative proceedings”; or “information classified by law or administrative decisions”.

<sup>163</sup> Supreme Court of Justice of the Dominican Republic. Judgment of July 25, 2008. *Rc: Miguel Antonio Franjul Bucarelli et al.* Available in Spanish at: <http://www.suprema.gov.do/sentsem/penal/2008/25junio/Miguel%20Antonio%20Franjul%20Bucarelli%20y%20compartes.pdf>. *Listín Diario*. June 27, 2008. *Suprema descarga a periodistas por insuficiencia de pruebas*. Available at: <http://www2.listindiario.com/app/article.aspx?id=63958>. Article 19 of Law No. 6132 stipulates that “[a]ll publications will be required to rectify the proven errors that it commits with respect to private parties in their information or writings. The violation of this prescription shall be punishable by a fine of between RD\$25.00 and RD\$250.00.”

## 12. Ecuador

111. The Office of the Special Rapporteur appreciates that the text of the new Constitution of Ecuador contains provisions that guarantee diverse aspects of the right to freedom of expression<sup>164</sup>. Nevertheless, some of the new constitutional clauses may be interpreted in such a

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<sup>164</sup> These provisions are established in Articles 16, 17, 18, 20, 91 and 92, the text of which, is as follows:

Article 16. All persons, individually and collectively, have the right to:

1. Free, intercultural, inclusive, diverse and participatory communication, in all of the spheres of social interaction, by any means and in any form, in their own language and with their own symbols.

2. Universal access to the technologies of information and communication.

3. The creation of communications media, and equal access to the use of radio spectrum frequencies for the operation of public, private and community television and radio stations, and to free bandwidth for the use of wireless networks.

4. Access to, and use of, all forms of visual, audio and sensory forms of communication, and others that make possible the inclusion of disabled persons.

5. To participate in the field of communications as provided in the Constitution.

Article 17. The State shall promote the plurality and diversity of communications, and to that end:

1. Shall guarantee the allocation, through transparent and egalitarian methods, of radio spectrum frequencies for the operation of public, private and community television and radio stations, as well as access to free bandwidth for the use of wireless networks, and shall take precautions to ensure that the collective interest prevails in their use.

2. Shall facilitate the creation and strengthening of public, private and community communications media, as well as universal access to the technologies of information and communication, especially for persons and groups that lack such access or have limited access.

3. Shall not permit direct or indirect monopolies or oligopolies in the ownership of the communications media and in the use of frequencies.

Article 18. All persons, individually and collectively, have the right to:

1. Seek, receive, exchange, produce and disseminate information that is true, verified, timely, contextualized [and] plural, without prior censorship, concerning facts, events and proceedings of general interest, subject to the imposition of subsequent liability.

2. Freely access information produced by public entities, or private entities that manage State funds or carry out public functions. There shall be no secrecy of information except in those cases expressly established by law. In cases of human rights violations, no public entity shall deny access to information.

Article 20. The State shall guarantee the 'conscience clause' of every person, and the professional secrecy and confidentiality of those who report or impart their opinions through the media or other forms of communication, or who work in any communications activity.

Article 91. The action of access to public information shall have the purpose of guaranteeing access to such information when it has been denied expressly or implicitly, or when the information provided is incomplete or untrustworthy. Such action may be filed even if the denial of access is based on the secret, reserved, confidential or other classification of the nature of the information. The secret nature of information must have been stated, prior to the request, by the proper authorities and in accordance with law.

Article 92. Every person, on his own behalf or as a representative with legal standing for such purposes, shall have the right to know of the existence of, and have access to, documents, genetic information, databases or files containing personal information and reports about himself or his assets, held by public or private entities, whether in physical or electronic format. He shall also have the right to know how the personal information is used, its purpose, its origin and destination, and the period of validity of such files or databases.

The persons in charge of personal files or databases may release the information on file with the authorization of its owner or when authorized by law.

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way as to confer broad powers of intervention to public authorities with regard to the exercise of freedom of expression.<sup>165</sup> The Office of the Special Rapporteur urges the Ecuadorian State to guarantee fully the exercise of the right to freedom of expression, in accordance with the standards of the Inter-American system on the matter, when enforcing, interpreting and implementing this Constitution.

112. During 2008, the Office of the Special Rapporteur received information on several cases of attacks against journalists. On September 12, 2008, cameraman Eduardo Molina from *Red Telesistema* (RTS) was attacked in Guayaquil to prevent him from filming a confrontation between demonstrators during the referendum to ratify the Constitution.<sup>166</sup> On October 7, 2008, the same cameraman was attacked with rocks when he tried to film a confrontation between students from a Guayaquil high school and the police.<sup>167</sup> On October 15, 2008, another RTS cameraman, Germán Vera, was beaten and attacked with rocks by individuals taking part in a confrontation between

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The owner of the information may request access to the files, free of charge, as well as the updating, correction, removal or cancellation of such information. In the case of sensitive information, which may be kept on file only when authorized by law or by the owner of the information, necessary security measures shall be required. If the request is not served, the owner of the information may go before the judge. The person adversely affected may file suit for the damages caused.

The text of the Political Constitution is available at: <http://www.presidencia.gov.ec/modulos.asp?id=109>.

<sup>165</sup> In this respect, Articles 19, 313 and 408 are of interest to the Office of the Special Rapporteur. These articles provide:

Article 19. The law shall regulate the prevalence of content with informative, educational and cultural purposes in communications media programming, and shall foster the creation of spaces for the dissemination of independent national productions. // Advertising that induces violence, discrimination, racism, drug addiction, sexism, religious or political intolerance, and all advertising that violates rights, is prohibited.

Article 313. The State reserves the right to administer, regulate, control and manage the strategic sectors in accordance with the principles of environmental sustainability, precaution, prevention and efficiency. The strategic sectors, under the exclusive control and decision of the State, are those that due to their importance and magnitude have decisive economic, social, political or environmental influence, and must be oriented toward the full development of rights and social interests. Energy in all of its forms, telecommunications, nonrenewable natural resources, the transporting and refining of hydrocarbons, biodiversity and genetic heritage, the radio spectrum, water, and other sectors established by law are considered strategic sectors.

Article 408. Nonrenewable natural resources and, in general, the products of the subsoil, mineral and hydrocarbon deposits, and substances whose nature is different from that of the soil, including those found in areas covered by the waters of the territorial sea and the maritime zones, are the inalienable, imprescriptible and unseizable property of the State, as are biodiversity and its genetic heritage and the radio spectrum. These assets may only be exploited in strict compliance with the environmental principles established in the Constitution.

The State shall partake of the benefits of exploiting such resources, in an amount not less than that taken by the company exploiting them.

The State shall guarantee that the mechanisms of production, consumption and use of natural resources and energy preserve and rehabilitate the natural cycles and enable decent living conditions.

<sup>166</sup> Instituto Prensa y Sociedad. September 22, 2008. *Camarógrafo agredido por simpatizantes del Sí para el referendun de la nueva Constitución; resolución ministerial podría recortar derecho de cobertura periodística*. Available at: [www.ipys.org/alertas/atentado.php?id=1615](http://www.ipys.org/alertas/atentado.php?id=1615). Fundación Andina para la Observación y Estudios de Medios. *Informe de Libertad de Prensa Ecuador 2008*. Alert 6, page 32. Available at: <http://www.fundamedios.org/home/contenidos.php?id=160&identificaArticulo=531>.

<sup>167</sup> Instituto Prensa y Sociedad/IFEX. October 16, 2008. *Agreden a camarógrafo durante manifestación en Guayaquil*. Available at: [www.ifex.org/es/content/view/full/97655](http://www.ifex.org/es/content/view/full/97655). Fundación Andina para la Observación y Estudios de Medios. October 7, 2008. *Agreden a camarógrafo durante manifestación en Guayaquil*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=492>.



squatters and tenants of Hacienda Mercedes, in the Province of Guayas. According to the journalist, the squatters tried to kidnap him after they beat him, but this was prevented by the police, who dispersed the protest.<sup>168</sup> Principle 9 of the Declaration of Principles provides that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the State to prevent and investigate these occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

113. The Office of the Special Rapporteur is especially concerned about the cases of journalists convicted and sentenced to terms of imprisonment for the offense of criminal defamation against public officials. A complaint was filed against journalist Freddy Aponte, from radio station *Luz y Vida*, by the former mayor of Loja as a result of Aponte allegedly calling him a “thief” in an interview. At the first instance, the Criminal Court of Loja acquitted him for lack of evidence of defamation. However, the former mayor appealed, and the Criminal Division of the Provincial Court of Justice overturned the judgment of the lower court and sentenced journalist Aponte to six months in prison with no possibility of early release. Aponte filed an extraordinary appeal before the National Court of Justice, the Third Criminal Division of which affirmed the decision of the court of second instance. According to the latest information received by the Office of the Special Rapporteur as of the date of writing of this Annual Report, the journalist was serving his sentence at the Social Rehabilitation Center of Loja. In addition, the former mayor filed a new lawsuit against him, requesting that he be ordered to pay civil damages in the amount of one million dollars.<sup>169</sup>

114. Another case was that of journalist Milton Chacaguasay Flores, who was prosecuted for criminal defamation on a complaint filed by Judge Silvio Castillo. The judge alleged that he had been accused of unjust enrichment, in an article published in a weekly newspaper edited by Chacaguasay. According to the journalist, the article was published in a space that the newspaper ceded to a third party. At the first instance, the Judge III of the Criminal Division of the El Oro Court acquitted the journalist. However, the complainant filed an appeal and the Criminal and Traffic Division of the El Oro Provincial Court of Justice decided, in a judgment handed down on November 15, 2008, to revoke the lower court’s decision and sentence Chacaguasay to ten months in prison for criminal defamation. The journalist was taken into custody on November 30, 2008, and admitted to the Social Rehabilitation Center in Machala, from where he was subsequently transferred to Quito on December, 2008. The extraordinary appeal he filed before the National Court of Justice has still not been adjudicated.<sup>170</sup>

115. In a different matter, the Special Rapporteurship expresses its concern about public statements made by the President of Ecuador in June of 2008, when he asked that a criminal case be reopened against journalist Francisco Vivanco, editor of the Quito newspaper *La Hora*. In May of

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<sup>168</sup> Instituto Prensa y Sociedad. November 5, 2008. *Manifestantes agreden a camarógrafo, intentan secuestrarlo*. Available at: [www.ipys.org/alertas/atentado.php?id=1641](http://www.ipys.org/alertas/atentado.php?id=1641). Fundación Andina para la Observación y Estudios de Medios. November 3, 2008. *Invasores de tierras agreden a camarógrafo*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=515>.

<sup>169</sup> Reporters Without Borders. December 5, 2008. *Acoso judicial a un periodista que ya está condenado a seis meses de cárcel, y encarcelado por “injurias”*. Available at: [www.rsf.org/article.php3?id\\_article=29570](http://www.rsf.org/article.php3?id_article=29570). Instituto Prensa y Sociedad. December 3, 2008. *Condenan a periodista a seis meses de prisión por delito de injuria*. Available at: [www.ipys.org/alertas/atentado.php?id=1663](http://www.ipys.org/alertas/atentado.php?id=1663). Committee to Protect Journalists. December 11, 2008. *El CPJ a Correa: Libera a periodistas encarcelados por difamación*. Available at: <http://cpj.org/2008/12/cpj-to-correa-release-journalists-jailed-for-defam.php>.

<sup>170</sup> Instituto Prensa y Sociedad. December 12, 2008. *Director de semanario condenado a diez meses de cárcel por injuria*. Available at: [www.ipys.org/alertas/atentado.php?id=1676](http://www.ipys.org/alertas/atentado.php?id=1676). Reporters Without Borders. December 15, 2008. *Un segundo periodista encarcelado por “injurias”: Reporters Without Borders pide su libertad*. Available at: [www.rsf.org/article.php3?id\\_article=29682](http://www.rsf.org/article.php3?id_article=29682).

2007, the President had filed a criminal complaint against Vivanco because of the publication of an editorial piece entitled "Official Vandalism." The case was dismissed. Dissatisfied with that decision, the President publicly called for the case against the journalist to be reopened.<sup>171</sup> Along these same lines, on April 29, 2008, the President of the Republic asked the Governor of Guayas, in very strong terms, to bring a criminal case against the newspaper *El Universo* because it had reported on the alleged payment of an US \$8000 salary in the Office of the Governor. In the newspaper's opinion, this violated the applicable laws by virtue of the excessive amount of the remuneration.<sup>172</sup>

116. Principle 10 of the Declaration of Principles establishes that "[t]he 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." Principle 11 provides that "[p]ublic officials are subject to greater scrutiny by society."

117. Likewise, the Special Rapporteurship was informed that on various occasions, some Ecuadorian high government officials have made statements that, because of their content, could inhibit the full exercise of expression.<sup>173</sup> Principle 13 of the Declaration of Principles establishes that "[t]he means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression."

118. The Office of the Special Rapporteur has also been informed of several administrative proceedings that, because of their impact, may have repercussions over the right to freedom of expression. On July 8, 2008, the Deposit Insurance Agency (ADG), seized approximately two hundred companies belonging to members of a financial group implicated in the Ecuadorian financial crisis of previous years. The heads of those companies are fugitives from justice. Among the seized companies were three television channels: *Gamavisión*, *TC Televisión* and *Cablevisión*.<sup>174</sup> The information received by the Office of the Special Rapporteur conveyed the concern of different organizations over various concurrent facts: (a) the substitution of the directors of news and information at the channels with people designated directly by the Government to hold

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<sup>171</sup> Reporters Without Borders/IFEX. July 10, 2008, *Embargados dos canales de televisión y una radio; el presidente pide la reapertura de procedimiento por injurias contra director del diario*. Available at: [www.ifex.org/es/content/view/full/95220](http://www.ifex.org/es/content/view/full/95220). Inter American Press Association. *Ecuador Report*. 64th General Assembly, Madrid, Spain. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=20&infoid=316&idioma=sp](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&infoid=316&idioma=sp). Agencia EFE. June 23, 2008. *Un juez desestima la querrela del presidente Correa contra un periodista por desacato*. Available at: [http://www.soitu.es/soitu/2008/06/23/info/1214243121\\_438011.html](http://www.soitu.es/soitu/2008/06/23/info/1214243121_438011.html).

<sup>172</sup> Knight Center for Journalism in the Americas. April 29, 2008. *Ecuador – Correa pide a gobernador enjuiciar a diario crítico*. Available at: <http://knightcenter.utexas.edu/blog/?q=en/node/211/>. El Universal. April 28, 2008. *Rafael Correa pide enjuiciar penalmente a importante diario de Ecuador*. Available at: [http://www.eluniversal.com/2008/04/28/int\\_ava\\_rafael-correa-pide-e\\_28A1542881.shtml](http://www.eluniversal.com/2008/04/28/int_ava_rafael-correa-pide-e_28A1542881.shtml).

<sup>173</sup> Inter American Press Association. *Ecuador Report*. 64th General Assembly, Madrid, España. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=20&infoid=316&idioma=sp](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&infoid=316&idioma=sp). Instituto Prensa y Sociedad. December 23, 2008. *Gobierno usa espacios en TV para criticar a periodista*. Available at: [www.ipys.org/alertas/atentado.php?id=1693](http://www.ipys.org/alertas/atentado.php?id=1693). Cadena Global. December 19, 2008. *Correa, escéptico ante posibilidad de cambios con Obama*. Available at: <http://www.cadenaglobal.com/noticias/default.asp?Not=200882&Sec=6>.

<sup>174</sup> Reporters Without Borders/IFEX. July 10, 2008. *Embargados dos canales de televisión y una radio; el presidente pide la reapertura de procedimiento por 'injurias' contra director del diario*. Available at: [www.ifex.org/es/content/view/full/95220](http://www.ifex.org/es/content/view/full/95220). Instituto Prensa y Sociedad. July 9, 2008. *Estado incauta tres canales de TV*. Available at: [www.ipys.org/alertas/atentado.php?id=1529](http://www.ipys.org/alertas/atentado.php?id=1529). Committee to Protect Journalists. July 8, 2008. *Government seizes two TV outlets and closes a radio station*. Available at: <http://cpj.org/2008/07/government-seizes-two-tv-outlets-and-closes-a-radi.php>.



those positions;<sup>175</sup> (b) the fact that on the day of the seizure, the afternoon program *Noticiero Nacional*, which reported the event, had its broadcast suspended and remained off the air for 36 hours, during which time it was replaced by cartoons and comedy programs;<sup>176</sup> and (c) the fact that the seizures had taken place within a context of tensions between the Government and the communications media, given the imminence of the referendum to approve Ecuador's new Constitution.<sup>177</sup>

119. On July 18, 2008, the IACHR requested information to the State on the grounds for its decision and the procedures it followed. In response to the request for information, the Government transmitted an official letter from the ADG dated August 12, 2008, in which its National Legal Director maintained that, "the editorial line has not been changed, nor has the daily programming, news and information been limited. They continue with absolute normalcy, without their rights having been affected." The State also indicated that it would respect completely the editorial independence of the seized media, and that the seizure was carried out for the exclusive purpose of recovering the money owed to the State. In this context, the President of Ecuador stated that, "the government could not be less interested in managing those assets". In another occasion, he said that "those properties, legally seized, will not be managed by the State as some perverse reports have tried to insinuate; they will be put up for auction as soon as possible."<sup>178</sup>

120. The Office of the Special Rapporteur was informed about the circulation of a video on the Internet on July 17, 2008, in which Enrique Arosemena, the government-appointed administrator of the channels, reprimanded the hostess of a cooking show, calling into question the fact that she had expressed her opinion on the increased price of the family shopping basket.<sup>179</sup> The Office of the Special Rapporteur was subsequently informed of the cancellation of two programs hosted and directed by the humorist Francisco Pinoargotti, allegedly because of its content that was highly critical of the Government.<sup>180</sup> Finally, it was informed of the cancellation of journalist Javier

<sup>175</sup> Inter American Press Association. July 9, 2008. *Alarma de la SIP por incautación de televisoras en Ecuador*. Available at: [www.sipiapa.com/v4/index.php?page=cont\\_comunicados&seccion=detalles&id=3959&idioma=sp](http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=3959&idioma=sp); FELATRACS. July 8, 2008. *Pronunciamiento – FELATRACS rechaza atentado contra la libertad de prensa en Ecuador*. Alert received via email by the Office of the Special Rapporteur for Freedom of Expression.

<sup>176</sup> Committee to Protect Journalists. July 8, 2008. *Government seizes two TV outlets and closes a radio station*. Available at: <http://cpj.org/2008/07/government-seizes-two-tv-outlets-and-closes-a-radi.php>. Inter American Press Association. July 9, 2008. *Alarma de la SIP por incautación de televisoras en Ecuador*. Available at: [www.sipiapa.com/v4/index.php?page=cont\\_comunicados&seccion=detalles&id=3959&idioma=sp](http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=3959&idioma=sp). Instituto Prensa y Sociedad. July 17, 2008. *Autoridades intervienen en tres noticieros de televisión*. Available at: [www.ipys.org/alertas/atentado.php?id=1539](http://www.ipys.org/alertas/atentado.php?id=1539).

<sup>177</sup> Reporters Without Borders. July 9, 2008. *Ecuador: Embargados dos canales de televisión y una radio: "Una medida inoportuna cuando se acerca el referéndum constitucional"*. Available at [www.rsf.org/article.php3?id\\_article=27798](http://www.rsf.org/article.php3?id_article=27798). Inter American Press Association. July 9, 2008. *Alarma de la SIP por incautación de televisoras en Ecuador*. Available at: [www.sipiapa.com/v4/index.php?page=cont\\_comunicados&seccion=detalles&id=3959&idioma=sp](http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=3959&idioma=sp). Committee to Protect Journalists. July 8, 2008. *Government seizes two TV outlets and closes a radio station*. Available at: <http://cpj.org/2008/07/government-seizes-two-tv-outlets-and-closes-a-radi.php>.

<sup>178</sup> Observatorio Latinoamericano para la Libertad de Expresión de FELATRACS. July 9, 2008. *Reporte 700 – Ecuador: Gobierno ecuatoriano defiende intervención a canales de TV*. Alert received via email by the Office of the Special Rapporteur. El Siglo de Torreón. July 11, 2008. *Descarta Correa estatizar medios de comunicación*. Disponible en: <http://www.elsiglodetorreon.com.mx/noticia/363839.descarta-correa-estatizar-medios-de-informaci.html>. AMARC – Agencia Pulsar. July 23, 2008. *Rafael Correa habló para Latinoamérica a través de las radios comunitarias*. Available at: [www.agenciapulsar.org/nota.php?id=13251](http://www.agenciapulsar.org/nota.php?id=13251).

<sup>179</sup> El Universo. July 17, 2008. *A Mariaca le cortan su salsa*. Available at: <http://www.eluniverso.com/2008/07/17/0001/21/C6FCCD355EB74502BE9E50FAD84B3C39.html>. *El Comercio*. July 19, 2008. *Arosemena, el interventor de TC Televisión*. Available at: [http://www.elcomercio.com/noticiaEC.asp?id\\_noticia=207460&id\\_seccion=70](http://www.elcomercio.com/noticiaEC.asp?id_noticia=207460&id_seccion=70).

<sup>180</sup> The first program, "Buenos Muchachos", was transmitted on *GamaTV*, but its broadcasting was canceled as of November 24, 2008, by orders of the channel's government-appointed co-administrator. According to the public denunciation

Molina's program "Sobremesas de Entorno" on *Cablenoticias*. The broadcasting of the program was canceled on November 19, 2008, apparently in reaction to its content that was highly critical of the administration of the channel and the Government.<sup>181</sup>

121. The Office of the Special Rapporteur notes with particular interest the November 13, 2008 closure of the *Radio Ritmo* radio station in the Province of Santa Elena by the Telecommunications Regulatory Authority, in the enforcement of a decision of the National Broadcasting and Television Board (CONARTEL). According to the information received by the Office of the Special Rapporteur, the authorities invoked as a justification of this act the fact that *Radio Ritmo* had called on the public in November of 2007 to take part in demonstrations in support of turning the canton of Santa Elena into Ecuador's 24<sup>th</sup> province.<sup>182</sup>

122. The Office of the Special Rapporteur invites the State to treat all cases involving the review of broadcasting licenses or frequencies with full respect for the guarantees enshrined in Article 13 of the American Convention. The Office of the Special Rapporteur likewise recalls that, by virtue of Article 13(3) of the American Convention on Human Rights, "[t]he right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions."

### 13. El Salvador

123. The Office of the Special Rapporteur observes that advances were made in 2008 through the introduction before the National Congress of two bills on access to information. As a result, Salvadoran political actors spoke out on the need to pass a law on access to information.<sup>183</sup>

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made by Pinoargotti, the program to be aired on November 24, 2008, contained strong criticism of the President of Ecuador, but the co-administrator "censored" its content without justifying his decision or going through the legally established procedure for doing so, and prohibited Pinoargotti from entering the station. The second program, "Mano a Mano", was transmitted by *Cablenoticias*, but was canceled as of December 1, 2008, also by decision of the co-administrators designated by the Government. Instituto Prensa y Sociedad. December 9, 2008. *Programa de TV censurado debido a reportaje criticando al Presidente*. Available at: [www.ipys.org/alertas/atentado.php?id=1673](http://www.ipys.org/alertas/atentado.php?id=1673). El Universo. November 28, 2008. *Actor Francisco Pinoargotti convoca hoy a concentración*. Available at: <http://www.eluniverso.com/2008/11/28/0001/8/AE2184CF35614F5B9A7761FFD2DC9941.html>. Ecuador Intermedio. November 27, 2008. *Francisco Pinoargotti asegura que censura a su programa es "casi volver a la esclavitud"*. Available at: <http://www.ecuadorinmediato.com/noticias/92535>.

<sup>181</sup> As reported by journalist Molina, prior to the cancellation of the program, the channel's co-administrators (Javier Enríquez and Rubén Peñaherrera) reprimanded him three times for its content, at which times he was advised that the seized channels "were not impartial" and were "controlled media". Instituto Prensa y Sociedad. December 12, 2008. *Cancelan programa de opinión por criticar administración de canal incautado por el Estado*. Available at: [www.ipys.org/alertas/atentado.php?id=1677](http://www.ipys.org/alertas/atentado.php?id=1677). Reporters Without Borders/IFEX. December 11, 2008. *Cancelan programa de televisión a causa de línea editorial crítica del gobierno*. Available at: [www.ifex.org/es/content/view/full/99265](http://www.ifex.org/es/content/view/full/99265).

<sup>182</sup> Instituto Prensa y Sociedad. November 19, 2008. *Clausuran radio acusándola de incitar a la población a protestar*. Available at: [www.ipys.org/alertas/atentado.php?id=1655](http://www.ipys.org/alertas/atentado.php?id=1655). Periodistas en español. November 21, 2008. *Clausuran una radio en Ecuador bajo la acusación de incitar a la población a protestar*. Available at: [http://www.p-es.org/index.php?option=com\\_content&view=article&id=1897:clausuran-una-radio-en-ecuador-bajo-la-acusacion-de-incitar-a-la-poblacion-a-protestar&catid=36:medios&Itemid=60](http://www.p-es.org/index.php?option=com_content&view=article&id=1897:clausuran-una-radio-en-ecuador-bajo-la-acusacion-de-incitar-a-la-poblacion-a-protestar&catid=36:medios&Itemid=60). El Diario Manabita. November 15, 2008. *Canal Uno y una radio de Santa Elena clausurados*. Available at: <http://www.eldiario.com.ec/noticias-manabi-ecuador/98710-canal-uno-y-una-radio-de-santa-elena-clausurados/>.

<sup>183</sup> The bills were introduced by Frente Farabundo Martí para la Liberación Nacional and Fundación Salvadoreña para el Desarrollo Económico y Social. Inter American Press Association. *Report on El Salvador. 64th General Assembly, Madrid, Spain*. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=20&inforid=317&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&inforid=317&idioma=us). La Prensa Gráfica. September 9, 2008. *Buscan ley de acceso a información pública*. "Available at:

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Principle 4 of the Declaration of Principles establishes that access to information “is a fundamental right of every individual” and that States “have the obligation to guarantee the full exercise of this right”.

124. This year, several occurrences of attacks and threats related to the exercise of journalistic activity were registered. In January 2008, representatives of *Radio Cadena Mi Gente* reported that they received death threats against their principal stockholder, William Omar Chamagua Morataya, as an alleged reprisal for the media outlet’s editorial position.<sup>184</sup> In August 2008, two journalists from the newspaper *La Prensa Gráfica* reported that they had been threatened following their publication of an investigation about alleged irregularities in the National Police. Several days later, an unidentified group of persons stole the laptop computer of the newspaper director. This laptop contained data about the newspaper’s ongoing investigations.<sup>185</sup> On September 17, 2008, the producer of the community radio station *Radio Bálsamo*, Allan Martell, was allegedly attacked by presumptive municipal officials while executing a series of reports on the difficulties faced by the inhabitants of Huizucar with their water supply.<sup>186</sup> The Special Rapporteurship recalls that Principle 9 of the Declaration of Principles indicates that 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.” Because of this, the Principle adds, States have the duty to “prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

#### 14. Grenada

125. The Office of the Special Rapporteur received information that Thenesa Thomas, a Jamaican journalist from the *Caribupdate* news agency, was detained on February 14, 2008 by the Grenadian immigration authorities for allegedly not having her immigration documents in order, and was ordered to leave the country. Thomas had arrived in Grenada in January of 2008 to cover the election campaign of the opposition party and, according to the information received, had return tickets for March of 2008, when her work as a journalist would be completed. It was reported that, even though the immigration officials verified that there had been a misunderstanding and that the journalist was not in the country illegally, they told her to leave Grenada within 24 hours. Shortly thereafter, the authorities extended her stay until February 19, 2008. According to the reporter, her visa was valid until August 2, 2008.<sup>187</sup> According to the information received, this occurrence

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<http://www.laprensagrafica.net/loledia/20080909/17963.asp>. *La Prensa Gráfica*. September 23, 2008. *FUSADES presenta propuesta de ley de acceso a la información*. Available in Spanish at: <http://www.laprensagrafica.net/loledia/20080923/18314.asp>.

<sup>184</sup> Committee to Protect Journalists. January 7, 2008. *Radio owner and host threatened with death*. Available at: <http://cpj.org/2008/01/radio-owner-and-host-threatened-with-death.php>. Probidad/IFEX. January 18, 2008. *Death threats against radio station owner; Media ownership too concentrated, warns PROBIDAD*. Available at: <http://www.ifex.org/en/content/view/full/90066>.

<sup>185</sup> Inter American Press Association. *Report on El Salvador. 64th General Assembly, Madrid, Spain*. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=20&infoid=317&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&infoid=317&idioma=us). Asociación de Periodistas de El Salvador. September 2, 2008. Available in Spanish at: <http://www.apes.org.sv/noticias2.asp?ID=76>.

<sup>186</sup> Reporters Without Borders. September 26, 2008. *El Salvador, Municipal officials and a prosecutor assault a community journalist*. Alert received in the email inbox of the Office of the Special Rapporteur for Freedom of Expression. *Diario Co Latino*. September 18, 2008. *Denuncian agresión de un síndico contra comunidad y periodista*. Available in Spanish at: <http://www.diariocolatino.com/es/20080918/nacionales/58951/>.

<sup>187</sup> Reporters Without Borders/IFEX. February 15, 2008. *Jamaican journalist detained briefly, faces expulsion order*. Available at: <http://www.ifex.org/en/content/view/full/90758/>. Caribbean Net News. February 15, 2008. *Jamaican journalist expelled from Grenada*. Available at: <http://www.caribbeannetnews.com/news-6078--32-32--.html>. Grenada Broadcast. February 18, 2008. *Government probes deportation of Jamaican journalist*. Available at: <http://www.grenadabroadcast.com/content/view/1999/45>.

prevented the journalist from being able to conduct her work as planned. The Office of the Special Rapporteur reminds the State that, in accordance with Principle 2 of the Declaration of Principles, "[e]very 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." Likewise, it emphasizes, as Principle 13 states, that "[d]irect or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression."

## 15. Guatemala

126. The Office of the Special Rapporteur views positively the fact that on September 23, 2008 the Congress of the Republic passed Decree No. 57-2008, the Public Information Access Act, which goes into force in January of 2009.<sup>188</sup> It is also pleased that on April 1, 2008, Guatemalan President Álvaro Colom signed the Declaration of Chapultepec.<sup>189</sup> On that occasion, the President of Guatemala expressed publicly his commitment to promoting the enactment of the Public Information Access Act, which was then being debated in Congress. The enactment of this law is a decisive advance in the incorporation of standards on access to information from the inter-American system into the Guatemalan legal system. Principle 4 of the Declaration of Principles establishes that "[a]ccess to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right."

127. The Office of the Special Rapporteur was aware that on September 23, 2008, Bill No. 3918 was introduced in the Congress of the Republic. This bill proposed the amendment of Article 164 of the Criminal Code, adding a new basis for the offense of criminal defamation and increasing the term of imprisonment for its commission. According to the information received, the bill is awaiting decision by the Legislative and Constitutional Points Committee of the Congress of the Republic. The Office of the Special Rapporteur notes with particular interest that the preliminary recitals of Bill No. 3918 indicate that "this legislative provision is submitted to the consideration of the honorable Committee in full attendance in order to reform the Criminal Code, specifically with respect to offenses against honor –DEFAMATION– broadening its legal scope, *by increasing the penalty of imprisonment and imposing clear and categorical civil penalties* against those *individuals or legal entities* that defame or [...], attack the credibility and honor of persons, *regardless of their public or private action or nature*."<sup>190</sup>

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<sup>188</sup> Congress of the Republic of Guatemala. September 23, 2008. *Decreto No. 57-2008: Ley de Acceso a la Información Pública*. Available at: <http://www.congreso.gob.gt/archivos/decretos/2008/gtdcx57-0008.pdf>. Inter American Press Association. September 24, 2008. *Satisfacción de la SIP por aprobación de ley de acceso en Guatemala*. Available at: [http://www.sipiapa.com/v4/index.php?page=cont\\_comunicados&seccion=detalles&id=4036&idioma=sp](http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4036&idioma=sp).

<sup>189</sup> Inter American Press Association. March 29, 2008. *Presidente Álvaro Colom firmará Declaración de Chapultepec en evento internacional de la SIP*. Available at: [http://www.sipiapa.com/v4/index.php?page=cont\\_comunicados&seccion=detalles&id=3886&idioma=sp](http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=3886&idioma=sp).

<sup>190</sup> Congress of the Republic of Guatemala. September 23, 2008. *Iniciativa de ley No. 3918*. Available at: <http://www.congreso.gob.gt/archivos/iniciativas/registro3918.pdf>. Emphasis added.

Bill No. 3918 proposes to add the following paragraphs to the text of Article 164 of the Criminal Code:

Any individual or legal entity that lacks means or proof to demonstrate reliably the truth of the statements made through any means of dissemination shall be civilly and criminally liable. In cases of legal entities, the directors, chiefs, managers or any other legal representative of the entity shall be held liable.

Any person who commits defamation shall be subject to a term of imprisonment ranging from nine to fourteen years, and a fine ranging from one hundred thousand to two million *quetzales*, without prejudice to the civil liability. This offense shall not be subject to substantive measures.

128. The Office of the Special Rapporteur expresses its concern over this bill, taking into account that in February of 2006 the Constitutional Court declared the offense of *desacato* unconstitutional, and considering that Article 35 of the Constitution of Guatemala indicates clearly that “[p]ublications that contain complaints, criticisms or accusations against government officials or employees concerning acts committed in the performance of their duties are not crimes or misdemeanors.” Likewise, Principle 10 of the Declaration of Principles provides that “[p]rivacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.” The Office of the Special Rapporteur urges the State to take these remarks into consideration when the appropriate governing bodies debate this draft bill.

129. The Office of the Special Rapporteur deplores the murder of Jorge Mérida Pérez, a correspondent for the newspaper *Prensa Libre*, on May 10, 2008. According to the information received, Mérida Pérez was writing an article in his home when an unidentified individual shot him four times in the face. In the days prior to his murder, Mérida Pérez had told his friends and family that he had been receiving threats. The reporter was working on articles about local drug trafficking and government corruption.<sup>191</sup> The Office of the Special Rapporteur urges the State to take all measures within its power to guarantee the lives and personal safety of members of the media in Guatemala. Likewise, it urges the State to investigate, prosecute and punish the perpetrators of this crime.

130. The Office of the Special Rapporteur regrets that during 2008 it received complaints of alleged attacks and threats made against journalists in the course of their professional activities. In particular, it received information on the cases of Hugo Oliva;<sup>192</sup> Eduardo García and María Teresa López Lima;<sup>193</sup> Mynor Toc, José Cancinos, Carlos Ventura, Vinicio Tan, Walter Arbilló, Antonio

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<sup>191</sup> Office of the Special Rapporteur – IACHR. May 16, 2008. *Press Release No. 191/08*. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=730&ID=2>. Committee to Protect Journalists. May 12, 2008. *El CPJ condena asesinato de periodista*. Available at: <http://cpj.org/es/2008/05/el-cpj-condena-asesinato-de-periodista-1.php>. Reporters Without Borders. May 13, 2008. *Asesinan a disparos un corresponsal del diario Prensa Libre*. Available at: [http://www.rsf.org/article.php3?id\\_article=26976](http://www.rsf.org/article.php3?id_article=26976).

<sup>192</sup> Instituto Prensa y Sociedad. February 8, 2008. *Golpean a periodista en Jalapa, se desconocen las causas*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1394>. Centro de Reportes Informativos de Guatemala. February 8, 2008. *Corresponsal de “Prensa Libre” víctima de un ataque en departamento de Jalapa*. Available at: <http://www.ifex.org/es/content/view/full/90580/>. Prensa Libre. May 14, 2008. *Eclipse: Periodismo departamental*. Available at: <http://www.prensalibre.com/pl/2008/mayo/14/237049.html>.

<sup>193</sup> Committee to Protect Journalists. April 9, 2008. *Cameraman shot and reporter beaten while covering protests*. Available at: <http://cpj.org/2008/05/cameraman-shot-and-reporter-beaten-while-covering.php>. Instituto Prensa y Sociedad. April 10, 2008. *Hieren de bala a un camarógrafo y agreden a periodista durante protesta*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1455>. Centro de Reportes Informativos de Guatemala. April 14, 2008. *Camarógrafo herido de bala, periodista agredida, robada mientras cubría protesta de San Juan Alotenango*. Available at: <http://www.ifex.org/es/content/view/full/92585/>. Federación Nacional de Periodistas. April 13, 2008. *La Asociación Nacional de Periodistas de Guatemala denuncia ola de agresiones contra periodistas*. Available at: <http://www.ifj.org/es/articles/la-asociacin-de-periodistas-de-guatemala-denuncia-ola-de-agresiones-contra-periodistas>.



Uluan and Diego López;<sup>194</sup> Ricardo Quinto, Henry Morales and Jaime Montenegro;<sup>195</sup> and Byron Barrera.<sup>196</sup>

131. On August 20, 2008, José Rubén Zamora, editor of the newspaper *El Periódico*, was allegedly kidnapped and beaten by unidentified individuals. Zamora was released some hours later.<sup>197</sup> On August 1, 2008, Oscar Ixmatul, a journalist from the same newspaper, received a death threat from unidentified individuals as he was leaving the newspaper's main offices.<sup>198</sup>

132. On October 5, 2008, unidentified individuals armed with machine guns threatened to kill José Pelicó, of the *Centro de Reportes Informativos sobre Guatemala (CERIGUA)*, his wife and his son, in the vicinity of their home. Subsequent to these events, on November 3, 2008, the IACHR granted protective measures to Pelicó and his family, and asked the State to take the measures necessary to preserve their rights to life and personal safety. It also ordered the State to report on the actions taken to legally establish the facts of these events. The IACHR is following this situation.<sup>199</sup>

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<sup>194</sup> Centro de Reportes Informativos de Guatemala. March 10, 2008. *Siete corresponsales golpeados por policías en Quetzaltenango mientras cubrían allanamiento*. Available at: <http://www.ifex.org/es/content/view/full/91550/>. Inter American Press Association. *Guatemala Report. Midyear Meeting, Caracas, Venezuela*. Available in Spanish at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=5&infoid=290&idioma=sp](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=5&infoid=290&idioma=sp).

<sup>195</sup> Centro de Reportes Informativos de Guatemala. April 18, 2008. *Agente de seguridad usa fuerza excesiva para restringir periodistas buscando hablar con el presidente*. Available at: <http://www.ifex.org/es/content/view/full/92793>. Prensa Libre. April 19, 2008. *APG lamenta agresión a periodistas*. Available at: <http://www.prensalibre.com/pl/2008/abril/19/233160.html>.

<sup>196</sup> Asociación Nacional de Periodistas de Guatemala/IFEX. July 2, 2008. *Reportero agredido por agentes de SAAS al intentar fotografiar vehículo del vicepresidente*. Available at: <http://www.ifex.org/es/content/view/full/95001/>. Inter American Press Association. *Guatemala Report. 64<sup>th</sup> General Assembly, Madrid, Spain*. Available in Spanish at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=20&infoid=319&idioma=sp](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&infoid=319&idioma=sp).

<sup>197</sup> *El Periódico*. August 23, 2008. *Ahora, el golpe fue para Zamora*. Available at: <http://www.elperiodico.com.gt/es/20080823/opinion/67130>. Committee to Protect Journalists. August 22, 2008. *CPJ alarmed by abduction of journalist in Guatemala*. Available at: <http://cpj.org/blog/2008/08/cpj-alarmed-by-abduction-of-journalist-in-guatemala.php>. Centro de Reportes Informativos sobre Guatemala. August 22, 2008. *Presidente de El Periódico fue agredido y secuestrado*. Available at: [http://cerigua.info/portal/index.php?option=com\\_content&task=view&id=3057&Itemid=31](http://cerigua.info/portal/index.php?option=com_content&task=view&id=3057&Itemid=31). Reporters Without Borders. August 25, 2008. *Con 24 horas de intervalo secuestran al director del diario El Periódico y agreden a uno de sus periodistas*. Available at: [http://www.rsf.org/article.php3?id\\_article=28306](http://www.rsf.org/article.php3?id_article=28306). Instituto Prensa y Sociedad. August 25, 2008. *Secuestran a presidente del diario El Periódico*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1580>. In its 2003 Annual report, the IACHR noted in particular that, "[o]n June 24, 2003, a dozen armed individuals who passed themselves off as agents from the National Civilian Police and the Public Ministry took control of the residence of José Rubén Zamora, journalist and president of 'El Periódico,' and abused members of his family. As a result of these events and the threats received subsequently, Zamora had to leave the country. In view of the risk to which the beneficiaries are exposed, and the context of violence against journalists, the IACHR asked the Guatemalan State to adopt the measures needed to protect the lives and personal integrity of the beneficiaries." IACHR. *2003 Annual Report*, Volume I, Chapter 3, para. 42. Available at: <http://www.cidh.org/annualrep/2003sp/cap.3e.htm>.

<sup>198</sup> Centro de Reportes Informativos sobre Guatemala. August 22, 2008. *Periodista de El Periódico fue perseguido y agredido por desconocidos*. Available at: [http://cerigua.info/portal/index.php?option=com\\_content&task=view&id=3059&Itemid=31](http://cerigua.info/portal/index.php?option=com_content&task=view&id=3059&Itemid=31). Inter American Press Association. *Guatemala Report. 64<sup>th</sup> General Assembly, Madrid, Spain*. Available in Spanish at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=20&infoid=319&idioma=sp](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&infoid=319&idioma=sp).

<sup>199</sup> Centro de Reportes Informativos sobre Guatemala. October 7, 2008. *Periodista de CERIGUA fue objeto de nuevo acto intimidatorio*. Available at: [http://cerigua.info/portal/index.php?option=com\\_content&task=view&id=4455&Itemid=31](http://cerigua.info/portal/index.php?option=com_content&task=view&id=4455&Itemid=31). Reporters Without Borders. October 13, 2008. *Unos hombres armados agreden cerca de su domicilio a un periodista que normalmente debería llevar escolta policial*. Available at: [http://www.rsf.org/article.php3?id\\_article=28926](http://www.rsf.org/article.php3?id_article=28926).

133. The Office of the Special Rapporteur urges the State to investigate promptly all of these cases and to make all possible efforts to prevent these crimes from being met with impunity. The lack of punishment for the masterminds and perpetrators of murders, assaults, threats and attacks connected to the practice of journalism creates a favorable environment for the occurrence of new offenses. Principle 9 of the Declaration of Principles indicates that “[t]he murder, kidnapping, intimidation and/or threats to social communicators, as well as to 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.”

134. On another matter, in November 2008, the Congress approved and sent Decree No. 67-2000 (Law of Television Broadcasting, Channels 9 and 4 of Legislative Television, and Channels 5 and 12 of Mayan Television) to the Executive Branch for its enactment. The bill assigns to the Academy of Mayan Languages the use of Channels 5 and 12, but prohibits the selling of advertising.<sup>200</sup> Critics of this bill, including the representatives of the Academy of Mayan Languages, allegedly stated that the prohibition did not have an objective and reasonable justification; that it would, *de facto*, prevent the channel from broadcasting; and therefore, it would affect the right to freedom of expression of the Mayas on equal terms. They added that this prohibition could only be explained as a discriminatory attitude aimed to benefit the “monopoly” of open signal television channels.<sup>201</sup> In October 2008, a Congresswoman indicated that “there is no doubt that there are economic interests behind this measure, and that, by banning the selling of advertising, these channels will be strangled. Thus, in the future, they will be transferred and someone else would be benefited”.<sup>202</sup> On November 28, 2008, the President of Guatemala vetoed this decree with arguments not related to the right to freedom of expression.<sup>203</sup> According to the information received at the completion date of this report, the Congress submitted the bill for consideration of the Constitutional Court.

135. As it did on its 2003 *Report on the Situation of Freedom of Expression in Guatemala*, the Office of the Special Rapporteur reaffirms that the State has the obligation to implement effective policies that provide equal opportunities of access to television and radio frequencies. Likewise, it reminds the State its obligation to carry out all necessary measures, including positive actions, aimed to ensure all minority groups have access to media outlets.<sup>204</sup>

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<sup>200</sup> Prensa Libre. November 28, 2008. *Congreso se extralimitó al asignar frecuencias televisivas*. Available at: <http://www.prensalibre.com/pl/2008/noviembre/28/279838.html>. Centro de Reportes Informativos sobre Guatemala. October 22, 2008. *ALMG considera que el Legislativo coarta un derecho de los pueblos mayas*. Available at: [http://cerigua.info/portal/index.php?option=com\\_content&task=view&id=4996&Itemid=31](http://cerigua.info/portal/index.php?option=com_content&task=view&id=4996&Itemid=31); November 7, 2008. *Ley que prohíbe pautar publicidad a TV Maya sólo beneficia a monopolio televisivo: Prensa Libre*. Available at: [http://cerigua.info/portal/index.php?option=com\\_content&task=view&id=5495&Itemid=31](http://cerigua.info/portal/index.php?option=com_content&task=view&id=5495&Itemid=31); November 15, 2008. *Rechazan campaña de hostigamiento contra la ALMG*. Available at: [http://cerigua.info/portal/index.php?option=com\\_content&task=view&id=5724&Itemid=31](http://cerigua.info/portal/index.php?option=com_content&task=view&id=5724&Itemid=31); November 24, 2008. *Presidente duda sancionar Ley de TV que perjudica a TV Maya*. Available at: [http://cerigua.info/portal/index.php?option=com\\_content&task=view&id=5944&Itemid=31](http://cerigua.info/portal/index.php?option=com_content&task=view&id=5944&Itemid=31); November 28, 2008. *Presidente veta ley que afectaba a TV Maya*. Available at: [http://cerigua.info/portal/index.php?option=com\\_content&task=view&id=6082&Itemid=31](http://cerigua.info/portal/index.php?option=com_content&task=view&id=6082&Itemid=31); December 3, 2008. *Bancada oficial dividida por veto presidencial*. Available at: [http://cerigua.info/portal/index.php?option=com\\_content&task=view&id=6194&Itemid=31](http://cerigua.info/portal/index.php?option=com_content&task=view&id=6194&Itemid=31).

<sup>201</sup> Prensa Libre. November 11, 2008. *Directivos de ALMG denunciaron ser objeto de ataque mediático*. Available at: <http://www.prensalibre.com/pl/2008/noviembre/11/275853.html>.

<sup>202</sup> Prensa Libre. October 16, 2008. *Alerta sobre iniciativa que lesiona proyectos mayas*. Available at: <http://www.prensalibre.com/pl/2008/octubre/16/270201.html>.

<sup>203</sup> Presidency of Guatemala. November 27, 2008. Acuerdo Gubernativo No. 308-2008.

<sup>204</sup> IACHR. *Justicia e Inclusión Social: Los Desafíos de la Democracia en Guatemala*. Chapter VII. Paragraph 414. Available at: <http://www.cidh.org/relatoria/listDocuments.asp?categoryID=10>.



Principle 12 of the Declaration of Principles establishes that “[t]he concession of radio and television broadcast frequencies should take into account the democratic criteria that provide equal opportunity of access for all individuals.” In this respect, the Office of the Special Rapporteur urges the State to bring its legislative framework on broadcasting in line with the international standards on freedom of expression with respect to broadcasting.

## 16. Guyana

136. The Office of the Special Rapporteur takes note of the fact that, as of April 2008, the government of Guyana has resumed placing official publicity in the newspaper *Stabroek News*, which has one of the highest circulations in the country. In November 2006, official publicity was removed from the newspaper, which has an editorial stance that is critical of the government.<sup>205</sup> The Office of the Special Rapporteur emphasizes that, in accordance with Principle 13 of the Declaration of Principles, the arbitrary and discriminatory assignment of official publicity threatens freedom of expression and must be prohibited by law.

137. The Office of the Special Rapporteur expresses its concern over the temporary suspension of a television channel’s license. According to the information received, on April 11, 2008, the President of Guyana, Bharrat Jagdeo, acting in the capacity of Minister of Information, decided to suspend the license of the television channel *CNS-TV 6* for four months. The motive for the decision was the airing and later rebroadcasting of a call by a television viewer to assassinate the president. According to the information received, the Advisory Committee on Broadcasting did not sanction the channel because it issued an apology for the incident, but later, the President decided to sanction it in this manner. The channel reopened four months later.<sup>206</sup>

138. The Office of the Special Rapporteur also received information regarding possible restrictions against Gordon Moseley, a journalist with *Capitol News*, to prevent him from entering the office of the President. The decision, which was adopted on July 13, 2008, originated from a letter submitted by the journalist to a local newspaper in reaction to declarations made against him by the President.<sup>207</sup> The Office of the Special Rapporteur reminds the State of Guyana that the creation of obstacles to the free flow of information constitute, according to Principle 5 of the Declaration of Principles, a violation of the right to freedom of expression. Additionally, Principle 13 of the Declaration of Principles, among other points, states that: “The exercise of power [...] by the state [...] 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[s] freedom of expression.”

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<sup>205</sup> Office of the Special Rapporteur — IACHR. *Annual Report 2007*. Volume II. Chapter II. Paragraph 210. Available at: [http://www.cidh.oas.org/annualrep/2007eng/Annual\\_Report\\_2007.VOL.II%20ENG.pdf](http://www.cidh.oas.org/annualrep/2007eng/Annual_Report_2007.VOL.II%20ENG.pdf).

<sup>206</sup> Inter-American Press Association. April 15, 2008. *IAPA calls for greater press freedom in Guyana, Bermuda*. Available at: [http://www.sipiapa.com/v4/index.php?page=cont\\_comunicados&seccion=detalles&id=3911&idioma=us](http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=3911&idioma=us). Caribbean Net News. April 14, 2008. *Private TV station shut down over threat to kill Guyana President*. Available at: <http://www.caribbeanetnews.com/news-7186--13-13--.html>. Inter-American Press Association. *Guyana Report*. 64<sup>th</sup> General Assembly, Madrid, Spain. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=20&infoid=310&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&infoid=310&idioma=us). Reporters Without Borders. *Guyana: TV station suspended for four months for rebroadcasting threats against president*. Available at: [http://www.rsf.org/article.php3?id\\_article=26568](http://www.rsf.org/article.php3?id_article=26568).

<sup>207</sup> Communication sent by the Guyana Press Association to the Office of the Special Rapporteur for Freedom of Expression on July 14, 2008. Reporters Without Borders. July 16, 2008. *Leading TV Journalist banned from President’s office*. Available at: [http://www.rsf.org/print.php3?id\\_article=27843](http://www.rsf.org/print.php3?id_article=27843).

## 17. Haiti<sup>208</sup>

139. The IACHR applauds the progress made in combating impunity in cases related to the murder of journalists. On January 23, 2008, the Petit-Goave criminal court convicted *in absentia* seven individuals charged in connection with the December 2001 murder of Brignol Lindor, of *Radio Echo 2000*. The suspects were identified as members of an armed militia known as *Dòmi nan Bwa*, said to be supporters of former Haitian President Jean-Bertrand Aristide. Two persons were sentenced to life imprisonment in December 2007 for the murder.<sup>209</sup> And, in May 2008, the parents of Ricardo Ortega, the Spanish journalist killed in Haiti in 2004, disclosed the decision by the Haitian courts that, according to evidence gathered, the journalist may have been killed by bullets fired by foreign soldiers. When he was killed, at the time Aristide left power, Ortega was covering demonstrations of pro- and anti-Aristide demonstrations. Initially, the investigations focused on supporters of the former Haitian president as possible suspects in the journalist's murder, but the courts noted that there was not enough evidence to charge the nine Haitians held as suspects. In July, the Spanish authorities announced the re-opening of the investigation.<sup>210</sup>

140. Moreover, the IACHR has received reports that show that journalists had been assaulted in 2008 while performing their duties. On April 8, 2008, *Le Matin* newspaper photographer Jean-Jacques Agustin and Channel 11 cameraman Leblanc Macaenzy were wounded after being shot with rubber bullets as they covered clashes between protesters and official Haitian and United Nations security forces in Port-au-Prince, according to reports. *Haiti Progrès* news photographer Yves Joseph was injured by pellets fired by demonstrators. These acts of aggression took place against the backdrop of series of violent protests against the René Prével government, denouncing food price hikes.<sup>211</sup>

141. Other assaults on journalists were reported to the IACHR. Pedro Edouard, a cameraman for the government-owned TV station TNH, was wounded when a police officer pushed a gun into his mouth, even though the weapon did not go off when the trigger was pulled. Photographer Evens Saint-Felix was accosted by foreign soldiers as he photographed them harassing Haitian plain-clothes policemen.<sup>212</sup>

142. The IACHR reiterates the importance of Principle 9 of the Declaration of Principles, which 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

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<sup>208</sup> This section corresponds to the chapter on freedom of expression in Haiti, part of Chapter IV, Volume I of the Annual Report of the IACHR.

<sup>209</sup> Reporters Without Borders (RSF). "Victory over impunity 'within reach' in Lindor murder after seven are convicted in absentia." Release issued January 25, 2008. Available at: [http://www.rsf.org/article.php3?id\\_article=25205](http://www.rsf.org/article.php3?id_article=25205); IAPA. Haiti Report. General Assembly: 64th General Assembly, October 3-7, 2008, Madrid, Spain. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=20&inoid=320&idioma=sp](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&inoid=320&idioma=sp).

<sup>210</sup> RSF. *Conclusiones de la investigación sobre la muerte del periodista Ricardo Ortega: en tela de juicio la fuerza de interposición norteamericana*. Release published on May 13, 2008. Available at: [http://www.rsf.org/article.php3?id\\_article=26980](http://www.rsf.org/article.php3?id_article=26980). CPJ. "Spanish authorities restart Haiti murder investigation". Press release issued July 16, 2008. Available at: <http://cpj.org/2008/07/spanish-authorities-restart-haiti-murder-investiga.php>.

<sup>211</sup> CPJ. "Three reporters injured while covering mass protests in Haitian capital." Press release issued on April 9, 2008. Available at: <http://www.cpj.org/news/2008/americas/haiti09apr08na.html/>. Reuters AlertNet: "Protests over food prices paralyze Haitian capital." Article published on April 8, 2008. Available at: <http://www.alertnet.org/thenews/newsdesk/N08409570.htm>//Terra/EFE: "Violentas protestas en Haití causan número indeterminado de heridos y saqueos." Article published on April 8, 2008. Available at: <http://www.terra.com/noticias/articulo/html/act1205856.htm>.

<sup>212</sup> IAPA. Haiti Report. General Assembly: 64<sup>th</sup> General Assembly, October 3-7, 2008, Madrid, Spain. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=20&inoid=320&idioma=sp](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&inoid=320&idioma=sp).

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. Honduras

143. The Office of the Special Rapporteur paid an official visit to Honduras on February 11-14, 2008, during which it met with representatives from government and civil society to receive information on the situation of freedom of expression in that country. The Office of the Special Rapporteur expresses its thanks to the government of Honduras for the invitation to visit the country, as well as to the government institutions, journalists, communications media and civil society organizations for their participation and the information they provided.<sup>213</sup>

144. At the end of its visit, the Office of the Special Rapporteur observed progress with regard to the decriminalization of the offense of *desacato* and with the 2006 enactment of the Transparency and Access to Information Act. It also emphasized the need to continue working toward the adoption of measures favoring the right to freedom of expression and presented the following recommendations to the State:<sup>214</sup>

1. Launch investigations into the murders of journalists that have taken place in the country in order to determine whether or not these murders were related to the exercise of their profession; bring those responsible to justice; and take measures to ensure that the crimes not remain in impunity.
2. Investigate cases of threats and attacks against journalists in the country and punish the responsible parties. At the same time, take the measures necessary to protect the lives and physical integrity of the threatened persons and to ensure that journalists who have had to leave the country because of threats to their lives can return in conditions of security that allow them to freely practice their profession.
3. Continue the process of making legislation compatible with international standards, and in this sense modify the Penal Code and related laws in order to eliminate criminal sanctions for actions considered an “offense to honor or reputation” when this is related to information that is disseminated on matters of public interest.
4. Consolidate the progress made with the passage of the Transparency and Access to Information Law through the establishment of its regulations and administrative procedures.
5. Eliminate from legislation the compulsory membership in professional associations for journalists.
6. Adopt legislation and administrative policies requiring objective and transparent criteria for government advertising.
7. Take proactive steps toward ensuring pluralism in the media.

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<sup>213</sup> During the visit to Honduras, which took place February 11 -14, 2008, the delegation of the Office of the Special Rapporteur met with representatives of the government and civil society. Government representatives they met with include the President of Honduras, Manuel Zelaya; Minister of the Presidency, Enrique Flores Lanza; Vice-Minister of the Secretariat of Foreign Relations, Enrique Eduardo Reina; Magistrates of the Supreme Court of Justice, Lidia Estela Cardona and Nicolás García Zorto; President of the Institute for the Access to Public Information, Commissioner Elizabeth Chiuz Sierra; Commissioners Gilma Argurcia Valencia and Arturo Etchenique Santos; and the National Commissioner for Human Rights, Ramón Custodio López. The Special Rapporteur’s Office also met with former IACHR commissioner and Executive Director of *ACI Participa*, Leo Valladares; and with representatives of the Committee of Family Members of the Detained and Disappeared of Honduras (COFADEH); the Honduran Press Association; the Honduran School of Journalism; the Democracy without Borders Foundation; *C-Libre*; and the Media Association. Meetings were also held with a representative number of top journalists.

<sup>214</sup> Office of the Special Rapporteur – IACHR. February 14, 2008. *Press Release 185/08*. Available at: <http://www.IACHR.oas.org/relatoria/showarticle.asp?artID=721&IID=2>.

145. In relation to points 1 and 2 of its recommendations, the Office of the Special Rapporteur has not received information from the State regarding the progress of the investigations of the cases of journalists murdered in Honduras. Nevertheless, the Office of the Special Rapporteur is concerned about the information it received in 2008 about threats and attacks against members of the media. For example, during its visit to Honduras, it was informed that journalists Renato Álvarez, from *Canal 63*, Rossana Guevara, from *TN5* of *Canal 5*, and Sandra Maribel Sánchez, news coordinator for *Radio Globo*, had received threats in connection with their work as journalists. The Special Rapporteurship also received information during its visit on the situation of journalist Dina Meza, who since 2006 has been the beneficiary of precautionary measures granted by the IACHR because of threats she has received in connection with the practice of her profession.<sup>215</sup> In May of 2008, during a prosecutors' strike, the Office of the Special Rapporteur was informed that Álvarez and Sánchez had received threats, as did *TN5* team members Jerry Carvajal and Jacqueline Aguilar, and María Estela Martínez, an associate of the television news program "Hoy Mismo", which airs on *Corporación Televicentro*.<sup>216</sup> In addition, it received information concerning the threat against journalist Carlos Chinchilla, the director of *Canal 12 Telemaya*, and cameraman Marlon Dubón. On April 18, 2008, three masked individuals had entered the station in the city of Copán, and had bound and gagged an official and a visitor, with whom they left a threatening message for the reporters. Chinchilla had already been threatened in 2007 for reasons that may have been connected to his work as a journalist.<sup>217</sup> The Office of the Special Rapporteur reiterates to the State its recommendations on this issue, and recalls Principle 9 of the Declaration of Principles, which indicates that the intimidation and threats to members of the media, among other things, violate the right to freedom of expression. It adds that "[i]t is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

146. With respect to point 3 of its recommendations, the Office of the Special Rapporteur has not received information concerning the introduction and adoption of any reforms to the current legal system in working toward the decriminalization of the criminal defamation offenses contained in the Criminal Code of Honduras.<sup>218</sup> On this point, the Office of the Special Rapporteur reiterates its recommendation to the State to make efforts to make its laws on so-called offenses against honor compatible with international standards. It recalls Principle 10 of the Declaration of Principles, which states 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."

147. In reference to point 4 of its recommendations, the Office of the Special Rapporteur highlights the advances made in Honduras with the December 2006 enactment of the Transparency

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<sup>215</sup> Office of the Special Rapporteurship – IACHR. February 14, 2008. *Press Release 185/08*. Available at: <http://www.IACHR.oas.org/relatoria/showarticle.asp?artID=721&IID=2>.

<sup>216</sup> Inter American Press Association. *Informe Honduras*. 64<sup>th</sup> General Assembly. Madrid, Spain. Available at: [http://www.sipiapa.org/v4/index.php?page=det\\_informe&asamblea=20&inoid=321&idioma=sp](http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=20&inoid=321&idioma=sp). Reporters Without Borders. May 14, 2008. *Honduras: el presidente Manuel Zelaya critica un informativo televisivo; varios periodistas amenazados y agredidos*. Available at: [http://www.rsf.org/fil\\_en.php3?id\\_rubrique=682&mois=05](http://www.rsf.org/fil_en.php3?id_rubrique=682&mois=05). Communication sent by Fundación Democracia sin Fronteras to the Office of the Special Rapporteur for Freedom of Expression on May 14, 2008.

<sup>217</sup> Inter American Press Association. *Informe Honduras*. 64<sup>th</sup> General Assembly. Madrid, Spain. Available at: [http://www.sipiapa.org/v4/index.php?page=det\\_informe&asamblea=20&inoid=321&idioma=sp](http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=20&inoid=321&idioma=sp). Probidad/IFEX. April 21, 2008. *Periodista y camarógrafo de Telemaya amenazados con muerte en La Entrada*. Available at: <http://www.ifex.org/es/content/view/full/92877>. Reporters Without Borders. April 21, 2008. *Three armed men threaten TV station director and cameraman*. Available at: [http://www.rsf.org/fil\\_en.php3?id\\_rubrique=682&mois=04](http://www.rsf.org/fil_en.php3?id_rubrique=682&mois=04).

<sup>218</sup> Criminal Code. Decree 144-83. See articles 155 to 169; Decree 59-1997. See articles 155, 157 and 165. Available at: <http://www.congreso.gob.hn/codigopenal.htm>.

and Access to Information Act,<sup>219</sup> and the subsequent creation of the Institute for Access to Public Information. Nevertheless, according to the information provided to the Office of the Special Rapporteur during its visit, Articles 17<sup>220</sup> (classification of information as secret) and 39<sup>221</sup> (information covered by the law) could be open to restrictive interpretations that could hinder the effective exercise of the right to access to information.<sup>222</sup> The Office of the Special Rapporteur appreciates that the regulations to this Act were passed in March of 2008.<sup>223</sup> Critical information has been received by the Office on some aspects of the implementation of the law, such as an alleged excess of zeal in the classification of information about the budgets of government offices as “secret”, or the establishment of ten-year time limits for the declassification of information on government finances.<sup>224</sup> The Office of the Special Rapporteur urges the adoption of implementation decisions that are consistent with the standards on the issue, to guarantee the effective exercise of the right of all persons to access to information. Principle 4 of the Declaration of Principles states: “Access to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right.”

148. As it indicated in point 5 of its recommendations following the visit, the Office of the Special Rapporteur notes with concern that at the end of 2008 there is still a law in effect in Honduras that requires compulsory membership for the practice of journalism.<sup>225</sup> The Office of the Special Rapporteur underscores Principle 6 of the Declaration of Principles, which indicates that: “Every person has the right to communicate his/her views by any means and in any form.

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<sup>219</sup> Decree No. 170-2006. November 27, 2006. *Ley de Transparencia y Acceso a la Información Pública*. Available at: <http://www.sre.hn/inicio/Leyes%20Ley%20de%20transparencia.html>.

<sup>220</sup> Article 17. Classification of information as secret. Without prejudice to the provisions in the Act on secrecy of data, processes and confidentiality of personal data and information turned over confidentially to the State by private individuals; the classification of public information as secret is proper when the harm that could be caused is greater than the public interest in knowing the information, or when the disclosure of the information jeopardizes or poses a risk to: 1) The security of the State; 2) The life, safety and health of any person, humanitarian aid, the legally protected interests of children and other persons or by the right of *habeas data*; 3) The conducting of secret investigations concerning the prevention, investigation or prosecution of criminal offenses or the administration of justice; 4) The interest protected by the Constitution and by Laws; 5) The conduct of international affairs and business; and 6) The economic, financial or monetary stability of the country or its governability.

<sup>221</sup> Article 39. Entry into Force. This Act shall take effect twenty (20) days after its publication in the official gazette *La Gaceta*, with the exception of the articles concerning the right to *habeas data*, which shall enter into force once the pertinent amendments to the text of the Constitution are ratified. Only the public information that is generated after the entry of this law into force shall be subject to this law.

<sup>222</sup> Office of the Special Rapporteur- IACHR. February 14, 2008. *Press Release 185/08*. Available at: <http://www.IACHR.oas.org/relatoria/showarticle.asp?artID=721&IID=2>.

<sup>223</sup> Order No. IAIP 0001-2008. March 3, 2008. *Reglamento de la Ley de Transparencia y Acceso a la Información Pública*. Available at: [http://www.bch.hn/download/juridico/reglamentos/reglamento\\_ley\\_transparencia.pdf](http://www.bch.hn/download/juridico/reglamentos/reglamento_ley_transparencia.pdf).

<sup>224</sup> Reporters Without Borders. *Honduras: government body keeps financial records classified for 10 years*. Available at: [http://www.rsf.org/fil\\_en.php?id\\_rubrique=682&mois=07](http://www.rsf.org/fil_en.php?id_rubrique=682&mois=07). Inter American Press Association. *Informe Honduras. 64<sup>th</sup> General Assembly, Madrid, Spain*. Available at: [http://www.sipiapa.org/v4/index.php?page=det\\_informe&asamblea=20&infoid=321&idioma=sp](http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=20&infoid=321&idioma=sp). Comité Nacional Anticorrupción. June 30, 2008. *Programa de Cara a la Ciudadanía 8: CNA pide al IAIP derogar la clasificación de información reservada en Finanzas y la DEI*. Available at: <http://www.cna.hn/index.php?act=md&f=12&t=538&st=0>. Proceso Digital. January 2, 2008. *Leyes de transparencia y sus tímidos avances en América central: el balance del 2008*. Available at: <http://www.proceso.hn/2009/01/02/Termómetro/Leyes.de.transparencia/10536.html>. ConexiHon.com. December 31, 2008. *Pocos avances en la libertad de expresión*. Available at: [http://74.125.47.132/search?q=cache:Zcs3-y3MscJ:www.conexihon.com/ediciones/edicion107/t\\_libertad-expresion4.html+Pocos+avances+en+la+libertad+de+expresión&hl=en&ct=clnk&cd=1&gl=us&client=safari](http://74.125.47.132/search?q=cache:Zcs3-y3MscJ:www.conexihon.com/ediciones/edicion107/t_libertad-expresion4.html+Pocos+avances+en+la+libertad+de+expresión&hl=en&ct=clnk&cd=1&gl=us&client=safari).

<sup>225</sup> Organic Law of the Colegio de Periodistas de Honduras. Available at: <http://www.congreso.gob.hn/leyes%20nacionales/759-79.pdf>. Amended by Decree 79. Available at: <http://www.congreso.gob.hn/leyes%20nacionales/79-81.pdf>. Colegio de Periodistas de Honduras. All of the laws relating to its functioning and authority are available at: <http://www.colegiodeperiodistasdehonduras.com/ley.htm>.



Compulsory membership or the requirements of a university degree for the practice of journalism constitute unlawful restrictions of freedom of expression.” Consequently, the Office of the Special Rapporteur calls upon the Honduran authorities to repeal any law that entails the mandatory membership of journalists as a requirement for practicing this profession.

149. On point 6 of its recommendations, the Office of the Special Rapporteur has not received information to indicate that any law has been enacted on the distribution of government advertising. As such, it again urges the State to adopt legislation and administrative policies that require objective and transparent criteria for the allocation of government advertising. Principle 13 of the Declaration of Principles indicates that the arbitrary and discriminatory allocation of government advertising with the intention of punishing or rewarding the communications media based on its editorial slant is a violation of freedom of expression and must be expressly prohibited by law.

150. The Office of the Special Rapporteur has not received information that during 2008 that any timely action has been taken with respect to point 7 of its recommendations in terms of guaranteeing pluralism in the communications media, and therefore reiterates what it stated at the end of its visit: “[t]he Special Rapporteur’s Office believes that it is important for Honduras to take actions such as: enacting laws against monopolies in the ownership and control of media; passing legislation that establishes open, public, and transparent competition for assigning radio frequencies; and giving power to independent agencies to make decisions on these matters.”<sup>226</sup>

151. Further, the Office of the Special Rapporteur was informed that in November of 2008 the Appeals Division of the Administrative Law Court of First Instance entered a final judgment granting the frequency for the *Canal 8* to the Teleunsa Company, and ordered the government to return it to that firm. According to the information received, judicial authorities had already ordered the government to turn the channel over to Teleunsa in 2007, and again in July of 2008.<sup>227</sup> At the end of 2008, the Office of the Special Rapporteur had not received information as to whether the government had turned the channel over to Teleunsa.

152. Finally, the Office of the Special Rapporteur reiterates its gratitude to the government of Honduras for the invitation to make a working visit to the country, which demonstrates its willingness to engage in dialogue and work jointly to guarantee the exercise of freedom of expression. It also takes special note of the cooperation of the journalists and civil society organizations that provided information to the Office of the Special Rapporteur, and hopes that they continue to make their valuable contributions.

## **19. Jamaica**

153. The Office of the Special Rapporteur welcomes the initiation of a process to review the legal framework for defamation and exhorts the State to adjust its legislation to conform to

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<sup>226</sup> Office of the Special Rapporteur - IACHR. February 14, 2008. *Press Release 185/08*. Available at: <http://www.IACHR.oas.org/relatoria/showarticle.asp?artID=721&IID=2>.

<sup>227</sup> La Prensa. November 25, 2008. *Corte le quita al gobierno la frecuencia del canal 8*. Available at: <http://www.laprensahn.com/País/Ediciones/2008/11/26/Noticias/Corte-le-quita-al-Gobierno-la-frecuencia-de-Canal-8>. Radio La Primerísima. August 3, 2008. *Canal de televisión del Gobierno hondureño comienza a emitir señal*. Available at: <http://www.radiolaprimerisima.com/noticias/resumen/34874>. Asociación Mundial de Radios Comunitarias. August of 2008. *Canal de televisión del gobierno comenzó a emitir*. Available at: <http://legislaciones.item.org.uy/index?q=node/732>. Inter American Press Association. *Informe Honduras. 64<sup>th</sup> General Assembly, Madrid, Spain*. Available at: [http://www.sipiapa.org/v4/index.php?page=det\\_informe&asamblea=20&infoid=321&idioma=sp](http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=20&infoid=321&idioma=sp). La Prensa. November 26, 2008. *Gobierno intenta recuperar Canal 8 ante tribunales*. Available at: <http://www.laprensahn.com/Pa%C3%ADs/Ediciones/2008/11/27/Noticias/Gobierno-intenta-recuperar-Canal-8-ante-tribunales>.

standards on freedom of expression. The Special Rapporteurship received information that the Prime Minister, Bruce Golding, ordered the creation of a committee to review the country's defamation laws and issue recommendations. On February 28, 2008, the committee presented its report and on April 29 of the same year, its recommendations were presented to the House of Representatives. According to the information received, the committee proposed abolishing the crimes of criminal defamation (*blasphemous, obscene and seditious libel*). It also proposed the elimination of the distinction between the civil actions of slander and libel, as well as the reduction of the statute of limitations to begin judicial actions for defamation from six years to twelve months<sup>228</sup>. The IACHR made an *in loco* visit to Jamaica between November 1-5, 2008. The IACHR met with directors of media outlets, journalists, and directors of media and reporter associations. The IACHR was informed that the initiatives of legislative reform presented by the committee were making their way through parliamentary channels<sup>229</sup>.

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

## 20. Mexico

155. On March 12, 2008, during the 131<sup>st</sup> Period of Sessions, the IACHR held a public hearing on the state of the law of the right to freedom of expression in Mexico. Representatives of the State and non-governmental organizations on human rights participated. In preparing this section of its 2008 Annual Report, the Special Rapporteurship has used the information provided by the parties at the hearing.<sup>230</sup>

156. The Office of the Special Rapporteur views positively the introduction of two draft laws before the House of Representatives to "make crimes against freedom of expression federal offenses."<sup>231</sup> In October of 2008, Mexican President Felipe Calderón proposed to amend Article 73

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<sup>228</sup> Jamaica Labour Party. April 30, 2008. *Committee recommends abolishing difference between slander and libel*. Available at: <http://www.jamaicalabourparty.com/home/content/committee-recommends-abolishing-difference-between-slander-and-libel>. Inter American Press Association. *Jamaica Report. 64th General Assembly, Madrid, Spain*. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=20&inford=311&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&inford=311&idioma=us). Committee commissioned by the Hon. Prime Minister Bruce Golding chaired by Justice Hugh Small. February 29, 2008. *Review of Jamaica's Defamation Laws*. Available at: <http://www.jamaica-gleaner.com/pages/defamationreport/Defamation%20Report.pdf>.

<sup>229</sup> IACHR. December 5, 2008. *Press Release 59/08*. Available at: <http://www.cidh.oas.org/Comunicados/English/2008/59.08eng.htm>.

<sup>230</sup> The State delegation was headed by Armando Vivanco, General Joint Director of Human Rights at the Secretariat on Foreign Relations, and Senator Carlos Sotelo, President of the Senate Commission on Radio, Television and Cinematography. The human rights non-governmental organizations that requested the public hearing were the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos ("Mexican Commission on Defense and Promotion of Human Rights") and Asociación Mexicana de Derecho a la Información ("Mexican Association of Right to Information"). On August 20, 2008, the petitioning organizations provided the Special Rapporteurship with additional information on the topics discussed at the hearing. The audio for the hearing is available at: <http://www.cidh.org/Audiencias/select.aspx>.

<sup>231</sup> Committee to Protect Journalists. June 9, 2008. *Calderón apoya la federalización de los delitos contra la libertad de expresión*. Available at: <http://cpj.org/es/2008/06/calderon-apoya-la-federalizacion-de-los-delitos-co.php>; December 8, 2008. *El debate comienza en México*. Available at: <http://cpj.org/es/2008/12/el-debate-comienza-en-mexico.php>; El



of the Federal Constitution so that the “federal authorities [may] take cognizance [...] of cases from local courts when they [...] involve [...] human rights or freedom of expression and, because of the characteristics of their execution or social relevance, go beyond the realm of the states or the Federal District, in the terms established by law.”<sup>232</sup> In November of 2008, a group of legislators introduced a draft law to amend Article 430 of the Federal Criminal Code, Article 50 of the Federal Judiciary Act and Article 116 of the Code of Criminal Procedure so that, among other measures, a sentence of “one to five years and a fine of one hundred to five hundred days’ minimum wage [shall be imposed] against any person who, with the intention of restricting the right of another to express and impart freely his thoughts, ideas, opinions and information, commits against such person an act legally defined as a criminal offense in this Code. The same penalty shall be imposed against any person who, with the same intention, attacks the facilities of any entity engaged in communications by means legally defined as a criminal offense.”<sup>233</sup>

157. The Office of the Special Rapporteur considers that the introduction of these draft laws, which seek to promote decisive State action to prevent, identify, prosecute and punish the perpetrators of acts of violence against those who exercise the right to freedom of expression, is an important advance.

158. The vulnerability of journalists in Mexico to organized crime, especially the drug trafficking cartels, was again underscored most tragically in 2008. This year, the Office of the Special Rapporteur was informed of the murders of media professionals Teresa Bautista and Felicitas Martínez<sup>234</sup>, Miguel Villagómez Valle<sup>235</sup> and Armando Rodríguez Carreón<sup>236</sup>, allegedly in

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Universal. June 27, 2008. *Propondrá Calderón a Congreso federalizar crímenes contra periodistas*. Available at: <http://www.eluniversal.com.mx/notas/518307.html>. Contralínea. January 1, 2009. *Detienen federalización de delitos contra periodistas*. Available at: <http://contralinea.info/archivo-revista/index.php/2009/01/01/detienen-federalizacion-de-delitos-contra-periodistas/>.

<sup>232</sup> House of Representatives, LX Legislature. October 24, 2008. *Del Ejecutivo Federal, con Proyecto de Decreto que reforma la Fracción XXI del artículo 73 de la Constitución Política de los Estados Unidos Mexicanos*.

<sup>233</sup> House of Representatives. LX Legislature. November 21, 2008. *Proyecto de Decreto por el que se adiciona el Título vigésimo séptimo y el artículo 430 del Código Penal Federal, y el artículo 116 del Código Federal de Procedimientos Penales; así como se reforma el artículo 50, fracción I de la Ley Orgánica del Poder Judicial de la Federación*.

<sup>234</sup> According to the information received, Bautista Merino and Martínez Sánchez, broadcasters from the community radio station *La Voz que Rompe el Silencio* of the Triqui indigenous community in Oaxaca, were killed in an ambush on April 7, 2008, by unidentified individuals who fired automatic weapons into the vehicle they were traveling in. Another four people were injured. According to the information obtained from the press and non-governmental organizations, the reporters were killed on their way back from conducting interviews in neighboring towns and talking about their community radio station. The two women worked as program hosts and reporters at the community radio station and would often report on issues concerning the autonomous indigenous government, health, education and their community’s culture. Office of the Special Rapporteur – IACHR. April 18, 2008. *Press Release No. 190/08*. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=729&IID=2>. Centro Nacional de Comunicación Social/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](http://www.rsf.org/article.php3?id_article=26514). Committee to Protect Journalists. 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 of the United Nations High Commissioner for Human Rights in Mexico. 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>.

<sup>235</sup> According to the information received, Villagómez Valle was kidnapped on October 9, 2008 after leaving the main office of the newspaper *La Noticia* in Michoacán. Hours later he was shot to death. His body was found on October 10, 2008 in the neighboring state of Guerrero. Villagómez Valle was the founder and editor of *La Noticia*, a newspaper that reported on crimes and politics as well as sports and culture. According to the information released by the local press and non-governmental organizations, Villagómez Valle had received a death threat on his cell phone a month earlier that might have been connected to a group of drug traffickers. Office of the Special Rapporteur – IACHR. October 23, 2008. *Press Release No. R44/08*. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=733&IID=2>. Reporters Without Borders. October 11, 2008. *Unos desconocidos abaten a director de diario en Michoacán*. Available at:

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relation to their work as journalists. It also received information on the murder of radio announcer Alejandro Fonseca.<sup>237</sup> The Office of the Special Rapporteur condemns these crimes urges the authorities to take all possible measures to ensure the life and personal safety of members of the media, and to guarantee their right to freedom of expression.<sup>238</sup>

159. The Office of the Special Rapporteur also underscores its concern for the alleged disappearance of journalist Mauricio Estrada Zamora in February of 2008, and urges the State to investigate his whereabouts and to shed light on the circumstances of this act.<sup>239</sup>

160. According to the statistical information gathered by the Office of the Special Rapporteur, 20 media professionals were murdered in Mexico between 1995 and 2005 for reasons allegedly related to their work as journalists.<sup>240</sup> During 2006, nine murders and one disappearance were reported.<sup>241</sup> In 2007, three homicides and three disappearances were reported.<sup>242</sup> There are other cases of murders committed against journalists during the period between 1995 and 2008 that have not been included in the statistics of the Office of the Special Rapporteur because there is still no clear connection between these crimes and the practice of journalism. These figures have

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[http://www.rsf.org/article.php3?id\\_article=28907](http://www.rsf.org/article.php3?id_article=28907). *El Universal*. October 11, 2008. *Despiden al periodista asesinado en Guerrero*. Available at: <http://www.eluniversal.com.mx/notas/546064.html>.

<sup>236</sup> According to the information received, on November 13, 2008, Rodríguez Carreón had left his house in a car to take his daughter to school, when unidentified individuals intercepted him and shot him several times. At the beginning of 2008, Rodríguez Carreón had received threats, and consequently left Ciudad Juárez for two months. Office of the Special Rapporteur – IACHR. November 14, 2008. *Press Release No. R50/08*. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=734&IID=2>. National Human Rights Commission. November 14, 2008. *Press Release No. 166/08, La CNDH inició hoy de oficio un expediente de queja, con motivo del homicidio del señor Armando Rodríguez Carreón*. Available at: <http://www.cndh.org.mx/recomen/recomen.asp>. Committee to Protect Journalists. November 13, 2008. *Reportero de la fuente policiaca asesinado a balazos en Ciudad Juárez*. Available at: <http://cpj.org/es/2008/11/mexico-reportero-de-la-fuente-policiaca-asesinado.php>. Reporters Without Borders. November 14, 2008. *El crimen organizado asesina a un periodista en Ciudad Juárez*. Available at: [http://www.rsf.org/article.php3?id\\_article=29291](http://www.rsf.org/article.php3?id_article=29291).

<sup>237</sup> According to the information received, Fonseca, an announcer on *Frecuencia Modulada Exa* in Tabasco, was shot to death on September 23, 2008 by unidentified individuals as he was putting up a poster on a public street as part of a campaign he had initiated against organized crime. Committee to Protect Journalists. September 25, 2008. *Locutor de radio muerto a tiros en Tabasco*. Available at: <http://cpj.org/es/2008/09/locutor-de-radio-muerto-a-tiros-en-tabasco.php>. Reporters Without Borders. September 25, 2008. *Asesinado en el estado de Tabasco un periodista radiofónico en lucha contra el crimen organizado*. Available at: [http://www.rsf.org/article.php3?id\\_article=28725](http://www.rsf.org/article.php3?id_article=28725). Article 19/Centro Nacional de Comunicación Social. September 25, 2008. *Locutor de radio asesinado cuando realizaba campaña contra la inseguridad*. Available at: <http://www.libertad-expresion.org.mx/alertas.php?id=6>.

<sup>238</sup> In its 2007 Annual Report, the Office of the Special Rapporteur expressed its concern over the vulnerability of media professionals in Mexico, “[which] is of the greatest concern,” IACHR, Office of the Special Rapporteur, 2007 Annual Report, Volume II, Chapter II, para. 221. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=725&IID=2>.

<sup>239</sup> Committee to Protect Journalists. February 15, 2008. *El CPJ alarmado por desaparición de periodista en Michoacán*. Available at: <http://cpj.org/es/2008/02/el-cpj-alarmado-por-desaparición-de-periodista-en.php>. Reporters Without Borders. February 15, 2008. *Reporteros sin Fronteras está preocupada por la desaparición de un periodista en Michoacán*. Available at: [http://www.rsf.org/article.php3?id\\_article=25768](http://www.rsf.org/article.php3?id_article=25768).

<sup>240</sup> Office of the Special Rapporteur – IACHR. March 8, 2008. *Estudio Especial sobre la Situación de las Investigaciones sobre el Asesinato de Periodistas por motivos que pudieran estar relacionados con la Actividad Periodística: Período 1995-2005*, pp. 46-50. Available at: <http://www.cidh.org/relatoria/section/Asesinato%20de%20Periodistas.pdf>.

<sup>241</sup> Office of the Special Rapporteur - IACHR, 2006 Annual Report, Volume II, Chapter II, paras. 13 & 143-167. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=691&IID=2>.

<sup>242</sup> Office of the Special Rapporteur – IACHR. 2007 Annual Report, Volume II, Chapter II, paras. 218-9. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=725&IID=2>.

been corroborated by governmental<sup>243</sup> and non-governmental bodies,<sup>244</sup> which have also concluded that the situation for those practicing journalism in some regions of the country is extremely serious.

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<sup>243</sup> On November 23, 2008, the National Human Rights Commission (CNDH) “condemn[ed] the persistent violence against media professionals, and call[ed] upon the State to investigate all cases of this nature in depth and in a professional manner, determine their connection to the exercise of the right to freedom of expression, and punish those persons guilty of committing these attacks, putting an end to impunity.” National Human Rights Commission, November 23, 2008, Press Release No. 170/08. In the 2006-2007 period, the CNDH also expressed its concern for the state of the practice of journalism in Mexico. On March 24, 2006, the National Commissioner of Human Rights “expressed its concern because the cases of homicide and disappearance of journalists, as well as threats made to members of the profession in our country by organized crime, remain unsolved and their perpetrators remain unpunished, which presents a serious threat to the exercise of freedom of expression in the country.” National Human Rights Commission, March 24, 2006, Press Release No. 042/2006. On February 4, 2007, la CNDH “demand[ed] that the authorities conduct professional, effective investigations in the cases of murdered or disappeared journalists that result in the arrest and punishment of the masterminds and perpetrators, which is a necessary condition for containing the growing wave of attacks against members of the media.” National Human Rights Commission, February 4, 2007, Press Release No. 005/2007. On April 10, 2007, the National Commissioner of Human Rights asserted that “[t]he timely clarification of these acts is an act of justice, and will in turn send a clear message that there will be zero tolerance or impunity for those who violate journalists’ right to life and freedom of expression.” National Human Rights Commission, February 10, 2007, Press Release No. 055/2007. On May 6, 2007, the CNDH “proposed that the Office of the Attorney General of the Republic strengthen the legal and administrative structure of the Office of the Special Prosecutor for Crimes against Journalists, that it specialize, train and raise awareness among the public officials responsible for conducting the investigations.” National Human Rights Commission. May 6, 2007. Press Release No. 066/2007. Available at: <http://www.cndh.org.mx/comsoc/compre/rescoas.asp>.

<sup>244</sup> In February of 2008, at the end of a visit to Mexico, the United Nations High Commissioner for Human Rights stated that, “the growing limitations to freedom of expression and assembly [and] the concentration of media power in the hands of a few strongly suggests the need for greater pluralism and greater protection of the diversity of opinions, necessary in a healthy democratic society. The unresolved killings and abuses of journalists contribute to a climate of impunity that affects the right to free expression.” On May 5, 2008, the representative in Mexico of the Office of the United Nations High Commissioner for Human Rights maintained that “[r]ecent years have been particularly violent for journalism in Mexico. Members of the media have become especially vulnerable to a broad range of attacks, especially from organized crime linked to the drug cartels. According to information from the Program for Offenses against Journalists and Human Rights Defenders of the National Human Rights Commission, 37 journalists have been murdered between the years 2000 and 2007. According to figures from the Office of the Special Prosecutor for Crimes against Journalists of the Office of the Attorney General of the Republic, 219 crimes ranging from murder to blackmail and threats have been committed against journalists between February of 2006 and February of 2008.” Office of the United Nations High Commissioner for Human Rights in Mexico. May 5, 2008. *Intervención del representante en México de la OACNUDH en la Conferencia de Prensa sobre Libertad de Expresión*. Available at: <http://www.hchr.org.mx/documentos/conferencias/Ponencialibertaddeexpresión.pdf>.

On May 2, 2008, the Centro Nacional de Comunicación Social [National Center for Social Communication] affirmed that “from the year 2000 to the present, 24 journalists have been killed and eight remain missing, in addition to the physical, property and legal attacks that violate this right in México.” Centro Nacional de Comunicación Social. May 2, 2008. *Libertad de Prensa: Página en blanco por garantizar y proteger en México*. Available at: <http://cencos.org/es/node/18412>. AMARC - Mexico/Centro de Periodismo y Ética Pública/Centro Nacional de Comunicación Social/Fundación Manuel Buendía/Libertad de Información - Mexico A.C./Sindicato Nacional de Redactores de la Prensa/Red de Protección a Periodistas y Medios de Comunicación/Reporters Without Borders. January 10, 2008. Press Bulletin, *Preocupante la situación de la libertad de expresión en el país*; El Universal. May 29, 2008. *Exigen cese de asesinatos a periodistas: Diferentes organizaciones de reporteros mexicanos se manifestaron en las inmediaciones de la PGR, en la ciudad de México, para demandar garantías para el desempeño periodístico*. Available at: [http://www.eluniversal.com.mx/notas/vi\\_510666.html](http://www.eluniversal.com.mx/notas/vi_510666.html).

In August of 2008, the International Mission for the Documentation of Attacks against Journalists and Communications Media concluded that “[t]he violence that the country has sustained in recent years from organized crime activity has had a profound impact on the practice of journalism, and not only has it meant the murder or disappearance of reporters but it has also led to self-censorship in the communications media, given the impunity and mistrust of the authorities at all levels. It is therefore essential that civil organizations and journalists organize and seek mechanisms to reverse this tendency. Although the battle among the cartels is particularly intense in the northern states, the violence has extended to nearly all of Mexico, and the self-censorship of the media has been an important concern in recent years. [...] The three levels of government must assume their responsibility to guarantee fully the exercise of freedom of expression and society’s right to information, and to prevent powerful groups from exerting any type of pressure on media professionals.” Misión Internacional de Documentación sobre Ataques en Contra de Periodistas y Medios de Comunicación. August 2008. *Libertad de Prensa en México: La Sombra de la Impunidad y la Violencia*, p. 23. Available at: <http://www.libertad-expresion.org.mx/downloads/informe-la%20sombra%20de%20la%20imp%20y%20la%20violen.pdf>.

The International Committee to Protect Journalists came to the same conclusion in December of 2008. Committee to Protect Journalists. December 18, 2008. *For sixth straight year, Iraq deadliest nation for press*. Available at:

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161. It is important to stress that the inclusion of this information in this section of the 2008 Annual Report in no way assumes the responsibility of the Mexican State in the commission of these crimes. It only illustrates that journalism in that country has become an extremely risky profession. Thus, on July 20, 2008, the National Human Rights Commission [CNDH] “expresse[d] its concern for the general increase in attacks against journalists, mainly with regard to murders and disappearances, as well as for the prevailing impunity with regard to punishing such crimes [...], which leads to the assertion that in Mexico journalism has become a high-risk profession.”<sup>245</sup>

162. In this respect, the Inter-American Court has established clearly that, “[t]he State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation. [...] The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim’s full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. *The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.*”<sup>246</sup>

163. The statements made to the press in December of 2008 by Octavio Orellana, Head of the Office of the Special Prosecutor for Crimes against Journalists (FEADP), indicating that “there is an erroneous perception that Mexico is the country with the greatest number of homicides against journalists, but that is not true,”<sup>247</sup> are therefore of interest to the Office of the Special Rapporteur. These statements are troubling to the Office of the Special Rapporteur given the context of an insufficient State response to these crimes, precisely because of their high number and complexity.

164. The Office of the Special Rapporteur urges the State to provide sufficient means for the serious and exhaustive investigation of these violations of freedom of expression. In particular, it urges the State to create mechanisms for the protection and safety of journalists and to design strategies to promote the investigation of killings and attacks on members of the media. It is necessary to prevent these crimes and to make effective progress in punishing the perpetrators of such acts.

165. In its 2006 Annual Report, the Office of the Special Rapporteur viewed the creation of the FEADP positively.<sup>248</sup> Nevertheless, it has received information that—three years after its

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<http://cpj.org/reports/2008/12/for-sixth-straight-year-iraq-deadliest-nation-for.php>; September 30, 2008. *Los Desaparecidos: México en Números*. Available at: <http://cpj.org/es/2008/09/mexico-en-numeros.php>.

<sup>245</sup> National Human Rights Commission, July 20, 2008, Press Release No. 113/2008. On September 22, 2008, the National Commissioner of Human Rights further stated that, “even in those cases where the offense against a journalist does not take the form of an abusive act of authority or has not been committed by a public official—as happens in attacks by criminal gangs against a journalist or journalists—the authorities are obligated to investigate and establish the facts.” National Human Rights Commission, September 22, 2008, Press Release No. 144/08. Available at: <http://www.cndh.org.mx/comsoc/compre/rescoas.asp>.

<sup>246</sup> I/A Court H.R., *Case of Velásquez Rodríguez*, Judgment of July 29, 1988. Series C, No. 1, paras. 174 and 176 (emphasis added).

<sup>247</sup> El Universal. December 10, 2008. *Niegan que México esté entre los países más riesgosos para periodistas*. Available at: <http://www.eluniversal.com.mx/notas/561540.html>. La Crónica de Hoy. December 9, 2008. *Niegan que México sea el más peligroso de AL para periodistas*. Available at: [http://www.cronica.com.mx/notaImprimir.php?id\\_nota=402900](http://www.cronica.com.mx/notaImprimir.php?id_nota=402900).

<sup>248</sup> Office of the Special Rapporteur –IACHR. 2006 Annual Report, Chapter II, para. 17, available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=691&IID=2>.

creation—the FEADP still lacks the financial and human resources to carry out its work.<sup>249</sup> The Office of the Special Rapporteur notes this circumstance with concern, bearing in mind the high number of cases involving homicides, assaults and threats against journalists that are still pending in Mexico. The Office of the Special Rapporteur considers the existence of an office of this kind, with personnel specifically assigned to the issue, to be extremely important. It urges the State to provide this office with the budgetary resources necessary for the investigation of these crimes.

166. It is notable that on April 31, 2008, the Escuinapa court of first instance [with both civil and criminal jurisdiction] convicted four individuals for the November 2004 murder of photographer Gregorio Rodríguez in the State of Sinaloa.<sup>250</sup> However, on September 26, 2008, the CNDH issued Recommendation No. 050/2008, addressed to the Attorney General of the Republic, the Governor of the State of Oaxaca and the Speaker of the House of the state legislature of Oaxaca, in the case of the October 2006 murder of journalist Bradley Rolando Will.<sup>251</sup> In its recommendation, the CNDH concluded that “to date, the respective court decision has not been issued, the person or persons allegedly responsible for the injuries that caused [his] death have not been identified [...], and neither have the motive and causes of the attack against him.” It further concluded that “the irregularities detected, the delayed action, and the lack of timeliness in the proceedings conducted by the prosecution, expert witnesses and other public officials involved in this case from the Office of the Attorney General of the Republic, as well as the Attorney General’s Office for the State of Oaxaca, evidence the government’s failure to pursue justice, which also violates the fundamental rights of the journalist’s parents and relatives to legality, legal certainty and the due provision of justice.”<sup>252</sup> It is of serious concern to the Office of the Special Rapporteur

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<sup>249</sup> Misión Internacional de Documentación sobre Ataques en Contra de Periodistas y Medios de Comunicación. August 2008. *Libertad de Prensa en México: La Sombra de la Impunidad y la Violencia*, p. 25. Available at: <http://www.libertad-expresion.org.mx/downloads/informe-la%20sombra%20de%20la%20imp%20y%20la%20viole.pdf>; Centro Nacional de Comunicación Social. December 9, 2008. *Pobres resultados de la FEADP en su informe 2008*. Available at: <http://cencos.org/es/node/19996>.

<sup>250</sup> According to the information received, Rodríguez had been killed following the publication of photographs of a state government official meeting with an alleged drug trafficker. The judgment has been appealed. Office of the Special Rapporteur – IACHR. March 8, 2008. *Special Study on the Status of Investigations into the Murder of Journalists during the 1995 – 2005 Period for Reasons that may be Related to Their Work in Journalism*, p. 120. Available at: <http://www.cidh.org/relatoria/section/Asesinato%20de%20Periodistas.pdf>; Committee to Protect Journalists. April 7, 2008. *En México, cuatro sujetos sentenciados por asesinato en 2004*. Available at: <http://cpj.org/es/2008/04/en-méxico-cuatro-sujetos-sentenciados-por-asesinat.php>; Inter American Press Association. April 4, 2008. *Sentencian a los asesinos de fotógrafo Gregorio Rodríguez*. Available at: <http://www.impunidad.com/index.php?shownews=177&idioma=sp>.

In its Recommendation No. 008/2006, addressed to the Governor of the State of Sinaloa, the National Human Rights Commission (CNDH), indicated that it had been “verified that government officials from the State of Sinaloa committed acts and omissions that violate[d] the rights of legal certainty, legality and the due provision of justice” in the investigation of the press photographer’s death. Comisión Nacional de los Derechos Humanos de México. April 10, 2006. *Recomendación 008/2006: Sobre el caso del señor Gregorio Rodríguez Hernández, reportero gráfico del periódico El Debate*. Available at: <http://www.cndh.org.mx/recomen/recomen.asp>. Mexican Ministry of Foreign Affairs, Bureau of Human Rights and Democracy. April 10, 2008. Informative Bulletin No. 62. *Sentencian a cuatro personas por el asesinato del reportero gráfico Gregorio Rodríguez Hernández*. Available at: <http://portal.sre.gob.mx/oi/pdf/dgdh62.pdf>.

<sup>251</sup> According to the information received, Will was shot on October 27, 2006 while filming a confrontation between sympathizers of the Popular Assembly of the People of Oaxaca [Asamblea Popular de los Pueblos de Oaxaca] and the local police. Office of the Special Rapporteur – IACHR. October 31, 2006. *Press Release 156/06*. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=682&IID=2>.

<sup>252</sup> Comisión Nacional de los Derechos Humanos de México. April 10, 2008. Recommendation 050/2008, *Sobre el caso del homicidio del señor Bradley Roland Will, reportero gráfico de Indymedia*. Available at: <http://www.cndh.org.mx/recomen/recomen.asp>. Reporters Without Borders. October 2, 2008. *Oficialmente aclaradas las condiciones en que se efectuó la investigación del asesinato de Brad Will. Reporters Without Borders writes to the Office of the Attorney General of the Republic*. Available at: [http://www.rsf.org/article.php3?id\\_article=28796](http://www.rsf.org/article.php3?id_article=28796).



that the Office of the Attorney General of the Republic has reportedly decided not to accept such recommendation.<sup>253</sup>

167. In addition, the Office of the Special Rapporteur continued to receive information in 2008 indicating that journalists and the communications media continue to be the object of threats, acts of violence and intimidation for their coverage of organized crime activities and the concealment of acts of corruption. Some of the most representative cases were those of photographer Gabriel Hugué Córdoba from the newspaper *Notiver* of Veracruz,<sup>254</sup> journalist Melchor López from *Radio Mixteca* de Oaxaca,<sup>255</sup> reporters Leo Espinoza, Geovanny Elizalde and Torivio Bueno from the newspaper *El Debate* de Sinaloa,<sup>256</sup> journalist Juan Padilla from the newspaper *El Correo de Tabasco*,<sup>257</sup> journalist Luis Pablo Guardado Negrete from the newspaper *Noticias de la Bahía* of Nayarit,<sup>258</sup> reporters Melesio Melchor Angeles and Jorge Aragón Martínez from the radio station *Zaachila Radio* of Oaxaca,<sup>259</sup> and reporter Jorge Insunza Bustillos from the newspaper *Sol de Sinaloa*.<sup>260</sup> Particular attention has also been paid to the attack of January 6, 2009 on the facilities of *Televisa* in Nuevo León.<sup>261</sup>

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<sup>253</sup> Article 19. October 21, 2008. *El asesinato de Brad Will, punta del iceberg de la impunidad en los casos de agresiones a periodistas*. Available at: <http://www.article19.org/pdfs/press/mexico-el-asesinato-de-brad-will-punta-del-iceberg-de-la-impunidad-en-los-ca.pdf>. Committee to Protect Journalists. October 24, 2008. *El CPJ preocupado por investigación en el caso Will*. Available at: <http://cpj.org/es/2008/10/el-cpj-preocupado-por-investigacion-en-el-caso-wil.php>.

<sup>254</sup> Centro Nacional de Comunicación Social/Article 19. February 25, 2008. *Reportero Gráfico es detenido de manera ilegal por agentes de la PFP en Veracruz*. Available at: <http://cencos.org/es/node/17938>. Committee to Protect Journalists. February 25, 2008. *Policía Preventiva Federal detiene y ataca a reportero gráfico en Veracruz*. Available at: <http://cpj.org/es/2008/02/policia-preventiva-federal-detiene-y-ataca-a-repor.php>.

<sup>255</sup> Committee to Protect Journalists. April 25, 2008. *Casa de director de radio baleada por atacantes no identificados*. Available at: <http://cpj.org/es/2008/04/casa-de-director-de-radio-baleada-por-atacantes-no.php>. Centro Nacional de Comunicación Social/Article 19. April 29, 2008. *Temor la seguridad del director de Radio Mixteca*. Available at: <http://cencos.org/es/node/18389>. Reporters Without Borders. April 29, 2008. *Acribillada a balazos la casa de un periodista en Oaxaca, ataques a la prensa en el resto del país*. Available at: [http://www.rsf.org/article.php3?id\\_article=26762](http://www.rsf.org/article.php3?id_article=26762).

<sup>256</sup> Centro Nacional de Comunicación Social/Article 19. May 7, 2008. *Periodistas agredidos por agentes de la Policía Federal Preventiva cuando cubrían operativo*. Available at: <http://cencos.org/es/node/18441>. Committee to Protect Journalists. May 7, 2008. *Dos periodistas hostigados, uno detenido por policías federales en México*. Available at: <http://cpj.org/es/2008/05/dos-periodistas-hostigados-uno-detenido-por-policia.php>.

<sup>257</sup> Reporters Without Borders. June 9, 2008. *El director de un semanario en Veracruz sale ileso de un atentado a disparos; un colega de un diario de Tabasco recibe una cabeza cortada*. Available at: [http://www.rsf.org/article.php3?id\\_article=27388](http://www.rsf.org/article.php3?id_article=27388). Committee to Protect Journalists. June 10, 2008. *Amenazado editor mexicano*. Available at: <http://cpj.org/es/2008/06/amenazado-editor-mexicano.php>.

<sup>258</sup> Committee to Protect Journalists. June 23, 2008. *Director de diario atacado en su oficina*. Available at: <http://cpj.org/es/2008/06/director-de-diario-atacado-en-su-oficina.php>. Reporters Without Borders. June 24, 2008. *Agredido en la redacción el subdirector de un diario en Nayarit; un periodista chihuahuense obligado a exiliarse*. Available at: [http://www.rsf.org/article.php3?id\\_article=27609](http://www.rsf.org/article.php3?id_article=27609).

<sup>259</sup> Inter American Press Association. *Informe México. 64ª Asamblea General, Madrid, España*. Available at: [http://www.sipiapa.org/v4/index.php?page=det\\_informe&asamblea=20&infoid=322&idioma=sp](http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=20&infoid=322&idioma=sp). Article 19/Asociación Mundial de Radios Comunitarias-México/ CENCOS. July 28, 2008. *Nuevo atentado en contra de la libertad de expresión en Oaxaca: Disparan con armas de grueso calibre en casas de periodistas comunitarios*. Available at: <http://www.libertad-expresion.org.mx/alertas.php?id=3>.

<sup>260</sup> La Jornada. August 6, 2008. *Deja el crimen en Chihuahua 16 muertos; siete más en tres entidades*. Available at: <http://www.jornada.unam.mx/2008/08/06/index.php?section=politica&article=007n2pol>. Committee to Protect Journalists. August 8, 2008. *Reportero alega haber sido agredido por militares en Sinaloa*. Available at: <http://cpj.org/es/2008/08/reportero-alega-haber-sido-agredido-por-militares.php>.

<sup>261</sup> Article 19. January 14, 2009. *México: Los ataques contra la prensa amenazan la democracia*. Available at: <http://www.article19.org/pdfs/press/mexico-los-ataques-contra-la-prensa-amenazan-la-democracia.pdf>. Committee to Protect Journalists. January 7, 2009. *Agresores enmascarados lanzan granada contra televisora en Monterrey*. Available at: <http://cpj.org/es/2009/01/agresores-enmascarados-lanzan-granada-contra-telev.php>.

168. The Office of the Special Rapporteur urges the State to investigate expeditiously all of these cases and to put forth its best efforts to prevent these crimes from being treated with impunity. The failure to punish the masterminds and perpetrators of the murders, assaults, threats and attacks related to the practice of journalism creates a favorable atmosphere for the commission of new crimes.

169. One of the characteristics of the attacks on the press that the Office of the Special Rapporteur has been able to verify in recent years in Mexico is the pressure exerted upon media professionals—especially the regional ones—that has given rise to self-censorship and the displacement of journalists.<sup>262</sup> According to a recent report, self-censorship has caused “[t]he mass resignation of journalists and employees in all departments of media organizations that have received threats or attacks on their personnel by persons identifying themselves as members of criminal organizations, or who are believed to be from them” and that, “[i]nformation on issues concerning organized crime and police cases is excluded from daily coverage for fear of reprisals.” Indeed, the report notes, there is “the general perception among the victims and their relatives that their cases will never be solved by the authorities.”<sup>263</sup>

170. When States fail to guarantee journalists’ right to life and personal safety, journalists must choose between continuing to risk their lives and their families’ lives, and abandoning their investigations or leaving the cities they live or work in, to stop providing information on certain issues. These circumstances, especially the fear caused by threats and crimes committed against other members of the media in Mexico, have led to self-censorship on the part of many journalists and communications media, and even to the closure of media or the abandonment of the profession. The Office of the Special Rapporteur considers it necessary to reiterate that the killing of journalists, in addition to being a violation of the right to life, is a serious infringement of the right to freedom of expression in its dual aspects. When a journalist is killed or assaulted, it affects not only the victim but all of society. Likewise, the death of journalists tends to result in self-censorship in contexts where it can be either inferred or established that such deaths were a consequence of the type of information disseminated and the opinions expressed by the journalists in the practice of their profession.

171. In point of fact, the Office of the Special Rapporteur received information this year concerning the cases of Carlos Huerta Muñoz, from the newspaper *Norte de Ciudad de Juárez*,<sup>264</sup> and Jorge Luis Aguirre, editor of the digital newspaper *La Polaka*,<sup>265</sup> who had left the country after receiving death threats, allegedly from criminal organizations.<sup>266</sup>

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<sup>262</sup> Office of the Special Rapporteur – IACHR. 2006 Annual Report, Volume II, Chapter II, paras. 143-167. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=691&IID=2>; 2007 Annual Report, Volume II, Chapter II, paras. 217-222. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=725&IID=2>.

<sup>263</sup> Misión Internacional de Documentación sobre Ataques en Contra de Periodistas y Medios de Comunicación. August 2008. *Libertad de Prensa en México: La Sombra de la Impunidad y la Violencia*. pp. 22-3 and 26. Available at: <http://www.libertad-expresion.org.mx/downloads/informe-la%20sombra%20de%20la%20imp%20y%20la%20viole.pdf>.

<sup>264</sup> Reporters Without Borders. February 5, 2008. *Un reportero forzado a exiliarse, su diario se autocensura*. Available at: [http://www.rsf.org/article.php3?id\\_article=25385](http://www.rsf.org/article.php3?id_article=25385). Committee to Protect Journalists. February 6, 2008. *Reportero mexicano huye tras amenaza, diario restringe cobertura sobre crimen*. Available at: <http://cpj.org/es/2008/02/reportero-mexicano-huye-tras-amenaza-diario-restri.php>.

<sup>265</sup> Committee to Protect Journalists. November 20, 2008. *Periodista abandona Ciudad Juárez después de recibir amenazas de muerte*. Available at: <http://cpj.org/es/2008/11/periodista-abandona-ciudad-juarez-despues-de-recib.php>. Knight Center for Journalism in the Americas. November 20, 2008. *Periodista de la frontera huye a Estados Unidos tras recibir amenazas de muerte*. Available at: <http://knightcenter.utexas.edu/blog/?q=es/node/2294>.

<sup>266</sup> Other threatened journalists have also been displaced from their cities, even crossing the border illegally into the United States. Reporters Without Borders. November 20, 2008. *RSF llama a la comunidad internacional a apoyar a los periodistas obligados a exiliarse*. Available at: [http://www.rsf.org/article.php3?id\\_article=29350](http://www.rsf.org/article.php3?id_article=29350).



172. The Office of the Special Rapporteur reminds the State that according to Principle 9 of the Declaration of Principles, “[t]he murder, kidnapping, intimidation 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.”

173. On another subject, on May 15, 2008, the Office of the Special Rapporteur sent the Secretary of Foreign Affairs of the State a communication, prompted by the parliamentary debate regarding the reform of the Federal Radio and Television Act. In its note, the Office of the Special Rapporteur noted the following:

[I]n the 2008 Annual Report, the Office of the Special Rapporteur recommended that States: “Legislate on matters of community broadcasting, so that part of the spectrum be designated for community radio, and that in the assignment of these frequencies, democratic criteria be considered that would guarantee all individuals an equal opportunity to access such frequencies”.

In the above-mentioned report, the Office of the Special Rapporteur expressed that regulations of community broadcast must recognize the special characteristics of this media and must contain, as a minimum, the following elements: the existence of simple procedures for obtaining licenses; the non-exigency of stringent technological requirements that would impede, in practice, the mere request for space to the State; and the possibility of using advertising as a means of financing. All of these elements are contained in the *Joint Declaration on Diversity in Broadcasting*, signed by the rapporteurs on freedom of expression of the OAS, UN, Africa, and Europe, on December 2007. Accordingly, the Office of the Special Rapporteur added to that annual report: “On the same line, it is necessary to pass legislation that appropriately defines the concept of community radio and that includes its social purpose, its non-profit character, and its operative and financial independence”. (IACHR. Annual Report 2007. Volume II. Chapter III. Pags. 109-10)

Considering that your Illustrious State adhered to the American Convention on Human Rights, the Office of the Special Rapporteur allows itself to emphasize the importance that the previously mentioned standards be taken into account when considering the legislative reform that, according to the information received, is being debated by the Mexican Congress. Additionally, the Office of the Special Rapporteur would also like to underscore the importance of this type of reform project being broadly discussed, with participation from civil society and other involved sectors, so that they may make their contributions and thus strengthen the public debate on the matter.

Due to the relevance that the Office of the Special Rapporteur gives this matter, in full respect for freedom of expression, I allow myself to request Your Excellency to keep the Office informed about its development. Finally, I would like to mention to Your Excellency that the Office of the Special Rapporteur for Freedom of Expression will send a copy of this note to the Mexican Congress, and will also inform those people who submitted communications to the Office of the Special Rapporteur, copies of which accompany the present note, about its content.

174. Information was also received during 2008 about threats to close and suspend the licenses of community broadcasters as part of operations coordinated by the Federal Crime Prevention Police.<sup>267</sup> As the Office of the Special Rapporteur has indicated on other occasions,

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<sup>267</sup> The event that occurred on August 29, 2008 received particular attention, when state government officials arrived at the *La Rabiosa* community radio station in Oaxaca, with instructions to shut it down and confiscate its transmission equipment. Article 19/Centro Nacional de Comunicación Social. September 2, 2008. *Cierran Cofetel y el SCT*

community broadcasters, which must act within the legal framework facilitated by the States, respond in many cases to the needs, interests, problems and expectations of sectors of civil society that are often marginalized, discriminated against and impoverished. In this context, it must be recalled that, according to Principle 12 of the Declaration of Principles, the “concession of radio and television broadcast frequencies, among others, should take into account democratic criteria that provide equal opportunity of access for all individuals.” The Office of the Special Rapporteur underscores that, given the important role these community channels can play in the exercise of freedom of expression, it is necessary to ensure the establishment of non-discriminatory legal frameworks free of delays that might hinder the allocation of frequencies for community broadcasters. The Office of the Special Rapporteur urges the State to take these considerations into account.

175. In regards to the concentration of ownership in the media, at the public hearing held during the 131<sup>st</sup> Period of Sessions, a State delegation member, Senator Carlos Sotelo, pointed out that in Mexico there exist “models of communication [...] of the highest level of concentration in the world, which alters the social function of the broadcasting service. Today, [...] two television companies concentrate 95% of [the television broadcasting concessions]. The big media consortiums have achieved the concentration of a great economic and political power, going beyond the will of the Mexican society and State, and have become a separate power, almost autonomous, that tends to work at the margins of the Republic’s institutions. Therefore, a democratic reform of the legal framework that supports the current model of mass communication in Mexico, cannot be postponed”. This information was also manifested by the petitioning parties at the hearing in the follow-up information that they provided the Special Rapporteurship in August 2008. In this respect, the Special Rapporteurship reminds the State that it is “important to develop a legal framework that establishes clear guidelines for defining criteria for a balancing test that accords weight to both efficiency in the broadcasting market and pluralism in information. The establishment of mechanisms for supervising these guidelines will be fundamental for ensuring pluralism in the information that is made available to society”.<sup>268</sup> The Special Rapporteurship emphasizes that, pursuant to principle 12 of the Declaration of Principles “[m]onopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people’s right to information.”

176. Likewise, the Office of the Special Rapporteur received information on the case of Alejandro González Muñoz, editor-in-chief of the newspaper *El Circo*. In July of 2008, González Muñoz had been driven by police officers to the offices of the Public Ministry and allegedly threatened so that he would reveal the identity of a source in the radio broadcast of a telephone interview about the murder of a local businessman. The journalist was subsequently released.<sup>269</sup> The Office of the Special Rapporteur recalls that Principle 8 of the Declaration of Principles provides

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*radio comunitaria en Huajapan de León, Oaxaca*. Available at: <http://www.libertad-expresion.org.mx/alertas.php?id=5>. Reporters Without Borders. September 10, 2008. *Temores de cierres en los medios comunitarios a falta de un marco jurídico claro y despreciando los compromisos internacionales del gobierno*. Available at: [http://www.rsf.org/article.php3?id\\_article=28499](http://www.rsf.org/article.php3?id_article=28499). Asociación Mundial de Radios Comunitarias – México. September 4, 2008. *El cierre de radios en Oaxaca no es la solución al problema*. Available at: <http://cencos.org/es/node/19355>.

<sup>268</sup> Office of the Special Rapporteur – IACHR. 2004 Annual Report. Chapter V. Section D: Conclusion 4. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=440&IID=1>.

<sup>269</sup> Article 19/Centro Nacional de Comunicación Social. July 14, 2008. *Periodista de Aguascalientes es hostigado por autoridades locales para revelar identidad de fuente*. Available at: <http://cencos.org/es/node/19036>. Reporters Without Borders. July 15, 2008. *Journalist pressured to reveal source*. Available at: [http://www.rsf.org/article.php3?id\\_article=27839](http://www.rsf.org/article.php3?id_article=27839).

that every “social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.”

177. This year the Office of the Special Rapporteur was also informed of the September 24, 2008 decision of the 29<sup>th</sup> Civil Court of the Federal District, which found journalist Miguel Ángel Granados Chapa not civilly liable in the lawsuit filed by a congressman following the publication of the book entitled *La Sosa Nostra, gobierno y porrismo coludidos en Hidalgo*, to which Granados Chapa had written the prologue. The judgment nevertheless ordered the book’s author, Alfredo Rivera, to pay the congressman an amount of money yet to be determined.<sup>270</sup> Principle 5 of the Declaration of Principles establishes that “[r]estrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

178. With respect to the arbitrary distribution of official advertising, the Office of the Special Rapporteur received information indicating that during 2008 the newspaper *A.M.*, the magazine *Forum* and the magazine *La Tijereta* had been subjected to discriminatory measures because of their editorial line that was critical of the government.<sup>271</sup> On this point, let us recall that Principle 13 of the Declaration of Principles states that the arbitrary and discriminatory placement of official advertising “[w]ith 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.” In this context, the Office of the Special Rapporteur recommends that all State entities establish clear, transparent, fair, objective and non-discriminatory criteria for the placement official publicity. The Office of the Special Rapporteur reminds the State that in no case may government advertising be used with the intention of harming or favoring one communications medium over another because of its editorial line or criticism of public administration.

## 21. Nicaragua

179. The IACHR held a public hearing on the right to freedom of expression and political rights in Nicaragua on October 27, 2008, during its 133<sup>rd</sup> Session. The hearing was attended by representatives of the State and of non-governmental human rights organizations. In preparing this section of its 2008 Annual Report, the Office of the Special Rapporteur has used the information provided by the parties at that time.<sup>272</sup>

180. The Office of the Special Rapporteur values positively that the new Regulations to the Public Information Access Act, which had been passed in May of 2007, were enacted and

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<sup>270</sup> Article 19/Centro Nacional de Comunicación Social. September 25, 2008. *Justicia a medias: Juez exonera a Granados Chapa, pero condena a Rivera Flores*. Available at: <http://www.libertad-expresion.org.mx/boletines.php?id=13>; Centro Nacional de Comunicación Social/IFEX. April 16, 2008. *Irregularidades en juicio contra periodistas por supuesto daño moral a diputado de Hidalgo ocasionado por un libro*. Available at: <http://www.ifex.org/es/content/view/full/92645/>; Centro Nacional de Comunicación Social. August 19, 2008. *Comparecen Granados Chapa y Rivera Flores en proceso por supuesto daño moral*. Available at: <http://cencos.org/es/node/19239>.

<sup>271</sup> CEPET/IFEX. January 11, 2008. *CNDH falla que funcionario del estado de Guanajuato violó la libertad de expresión de directores de dos periódicos*. Available at: <http://www.ifex.org/es/content/view/full/89598/>; CEPET/IFEX. July 16, 2008. *Revista Forum denuncia boicot publicitario*. Available at: <http://www.ifex.org/es/content/view/full/95425/>; CEPET/IFEX. October 28, 2008. *Empresario editorial denuncia veto publicitario del gobierno por difundir información sobre corrupción*. Available at: <http://www.ifex.org/es/content/view/full/98028/>.

<sup>272</sup> The State delegation was headed by the Nicaraguan Ambassador to the OAS, and by the Attorney General of the Nation. The non-governmental human rights organizations that requested the public hearing were the Centro Nicaragüense de Derechos Humanos. (CENIDH) and the Center for Justice and International Law (CEJIL). The audio recording of the hearing is available at: <http://www.cidh.org/Audiencias/seleccionar.aspx>.

published on January 9, 2008. The new Regulations, previously enacted through a process of validation by several civil society organizations, establish administrative procedures for accessing information held by public entities and private providers of public services.<sup>273</sup> The Office of the Special Rapporteur considers fundamental for the State to continue its efforts to implement the new regulations.

181. Nevertheless, the Office of the Special Rapporteur has received information that certain problems still persist in the enforcement of the regulations on access to public information. According to reports, sufficient budgetary allocations must be guaranteed for the enforcement of these regulations, and the public officials in charge of implementing them must be properly trained.<sup>274</sup> Principle 4 of the Declaration of Principles addresses this point, stating that “[a]ccess to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right.”

182. During 2008, the Office of the Special Rapporteur has received information on attacks and threats related to the exercise of the right to freedom of expression. According to the information received, the attacks were taking place in the context of tension and political polarization and consisted, mainly, of the acts of particular government supporters and opponents. Those were the cases of Pedro Noel Morales Urbina and Nicolás Berríos Santana.<sup>275</sup>

183. The elections of November 9, 2008, saw an escalation in the episodes of violence against journalists and the communications media. The Office of the Special Rapporteur was informed that around 30 journalists were attacked during this period.<sup>276</sup>

184. On the one hand, news teams which were trying to report on demonstrations in the city of León, were attacked by people identified as followers of the official party. In this incident,

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<sup>273</sup> The official version of the Regulations was published in *La Gaceta – Official Gazette*, on January 9, 2008. Available at: <http://www.periodismo-aip.org/img/noticias/reglamentodenicaragua.pdf>.

<sup>274</sup> Violeta Barrios de Chamorro Foundation. January 16, 2008. *The regulations to the Public Information Access Act is published here, but the budget is still absent*. Alert received in the email inbox of the Office of the Special Rapporteur for Freedom of Expression.

<sup>275</sup> Agencia EFE. November 21, 2008. *FIDH condena las ‘agresiones sistemáticas’ a periodistas nicaragüenses*, available at: [http://php.terra.com/templates/imprime\\_articulo.php?id=ACT1516765](http://php.terra.com/templates/imprime_articulo.php?id=ACT1516765). Centro Nicaragüense de Derechos Humanos. November 20, 2008. *Comunicado: Derecho que no se defiende... es derecho que se pierde*. Available at: <http://cenidh.org/noticiadetalle.php?idboletin=243>. Morales Urbina was attacked and received a death threat, apparently as a consequence of his coverage of a political event in support of the official party. *El Nuevo Diario*. February 20, 2008. *Amenazan de muerte a periodista esteliano*. Available at: <http://www.elnuevodiario.com.ni/politica/8908>. Nicolás Berríos Santana, from *Tu Nueva Radio Ya*, was attacked in the early morning hours by individuals who intercepted his car, which was identified by the station’s logo. They stabbed him with a dagger, dragged him away, beat him and set fire to his vehicle, threatening further acts of violence against him if the radio station continued to broadcast information. Inter-American Press Association. November 13, 2008. *Condena la SIP asesinato de periodista en México y agresión contra otro en Nicaragua*. Available at: <http://www.ifex.org/es/content/view/full/98520>. Radio La Primerísima. November, 12 2008. *Liberales escalan violencia: puñalean a un periodista e incineran móvil de su emisora*. Available at: <http://www.radiolaprimerisima.com/noticias/general/41475>. *El Nuevo Diario*. November 12 2008. *Policía investiga agresión a periodista de Radio Ya*. Available at: <http://www.elnuevodiario.com.ni/nacionales/32279>.

<sup>276</sup> CENIDH publicly released the names of the following journalists who were victims of attacks during the elections: Antenor Peña, Rosa María Maliaños, Nicolás Berríos, Alvaro Montalbán, Irvin Guerrero, Yahoska Alvarez, Fabio Gadea Mantilla, Miguel Alvarez, Sheyla Cano, Osbaldo Rivas, Jessica Caldera, Iván Olivares, Héctor Rosales, Yader Montoya, Kastalia Zapata, Juan José Toruño, Albert Poveda, Ary Neil Pantoja, Manuel Esquivel and Octavio Sevilla. Centro Nicaragüense de Derechos Humanos. November 20, 2008. *Comunicado: Derecho que no se defiende... es derecho que se pierde*. Available at: <http://cenidh.org/noticiadetalle.php?idboletin=243>. *Periodistas en español*. December 1, 2008. *Movilización en Nicaragua contra la violencia postelectoral contra periodistas*. Available at: [http://www.p-es.org/index.php?option=com\\_content&view=article&id=1967:movilizacion-en-nicaragua-contra-la-violencia-postelectoral-contra-periodistas&catid=38:periodistas&Itemid=62](http://www.p-es.org/index.php?option=com_content&view=article&id=1967:movilizacion-en-nicaragua-contra-la-violencia-postelectoral-contra-periodistas&catid=38:periodistas&Itemid=62).

photographers Miguel Álvarez, from *Agence France Presse*, and Germán Miranda, from *La Prensa*, were injured, and Ary Neil Pantoja, from *El Nuevo Diario*,<sup>277</sup> and Sheyla Cano, from *Canal 2*, were assaulted.<sup>278</sup>

185. Likewise, Iván Olivares, from the weekly paper *Confidencial*, photographer Oswaldo Rivas, from the *Reuters* Agency, journalist Antenor Peña Solano, from *Canal 4*, and Octavio Sevilla, from *Tu Nueva Radio Ya*, were attacked in Managua and in León apparently by government opposition groups. Two vehicles belonging to *Canal 2* and *Telenica Canal 8*<sup>279</sup> were reportedly destroyed, and their occupants were assaulted and threatened.<sup>280</sup> Moreover, it was reported that journalists Rosa María Maliaños, Álvaro Montalbán, and David Barrera, from *Canal 12*, Irvin Guerrero, from *Canal 23*, and Yahoska Alvarez, from *Canal 10*, were attacked.<sup>281</sup>

186. On the other hand, during the elections, several communications media were subjected to acts of vandalism resulting in injuries to media professionals and workers. On November 18, 2008, in León, around 40 hooded and armed individuals allegedly destroyed the facilities of *Radio Darío*, *Radio Caricia* and *Radio Metro Estéreo*, beating and threatening their employees. It was reported that the attackers were alleged officials or sympathizers of the official party.<sup>282</sup>

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

188. During 2008, various types of sanctions proceedings were initiated, allegedly aiming at silencing critical voices to the government. This would be the case of the criminal investigations opened against nine leaders of the movement that protects the human rights of women that have held public campaigns advocating the decriminalization of therapeutic abortion in the country, to wit: human rights defenders Ana María Pizarro, Juana Jiménez, Lorna Norori, Luisa Molina, Martha

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<sup>277</sup> Inter-American Press Association. November 17, 2008. *Preocupan a la SIP continuas agresiones post-electorales en Nicaragua*. Available at: [www.ifex.org/es/content/view/full/98606](http://www.ifex.org/es/content/view/full/98606). Article 19. December 2, 2008. *Nicaragua: Freedom of Expression is an Essential Component to the Upholding and Strengthening of Democracy*. Available at: <http://www.article19.org/pdfs/press/nicaragua-freedom-of-expression-is-an-essential-component-to-the-upholding-a.pdf>. Periodistas en Español. November 19, 2008. *La SIP contra las ‘continuas’ agresiones a periodistas en Nicaragua*. Available at: [http://www.p-es.org/index.php?option=com\\_content&view=article&id=1871:la-sip-contra-las-continuas-agresiones-a-periodistas-en-nicaragua&catid=38:periodistas&Itemid=62](http://www.p-es.org/index.php?option=com_content&view=article&id=1871:la-sip-contra-las-continuas-agresiones-a-periodistas-en-nicaragua&catid=38:periodistas&Itemid=62).

<sup>278</sup> Communication submitted to the Office of the Special Rapporteur for Freedom of Expression by CENIDH on December 10, 2008.

<sup>279</sup> Inter-American Press Association. November 20, 2008. *Alerta la SIP por actos de violencia contra journalists en Nicaragua*. Available at: <http://www.ifex.org/es/content/view/full/98692>. Article 19. December 2, 2008. *Nicaragua: Freedom of Expression is an Essential Component to the Upholding and Strengthening of Democracy*. Available at: <http://www.article19.org/pdfs/press/nicaragua-freedom-of-expression-is-an-essential-component-to-the-upholding-a.pdf>.

<sup>280</sup> Communication submitted to the Office of the Special Rapporteur for Freedom of Expression by CENIDH on December 10, 2008.

<sup>281</sup> Communication submitted to the Office of the Special Rapporteur for Freedom of Expression by CENIDH on December 10, 2008.

<sup>282</sup> Centro Nicaragüense de Derechos Humanos. November 20, 2008. *Comunicado: Derecho que no se defiende... es derecho que se pierde*. Available at: <http://cenidh.org/noticiadetalle.php?idboletin=243>. AFP. November 24, 2008. *Los medios de comunicación, objetivo de los disturbios en Nicaragua*. Available at: <http://www.google.com/hostednews/afp>. *El Nuevo Diario*. November 21, 2008. *Omar Cabezas justifica agresiones a periodistas*. Available at: <http://www.elnuevodiario.com.ni/imprimir/33036>.

María Blandón, Martha Murguía, Mayra Sirias, Violeta Delgado and Yamileth Mejía. Administrative investigations were later opened against the organization to which they belong, Movimiento Autónomo de Mujeres (MAM), and their offices were searched and documents were seized.<sup>283</sup>

189. Similarly, the Office of the Special Rapporteur has learned of the investigation against the organization called CINCO, its director, journalist Carlos Chamorro, and members of its board of directors.<sup>284</sup> Chamorro has taken a critical stance toward the government in the media. Without it ever being made clear what acts or offenses were being investigated, Chamorro was interrogated by the Office of the Public Prosecutor of the Republic, CINCO's bank secrecy was lifted, and its offices were searched by police officers who seized documents and computers that contained research and personal papers belonging to the journalist.<sup>285</sup>

190. On October 13, 2008, the Office of the Special Rapporteur requested information to the State on this matter. On October 22, 2008, the State replied to this request. The State explained that having been advised by the Ministry of the Interior of irregular transactions being conducted with funds from abroad, on September 8, 2008, the Public Ministry opened an investigation against 8 non-governmental organizations including CINCO and MAM.<sup>286</sup> The Office of the Public Prosecutor summonsed the legal representatives of the organizations and deemed it necessary to examine the organizations' accounting records and sources of financial support.<sup>287</sup> The representatives from CINCO and MAM refused to do so, and so it proceeded to lift the bank secrecy and to issue and execute a search and seizure warrant for purposes of obtaining the information that had been requested.<sup>288</sup> The State also indicated that the proceedings were only in the investigative phase, and that there was no open criminal or civil case as such against them.<sup>289</sup>

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<sup>283</sup> Article 19/IFEX. January 10, 2008. *Se inician procesos penales contra nueve defensores de los derechos de las mujeres*. Available at: <http://www.ifex.org/es/content/view/full/89458>. Article 19. January 9, 2008. *Nicaragua: La libertad de expresión de las activistas a favor de los derechos de las mujeres y su derecho a defender los derechos humanos se encuentran bajo ataque*. Available at: <http://www.article19.org/pdfs/press/nicaragua-women-s-rights-sp.pdf>.

<sup>284</sup> Committee to Protect Journalists. October 17, 2008. *Nicaraguan probe raises concerns of political motive*. Available at: <http://cpj.org/2008/10/nicaraguan-probe-raises-concerns-of-political-moti.php>. Reporters Without Borders. October 10, 2008. *Nicaragua: Una campaña de acoso político y judicial contra algunas ONGs pone en peligro la libertad de expresión y de asociación*. Available at: [http://www.rsf.org/article.php3?id\\_article=28892](http://www.rsf.org/article.php3?id_article=28892). Radio La Primerísima. October 20, 2008. *Gobierno de Ortega bajo asedio de feroz campaña mediática desde el exterior*. Available at: <http://www.radiolaprimerisima.com/noticias/general/39982>.

<sup>285</sup> Committee to Protect Journalists/IFEX. October 21, 2008. *Agentes de policía allanan oficinas de ONG, confiscan documentos y computadoras*. Available at: <http://www.ifex.org/es/content/view/full/97776>. Periodistas en español. October 4, 2008. *Preocupación por la investigación gubernamental contra el periodista Carlos Chamorro*. Available at: [http://www.p-es.org/index.php?option=com\\_content&view=article&id=1548:preocupacion-por-la-investigacion-gubernamental-contra-el-periodista-carlos-chamorro&catid=38:periodistas&Itemid=62](http://www.p-es.org/index.php?option=com_content&view=article&id=1548:preocupacion-por-la-investigacion-gubernamental-contra-el-periodista-carlos-chamorro&catid=38:periodistas&Itemid=62).

<sup>286</sup> "On September 8 of this year, the Public Ministry opened a criminal investigation based on a written communication from the Ministry of the Interior that discussed irregular transactions conducted with funds from abroad, channeled through entities registered as Non-profit Organizations, including CENTRO DE INVESTIGACIONES DE LA COMUNICACIÓN (CINCO), MOVIMIENTO AUTONOMO DE MUJERES (MAM) and OXFAM GRAN BRETAÑA (OXFAM GB)." "It should be noted that of the 4,202 Non-governmental Organizations that exist in Nicaragua, only 8 of them are being investigated at the request of the Ministry of the Interior, that is, 0.1903855% of them, or less than two-tenths (2/10) of 1%. The fact that only 4 of these 8 organizations are entities regulated by the aforementioned Ministry, and that the other 4 are operating outside the legal framework currently in effect, is also worthy of special attention." Pertinent sections of the communication sent by the State to the Office of the Special Rapporteur for Freedom of Expression on October 22, 2008.

<sup>287</sup> "Upon analyzing the interviews conducted with all of the previously mentioned individuals, it was determined to be necessary to examine the accounting records and other supporting documents relating to the expenditure of the donors' money. Therefore, the representatives of the aforementioned organizations were requested in writing to submit the books and other accounting documents from their organizations in accordance with national law, which authorizes the audit of financial controls for purposes of investigation." Pertinent section of the communication sent by the State to the Office of the Special Rapporteur for Freedom of Expression on October 22, 2008.

<sup>288</sup> "All of the representatives of the aforementioned organizations gave their express consent in writing to cooperate and provide the requested information to the Public Ministry, except for the representative from the



191. The issue of these was also addressed during the public hearing that was held on October 27, 2008. At that hearing, the representatives of the State provided information that, in general, is similar to that contained in the report provided to the Office of the Special Rapporteur on October 22, 2008. Nevertheless, at the aforementioned hearing, as well as in a letter sent to the State on December 16, 2008, the Special Rapporteur requested a broadening of the original information regarding the reasons and possible offenses that had given rise to the serious restrictions to journalist Chamorro's rights. Such restrictions, according to the information received, had the potential to cause fear and inhibition within human rights defense organizations that were critical or independent of the government.

192. The Special Rapporteur thanks the State for its opportune and complete response to the request for information. In its response, the State reported that on January 22, 2009, the Public Ministry adopted the decision to disregard the complaint against the members of CINCO "for not being constitutive of the crime or for not being pursuable in officio." However, it reports that the Public Ministry considered that irregularities existed that must be investigated by the administrative entities. Additionally, in the same resolution, the Public Ministry recommended that the Secretariat of Economic Relations and of External Cooperation of the Ministry of Foreign Relations, revise the agreement subscribed with international donors of CINCO, and that the Ministry of Government implement the necessary actions to "regulate law 147, the Law of Registry and Control of Non-Profit Organizations, in order to establish and clearly define the normative procedures and the functioning limits of these organisms".

193. The Special Rapporteurship calls upon the intimidating effect that the aforementioned actions have had over the critical or independent voices of the government's policies. Thus, without prejudice to the role that the State must fulfill to have the law be respected, the Office of the Special Rapporteurship reiterates the importance that the State in all of its actions adhere to Article 13(3) of the American Convention, pursuant to which "[t]he right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls".

194. On another matter, in April 2008, the Eighth Local Criminal Judge of Managua convicted Jaime Chamorro Cardenal, director of the newspaper *La Prensa*, and Eduardo Enríquez, information chief of the same newspaper, for the offense of criminal defamation. The conviction was the result of a lawsuit filed against them by five women members of the Citizen Power

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Communications Research Center (CINCO), journalist Carlos Fernando Chamorro Barrios, and the representative from the Autonomous Women's Movement (MAM), Juana Antonia Jiménez Martínez. These individuals, in spite of having been summoned twice, refused to appear before the Office of the Public Prosecutor. Search warrants were then requested from the court to search for information of investigative interest, pursuant to art. 250 of the Code of Criminal Procedure. [...] In view of the legal representatives' refusal [...], which were unique and isolated cases, warrants were requested to search and seize the accounting documents and computer records in the possession of these organizations, which contained records produced during the course of their financial transactions, as well as records on the use of donor funds. The aforementioned proceedings were authorized by the proper authority, as previously indicated. Consequently, once the proper court order was issued, it was executed in accordance with the provisions of article 26 of our Constitution." Pertinent section of the communication sent by the State to the Office of the Special Rapporteur for Freedom of Expression on October 22, 2008.

<sup>289</sup> "It is necessary to make clear that at no time was the legal action aimed at shutting down media programs, much less the program *Onda Local*, as the subjects under investigation would have the public believe. It must be noted that all actions have been in strict compliance with the law, and that none of the aforementioned individuals has been jailed or is wanted for arrest, since the case is in the investigative phase and no civil or criminal case has been opened against them. [...] At this point, the Public Ministry is still investigating. It has not filed any charges against Carlos Fernando Chamorro or any other person who has been summoned for an interview. Right now they are still under investigation, which is very different from being a defendant." Pertinent section of the communication sent by the State to the Office of the Special Rapporteur for Freedom of Expression on October 22, 2008.



Councils (CPC), which are linked to the political party in power. These women alleged that they had been defamed by the publication of an article in *La Prensa* on December 19, 2007, entitled “CPC has license to give beatings.” The article denounced certain attacks on a journalist from that newspaper, without naming the attackers. The defendants announced that they would appeal the guilty verdict.<sup>290</sup>

195. In the same regard, it has been reported that in August 2008, priest and poet Ernesto Cardenal was convicted by a criminal judge in Managua and sentenced to pay a fine for the offense of criminal defamation against a German citizen. Cardenal announced that he would not comply with the sanction, considering that he had already been acquitted of the same act three years earlier. The judge who convicted him then declared him an “infirm defendant” due to his advanced age. According to Cardenal, the reopening of this case was due to critical statements he made about the President of Nicaragua, Daniel Ortega.<sup>291</sup>

196. The Office of the Special Rapporteur was also informed that on November 13, 2008, the Attorney General of the Republic made a statement, in which he asserted that the Government has been acting with full respect for freedom of expression, otherwise, “the communications media would have been wiped out with a single order from President Ortega.”<sup>292</sup> In its Press Release No. 51/08, the IACHR expressed “its concern about statements by a high-level government official that could have an intimidating effect on Nicaraguan civil society organizations and the communications media. Statements of this tenor can adversely affect the exercise of the right to freedom of expression and the work of human rights defenders. The Commission reiterates that States must help to ensure the necessary conditions so that human rights organizations and members of the media can carry out their work without restrictions.”<sup>293</sup>

197. Principle 13 of the Declaration of Principles says that, “the means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

## 22. Panama

198. The new Criminal Code, which entered into force in May 2008, maintains the crimes of criminal defamation (*calumnia* and *injuria*). However, the Office of the Special Rapporteur highlights Article 192, which excludes criminal liability when the alleged victim is a public official.

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<sup>290</sup> Inter-American Press Association/IFEX. April 24, 2008. *Director y jefe de información de diario condenados, multados por delitos de injuria*. Available at: <http://www.ifex.org/es/content/view/full/92970>. Periodistas en español. April 20, 2008. *Polémica en Nicaragua por la condena de un juez de Managua contra directivos de La Prensa*. Available at: [http://www.p-es.org/index.php?option=com\\_content&view=article&id=540:polemica-en-nicaragua-por-la-condena-de-un-juez-de-managua-contradirectivos-de-la-prensa&catid=36:medios&Itemid=60](http://www.p-es.org/index.php?option=com_content&view=article&id=540:polemica-en-nicaragua-por-la-condena-de-un-juez-de-managua-contradirectivos-de-la-prensa&catid=36:medios&Itemid=60). El Nuevo Diario. April 23, 2008. *Notifican sentencias en juicio a La Prensa*. Available at: <http://impreso.elnuevodiario.com.ni/2008/04/23/nacionales/74890>.

<sup>291</sup> AFP. September 1, 2008. *El caso del poeta Cardenal será elevado ante la CIDH*. Available at: [http://ar.news.yahoo.com/s/afp/080901/entretenimiento/nicaragua\\_ddhh\\_justicia\\_letras](http://ar.news.yahoo.com/s/afp/080901/entretenimiento/nicaragua_ddhh_justicia_letras). Radio Evangelización. August 29 2008. *Solidaridad con Ernesto Cardenal tras sentencia judicial*. Available at: <http://www.radioevangelizacion.org/spip.php?article2307>. La Jornada. August 29, 2008. *Poeta Ernesto Cardenal no aceptó sentencia*. Available at: <http://www.lajornadanet.com/diario/archivo/2008/agosto/296.html>.

<sup>292</sup> Nación. December 19, 2008. *Ministerio de Defensa vigila violencia postelectoral en Nicaragua*. Available at: [http://www.nacion.com/ln\\_ee/2008/noviembre/19/mundo1782405.html](http://www.nacion.com/ln_ee/2008/noviembre/19/mundo1782405.html). El Nuevo Diario. November 14, 2008. *Periodistas rechazan advertencia del Procurador*. Available at: <http://www.elnuevodiario.com.ni/nacionales/32536>.

<sup>293</sup> IACHR. November 25, 2008. *Press Release No. 51/08*. Available at: <http://www.cidh.org/Comunicados/English/2008/51.08eng.htm>.

199. The new Criminal Code also contains two dispositions that because of their general nature could unduly restrict the exercise of freedom of expression. On the one hand, Article 420 provides for criminal sanctions of 2-4 years in prison for those who reveal “confidential information of restricted access [...] relating to the security of the State”.<sup>294</sup> On the other hand, Article 164 punishes with pecuniary sanctions or “weekend” arrests “anyone who legitimately possesses private, personal correspondence, copies or documents not intended for publication and publishes these, even if so directed, without the proper authorization and publication results in prejudice”.

200. The Office of the Special Rapporteur urges the State to take into consideration Principle 4 of the Declaration of Principles that establishes that access to information “is a fundamental right of every individual” that “States have the obligation to guarantee.” Principle 10 states that “Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest”.

201. During 2008, the Office of the Special Rapporteur received information about the initiation of criminal prosecutions allegedly related to the exercise of journalism. In July 2008, a judge prohibited sports columnist Bienvenido Brown from leaving the country and ordered him to appear before the courts in a defamation suit presented against him in 2005. The journalist was allegedly prosecuted following his denunciation of alleged irregularities at the Panamanian Sports Institute.<sup>295</sup> In October 2008, the Minister of Government and Justice, Daniel Delgado Diamante, sued *La Prensa* journalist Santiago Fascetto for crimes of criminal defamation. Days before, Fascetto had published an article indicating that the official was allegedly responsible for the murder of a National Guard corporal in 1970.<sup>296</sup>

202. 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 ineffective. On July 1, 2008, the Supreme Court of Justice held that the pardons granted by former president Mireya Moscoso in 2004 were unconstitutional.<sup>297</sup>

203. Principle 10 of the Declaration of Principles indicates that “the protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the

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<sup>294</sup> According to the information received, on July 5, 2008, an unconstitutionality action was introduced against this article. Reporters Without Borders. March 23, 2007. *Dismay at presidential green light for two restrictive articles in new criminal code*. Available at: [http://www.rsf.org/article.php3?id\\_article=21421](http://www.rsf.org/article.php3?id_article=21421). Inter American Press Association. *Panama Report*. 63rd General Assembly, Miami, Florida, USA. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=20&infoid=324&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&infoid=324&idioma=us). The official text of the Penal Code of Panama is available in Spanish at: <http://www.gacetaoficial.gob.pa/pdfTemp/25796/4580.pdf>.

<sup>295</sup> According to the information received, the journalist was forced to cancel his trip to Beijing to cover the Olympic Games because of this decision. The order was adopted after the entry into force of the new Penal Code. Committee to Protect Journalists/IFEX. July 28, 2008. *Columnist barred from leaving the country, ordered to stand trial on criminal defamation charges*. Available at: <http://www.ifex.org/en/content/view/full/95767>. El Siglo. July 28, 2008. *Columnista de La Estrella no podrá viajar a Beijing*. Available at: <http://www.elsiglo.com/siglov2/Nacion.php?idnews=77138&idsec=1&fechaz=28-07-2008>.

<sup>296</sup> According to the information received, on November 15, 2008, the proceedings continued to run their course. *Prensa*. November 15, 2008. *Periodistas rechazan querrela de Delgado D*. Available in Spanish at: <http://mensual.prensa.com/mensual/contenido/2008/11/15/hoy/panorama/1593093.html>. El Siglo. November 15, 2008. *Triple D al ataque*. Available in Spanish at: <http://www.elsiglo.com/siglov2/Hechos.php?idsec=1&fechaz=15-11-2008&idnews=86138>.

<sup>297</sup> El Siglo. July 2, 2008. *Moscoso mal utilizó la palabra indulto*. Available at: <http://www.elsiglo.com/siglov2/Nacion.php?idsec=1&fechaz=02-07-2008&idnews=75001>. Inter American Press Association. *Panamá Report*. 64th General Assembly, Madrid, España. Available at: [http://www.sipiapa.org/v4/index.php?page=det\\_informe&asamblea=20&infoid=324&idioma=sp](http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=20&infoid=324&idioma=sp).

person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest.

204. Finally, the Office of the Special Rapporteur has been informed of the judicial decision ordering the seizure of part of the assets of the weekly newspaper *El Periódico* and of a percentage of the salaries of two of its employees. The order was allegedly issued three days after businessman Herman Bern submitted a civil complaint for damages and prejudice against *El Periódico* following its publication of his tax return.<sup>298</sup> According to the information presented by *El Periódico* in a public statement, the order “[retained] the assets of the Compañía Distribuidora, the company responsible for *El Periódico*’s circulation, thereby making the timely distribution of the newspaper’s 78th edition impossible.”<sup>299</sup> The Office of the Special Rapporteur recalls that in agreement with the jurisprudence of the Inter-American Court, “the restriction must be proportionate to the legitimate interest that justifies it and must be limited to what is strictly necessary to achieve that objective. It should interfere as little as possible with effective exercise of the right to freedom of expression”.<sup>300</sup>

### 23. Paraguay

205. The Office of the Special Rapporteur on Freedom of Expression welcomes the acquittal of the editor of the newspaper *ABC*, Aldo Zucolillo, as well as journalists Enrique Dávalos and Carlos Cáceres, of the same newspaper, in the defamation proceedings that were instituted against them after they denounced supposed acts of corruption.<sup>301</sup>

206. The Office of the Special Rapporteur would also like to highlight the decision of the Sala 3 del Tribunal de Apelación en lo Civil y Comercial de Asunción, which, on May 2, 2008, ordered the municipality of Lambaré to hand over a copy of the 2007 budget to a citizen who had requested it.<sup>302</sup> Principle 4 of the Declaration of Principles states that access to information is a

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<sup>298</sup> Reporters Without Borders. September 8, 2008. *Seizure of weekly’s property and bank accounts slammed as a form of “indirect censorship”*. Available at: [http://www.rsf.org/article.php3?id\\_article=28443](http://www.rsf.org/article.php3?id_article=28443). Committee to Protect Journalists. September 9, 2008. *Judge orders seizure of weekly after story on alleged tax evasion*. Available at: <http://cpj.org/2008/09/judge-orders-seizure-of-weekly-after-story-on-alle.php>. Diario Crítico Panameño. September 10, 2008. *El Periódico denunció declaración de rentas de Bern*. Available in Spanish at: <http://www.diariocritico.com/panama/2008/Septiembre/noticias/97087/el-periodico-denuncio-declaracion-de-rentas-de-bern.html>.

<sup>299</sup> The Panama News. September 7, 2008. *Declaración de El Periódico por secuestro de Herman Bern*. Disponible en: [http://www.thepanamanews.com/pn/v\\_14/issue\\_17/opiniones\\_01.html](http://www.thepanamanews.com/pn/v_14/issue_17/opiniones_01.html). Diario Crítico Panameño. September 10, 2008. *El Periódico denunció declaración de rentas de Bern*. Disponible en: <http://www.diariocritico.com/panama/2008/Septiembre/noticias/97087/el-periodico-denuncio-declaracion-de-rentas-de-bern.html>.

<sup>300</sup> 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. Paragraph 46; and I/A Court H.R., *Case of Herrera Ulloa*. Judgment of July 2, 2004. Series C No. 107. Paragraph 123.

<sup>301</sup> The journalists had denounced irregularities in the construction of highway projects. In addition to calling for criminal sanctions, the complaint called for indemnification in the amount of 6.1 billion *guaraníes*. Sindicato de Periodistas de Paraguay/IFEX. May 2, 2008. *“ABC Color” journalists, editor cleared of defamation accusations stemming from coverage of highway contract irregularities*. Available at: <http://www.ifex.org/en/content/view/full/93180>. ABC Digital. May 2, 2008. *Juicio a periodistas reveló esquema para encubrir negociado con obras*. Available at: <http://www.abc.com.py/articulos.php?fec=2008-05-02&pid=411662&sec=6>.

<sup>302</sup> The Court of Appeals considered that there was a constitutional duty to provide information requested by a taxpayer. This precedent constitutes a landmark for Paraguayan jurisprudence since it is the first time that an appeals court has made a pronouncement regarding the right to access to information. Article 19/IFEX. June 3, 2008. *ARTICLE 19 celebrates judicial decisions recognising access to public information as a fundamental human right*. Available at: <http://www.ifex.org/280fr/content/view/full/94212/>. Asociación Iberoamericana de Derecho de la Información y de la Comunicación. May 13, 2008. *Derechos Humanos: en Paraguay se consolida el acceso a la información pública*. Available at:

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“fundamental right of every individual” and that the States have an obligation to guarantee the exercise of this right.

207. In spite of these advances, the Office of the Special Rapporteur received reports of presumed attacks and threats against journalists in the exercise of their profession. According to information received, on June 24, 2008, two journalists from the newspaper *La Nación*, Gerardo Benítez and Ismael Villalba, were repeatedly kicked by members of the Police while they were covering a protest by “*Sin Techo*” organizations.<sup>303</sup> On October 15, 2008, an attorney accused in several cases of fraud brutally attacked journalists Enrique Acosta and Nelson Esquivel, of the newspaper *TN Press* (Ciudad del Este).<sup>304</sup> On November 19, 2008, a soccer player attacked photojournalist Oscar González and journalist Gabriela León.<sup>305</sup> Additionally, the Office of the Special Rapporteur was informed that on October 31, 2008, U.S. journalist Evans Abramson was detained while covering a story in Ciudad del Este and was held for seven hours for allegedly being undocumented. The reporter stated that he was carrying a photocopy of his passport and his press card.<sup>306</sup>

208. The Office of the Special Rapporteur observes with concern the lack of diligence by the State in the investigation of the murder of Chilean journalist Alberto Palma, who was killed by gunshots in August of 2007. On April 12, 2008, one of the suspects, who was detained in relation to another judicial proceeding, was released, apparently without the authorities investigating the murder case having been notified.<sup>307</sup> Principle 9 of the Declaration of Principles underlines the States’ duty to prevent and investigate these acts, punish those responsible, and provide adequate reparations to the victims. The Office of the Special Rapporteur calls for the facilitation of the investigation of these facts, the punishment of those responsible, and the provision of adequate reparations to the victim.

209. With respect to community radio broadcasters, the Office of the Special Rapporteur is concerned about declarations made by public officials that could lead to the justification of acts of

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[http://www.aidic.org/noticias\\_desarrollo.php?id=49](http://www.aidic.org/noticias_desarrollo.php?id=49). Paraguay, Sala 3 Tribunal de Apelación en lo Civil y Comercial de Asunción. Judicial decision available at: <http://www.aidic.org/publicaciones/Sentencia%20Picco%20Portillo.pdf>.

<sup>303</sup> Sindicato de Periodistas de Paraguay/IFEX. June 25, 2008. *Two journalists assaulted by police while trying to cover demonstration against homelessness*. Available at: <http://www.ifex.org/en/content/view/full/94844>. *La Nación*. June 25, 2008. *Policia agrede a trabajadores de la Nación*. Available at: [http://200.61.224.39/noticias\\_um.php?not=191653](http://200.61.224.39/noticias_um.php?not=191653).

<sup>304</sup> The attorney stated that he was bothered by the newspaper’s publications linking him to a case of fraud. Sindicato de Periodistas de Paraguay/IFEX. October 22, 2008. *Journalists assaulted by lawyer*, available at: <http://www.ifex.org/en/content/view/full/97825>. *Diario Vanguardia*. October 16, 2008. *Abogado agrede a periodistas molesto por publicaciones*. Available at: [http://www.diariovanguardia.com.py/det\\_noti.asp?id=11705](http://www.diariovanguardia.com.py/det_noti.asp?id=11705).

<sup>305</sup> The player attacked the reporters from *Diario Popular* after they attempted to interview him regarding allegations of physical attacks against his girlfriend. Sindicato de Periodistas del Paraguay/IFEX. November 21, 2008. *Football player assaults and issues death threats against “Popular” newspaper journalists*. Available at: <http://www.ifex.org/en/content/view/full/98703>. ABC Digital. November 21, 2008. *Manifiesto de Repudio contra Marco Lazaga*. Available at: <http://www.abc.com.py/2008-11-21/articulos/471663/manifiesto-de-repudio-contra-marco-lazaga>.

<sup>306</sup> The journalist’s original passport was at the Embassy of Bolivia, the country to which he was to travel later, but the trip was cancelled due to his detention. Sindicato de Periodistas de Paraguay. October 31, 2008. *SPP denuncia agresión a la libertad de ejercicio de la profesión*. Available at: <http://www.abc.com.py/2008-10-31/articulos/465266/spp-denuncia-agresion-a-la-libertad-del-ejercicio-periodistico>. ABC Digital. November 1, 2008. *Reportero estadounidense fue detenido en Ciudad del Este*. Available at: <http://www.abc.com.py/2008-11-01/articulos/465388/Reportero%20estadounidense%20fue%20detenido%20en%20Ciudad%20del%20Este>.

<sup>307</sup> Inter-American Press Association. *Impunity Paraguay Resolution*. 64<sup>th</sup> General Assembly, Madrid, Spain. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_resolucion&asamblea=20&resid=317&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_resolucion&asamblea=20&resid=317&idioma=us). ABC Digital. May 3, 2008. *Liberan a sospechoso de matar a periodista*. Available at: <http://www.abc.com.py/articulos.php?pid=412136&fec=2008-05-03>.

harassment. In the context of the presidential elections in Paraguay, held in April of 2008, the then-president, Nicanor Duarte, stated that certain groups “are organising themselves to unleash a wave of violence immediately after the overwhelming triumph of the Colorado Party next Sunday [sic]. We also know that some community radio stations in San Pedro are hiding explosives. So the prosecutors have to intervene and carry out raids.”<sup>308</sup> According to the information received, as of five days before the elections, no proof had been presented regarding these accusations, nor had a criminal investigation into these allegations been initiated.<sup>309</sup> The Office of the Special Rapporteur would like to emphasize that general declarations by public officials made with insufficient foundation could lead to the creation of an atmosphere of intimidation that supports persecution or self-censorship of the media.<sup>310</sup>

## 24. Peru

210. On October 23, 2008, during the 133<sup>rd</sup> Period of Sessions, the IACHR held a public hearing on the state of the right to freedom of expression in Peru. Representatives of the State and of non-governmental human rights organizations participated in the hearing. For the preparation of this section of its 2008 Annual Report, the Special Rapporteurship has utilized the information provided by the parties,<sup>311</sup> as well as that provided to the IACHR by the petitioning entity on December 2008 regarding the questions that were posed during the hearing, but which were not able to be answered.<sup>312</sup>

211. The Office of the Special Rapporteur welcomes the signature of the Declaration of Chapultepec during 2008 by representatives of different parties in the National Congress.<sup>313</sup> This year also saw the subscription of the Peruvian Governors' (*presidentes regionales*) Declaration on Transparency and Access to Public Information.<sup>314</sup> Both of these actions constitute an important step to adjust Peruvian legislation to international standards on freedom of expression.

212. The Special Rapporteurship has received information about positive legal developments in the judicial proceedings surrounding the assassinations of journalists Miguel Pérez

<sup>308</sup> World Association of Community Radio Broadcasters/IFEX. April 17, 2008. *Community radio stations bracing for possible military incursions following irresponsible accusations by President Duarte*. Available at: <http://www.ifex.org/en/content/view/full/92790>.

<sup>309</sup> ABC Digital. April 16, 2008. *Nicanor busca sembrar miedo y dice que llegaron “subversivos” al país.* Available at: <http://www.abc.com.py/2008-04-16/articulos/407007/Nicanor%20busca%20sembrar%20miedo%20y%20dice%20que%20%20%20%20llegaron%20%20ubversivos%20al%20país>.

<sup>310</sup> The Office of the Special Rapporteur also received information about other declarations by former president Nicanor Duarte, in which he accused journalists of being “mediocre,” “venal,” and “unscrupulous.” ABC Digital. April 10, 2008. *Duarte Frutos acusó ayer de mediocre a la prensa*. Available at: <http://www.abc.com.py/2008-04-10/articulos/405520/Duarte%20Frutos%20acusó%20ayer%20de%20mediocre%20a%20la%20prensa>. Inter-American Press Association. *Paraguay Report*. 64th General Assembly, Madrid, Spain. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=20&inford=325&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&inford=325&idioma=us).

<sup>311</sup> The State's delegation was headed by the vice-minister of justice, Erasmio Rey. The Instituto de Defensa Legal (IDL) was the non-governmental organization that requested the public hearing. The audio recording of the hearing is available at: <http://www.cidh.org/Audiencias/select.aspx>.

<sup>312</sup> The document titled “Información adicional sobre la situación de la libertad de expresión en Perú y nuevos hechos preocupantes” was provided to the IACHR by the IDL on December 2, 2008.

<sup>313</sup> Inter-American Press Association. November 6, 2008. *El Congreso del Perú se comprometió a mayor transparencia y a legislar sobre crímenes contra periodistas*. Available in Spanish at: [http://www.declaraciondechapultepec.org/v2/noticia\\_detalle.asp?id\\_noticia=108](http://www.declaraciondechapultepec.org/v2/noticia_detalle.asp?id_noticia=108).

<sup>314</sup> Instituto Prensa y Sociedad. January 5, 2009. Information received in the email inbox of the Office of the Special Rapporteur for Freedom of Expression.



Julca<sup>315</sup> and Hugo Bustíos Saavedra,<sup>316</sup> there are other cases, such as those of Antonio de la Torre Echandía<sup>317</sup> and Alberto Rivera Fernández,<sup>318</sup> where there has been no significant progress. The Office of the Special Rapporteur recalls that Principle 9 of the Declaration of Principles on Freedom of Expression says 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.” Additionally, the Special Rapporteurship calls for the State to investigate, try, and punish the perpetrators of these crimes.

213. The Special Rapporteurship is concerned about the information it has received regarding a number of acts of aggression and threats against social communicators allegedly because of their work. On May 22, 2008, reporter Juan Carlos Rodríguez and other journalists were beaten by a group of policemen as they tried to enter the penitentiary of San Jacinto de Huayabamba to cover a prisoners’ revolt.<sup>319</sup> On June 16, 2008, Carlos Alvarado Tuesta, a journalist for the radio station *La Voz de la Selva*, was beaten, stripped of his belongings, and held captive by members of the Army during an interview with a soldier.<sup>320</sup> It was also reported that the newspaper *Ahora* of the Amazonas region had its headquarters attacked by a stone-throwing former municipal

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<sup>315</sup> According to the information received, on April 17, 2008, a tribunal of Jaen (*Sala Mixta Descentralizada de Jaén*) convicted two of the individuals accused with the murder of journalist Miguel Pérez Julca on March 17, 2006. There are criticisms as to the brevity of the investigation that led to this conviction. Likewise, the National Police apparently continue to investigate the whereabouts of one of the suspects accused of having shot at the journalist. Committee to Protect Journalists. April 18, 2008. *Two men convicted in radio journalist’s murder*. Available at: <http://cpj.org/2008/04/two-men-convicted-in-radio-journalists-murder-1.php>. Instituto Prensa y Sociedad. April 18, 2008. *Sentencias a implicados en asesinato de periodista Miguel Pérez Julca*. Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1463>.

<sup>316</sup> According to the information received, during 2008, the Supreme Court of Justice ratified the conviction of the soldiers involved in the death of journalist Hugo Bustíos Saavedra. The Court nullified the verdict with respect to civil reparations, ordering that these be increased. Inter-American Press Association. *Peru Report, 64th General Assembly, Madrid, Spain*. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=20&infoid=326&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&infoid=326&idioma=us). Asociación Nacional de Periodistas. September 4, 2008. *Corte Suprema confirma condena en caso de periodista Hugo Bustíos*. Alert received in the email inbox of the Office of the Special Rapporteur for Freedom of Expression.

<sup>317</sup> According to the information received, on June 13, 2008, the First Criminal Chamber of the Superior Court of Justice of Ancash (*Primera Sala Penal de la Corte Superior de Justicia de Ancash*) absolved one of the accused of the charge that he was the material author of the homicide of the journalist. In 2006, the Supreme Court had already absolved another man implicated as the intellectual author of the crime. Reporters Without Borders. June 16, 2008. *Suspect absolved in the 2004 murder of journalist Antonio de la Torre Echeandia*. Alert received in the email inbox of the Office of the Special Rapporteur for Freedom of Expression. Instituto Prensa y Sociedad. June 13, 2008. *Corte absuelve acusado de asesinar a periodista Antonio de la Torre*. Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1505>.

<sup>318</sup> This case was reported during the public hearing on October 23, 2008. According to the information received, on September 24, 2008, the Criminal Chamber of the Supreme Court of Ucayali decided to transfer the case to the Supreme Court of the Republic so that this court could decide the case against those implicated in the intellectual authorship of the journalist’s 2004 homicide. In June 2008, the decision absolving one of those accused as material author was overturned. The court held that the evidence presented in order to obtain civil reparation had not been considered in the criminal case. Reporters Without Borders. June 11, 2008. *The Supreme Court reopens the case of the murder of journalist Alberto Rivera Fernandez*. June 11, 2008. Alert received in the email inbox of the Office of the Special Rapporteur for Freedom of Expression.

<sup>319</sup> Instituto Prensa y Sociedad/IFEX. May 26, 2008. *Journalists beaten by police to prevent them from reporting on prison shooting*. Available at: <http://www.ifex.org/en/content/view/full/94033>. Asociación Nacional de Periodistas del Perú. May 26, 2008. *Policías agreden a periodistas que cubrían información tras revuelta en penal*. Alert received in the email inbox of the Office of the Special Rapporteur for Freedom of Expression.

<sup>320</sup> World Association of Community Radio Broadcasters/IFEX. June 19, 2008. *Journalist detained, injured, threatened with intelligence surveillance by Army officers*. Available at: <http://www.ifex.org/en/content/view/full/94634>. Instituto Prensa y Sociedad. June 19, 2008. *Periodista es retenido por personal del ejército. Tras su liberación, es denunciado por dicho órgano*. Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1511>. Reporters Without Borders/IFEX. July 3, 2008. *Journalist told of soldier’s possible plan for vengeance, asks for protection measures*. Available at: <http://www.ifex.org/en/content/view/full/95030>.



official;<sup>321</sup> and that Raúl Vento, Roxana Rivera, and Elizabeth Salinas were insulted and threatened while distributing a newspaper.<sup>322</sup> On February 20, 2008, Carlos Vargas and Víctor del Castillo were detained as they filmed two policemen sleeping in their squad car while on duty.<sup>323</sup> On April 8, 2008, members of the National Police detained José Santillán Arrúz and Luis Corrales as they were covering a visit of Peru's Ombudsman to the National Police Hospital to verify a shortage of medical supplies.<sup>324</sup>

214. Throughout 2008, the Office of the Special Rapporteur received reports about acts of aggression allegedly caused by protestors during social demonstrations. These reports also accused the authorities of a failure to offer adequate protection or conduct investigations to identify and punish the perpetrators in these cases. Examples of such situations may be the case of *Radio Sicuani* radio station, which was vandalized following its coverage of a protest,<sup>325</sup> as well as of Karina Novoa of *Canal N*, attacked while reporting on the national strike of July 2008.<sup>326</sup>

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<sup>321</sup> Asociación Nacional de Periodistas del Perú. February 18, 2008. *Atentan contra instalaciones de Diario en Bagua Grande*. Alert received in the email inbox of the Office of the Special Rapporteur for Freedom of Expression. Instituto Prensa y Sociedad. February 18, 2008. *Ex funcionario municipal atenta contra sede de diario*. Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1415>.

<sup>322</sup> According to the information received, the journalists were threatened and insulted by workers of the municipality of Chosica, who prevented them from distributing issues of *El Comercio* newspaper which contained published testimonials about Mayor Luis Bueno Quino. Instituto Prensa y Sociedad/IFEX. July 18, 2008. *Journalists assaulted, newspaper's circulation impeded, following coverage of Chosica mayor's alleged sexual abuse of employees*. Available at: <http://www.ifex.org/en/content/view/full/95555>. Inter American Press Association. *Peru Report. 64th General Assembly, Madrid, Spain*. Available at: [http://www.sipiapa.com/v4/index.php?page=det\\_informe&asamblea=20&infoid=326&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&infoid=326&idioma=us).

<sup>323</sup> *El Comercio*. February 23, 2008. *Sorprenden a policías durmiendo*. Available in Spanish at: <http://www.elcomercio.com.pe/edicionimpresa/Html/2008-02-23/sorprenden-policias-durmiendo.html>. Instituto Prensa y Sociedad/IFEX. February 27, 2008. *Journalists detained for videotaping police officers sleeping on duty at Iquitos jail*. Available at: <http://www.ifex.org/en/content/view/full/91333>.

<sup>324</sup> *La Primera*. April 9, 2008. *Hospital de Policía fue un campo de batalla*. Available in Spanish at: <http://diariolaprimeraperu.com/online/noticia.php?IDnoticia=13973>. International Federation of Journalists. April 8, 2008. *Detienen a periodistas para impedirles desarrollo de su labor informativa*. Available in Spanish at: <http://americalatina.ifj.org/es/articles/detienen-a-periodistas-para-impedirles-desarrollo-de-labor-informativa-en-lima>.

<sup>325</sup> According to the information received, on October 24, 2008, a group of persons entered the network's headquarters, destroying part of the furniture and stealing equipment. The attack allegedly occurred because of the media outlet's coverage of an agricultural protest movement. Reporters Without Borders/IFEX. October 28, 2008. *Radio station ransacked in anti-government protest*. Available at: <http://canada.ifex.org/en/content/view/full/97969>. Coordinadora Nacional de Radio. October 24, 2008. *Turba ataca instalaciones de Radio Sicuani*. Available in Spanish at: <http://www.cnr.org.pe/noticia.php?id=23933>.

<sup>326</sup> According to the information received, on July 9, 2008, a group of protestors attacked a *Canal N* TV station SUV with rocks. Reporter Karina Novoa, who attempted to film the event, was beaten. These events unfolded after one of the leaders of the Confederación Nacional de Trabajadores del Perú, the organization leading the protest, affirmed that the TV station's reporters were spreading disinformation about the national strike. Instituto Prensa y Sociedad/IFEX. July 10, 2008. *Reporter assaulted, television station's vehicle damaged during demonstration in Lima; journalist threatened in San Francisco for criticising illegal coca farming*. Available at: <http://www.ifex.org/en/content/view/full/95246>. *El Comercio*. July 9, 2008. *Manifestantes de la CGTP agreden a periodistas*. Available in Spanish at: <http://www.elcomercio.com.pe/ediciononline/HTML/2008-07-09/manifestantes-cgtp-agreden-periodistas.html>.

215. The Special Rapporteurship also received information about threats against journalists Miguel Ramírez,<sup>327</sup> Dante Francisco Espeza,<sup>328</sup> and Américo Zambrano.<sup>329</sup> These reporters were allegedly threatened as a reprisal for their publications on acts of corruption.

216. On another note, during 2008 the Office of the Special Rapporteur continued to receive numerous reports on criminal defamation suits filed against reporters who cover government sources. In the cases of Juan Vásquez and Félix Adrianzén,<sup>330</sup> Ernesto Barreda Arias,<sup>331</sup> and Francisco Espeza Matamoros and Cristian Palomino,<sup>332</sup> the suits were allegedly initiated after the journalists criticized public employees for corruption and breach of duties. Attention was generated in particular by the criminal sanctions imposed in October 2008 against TV talk show host Magaly Medina and her producer, Ney Guerrero, who were sentenced respectively to five months and three months in prison for the crime of defamation against a sports figure.<sup>333</sup> Although in Medina's case,

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<sup>327</sup> According to the information received, in February 2008, the journalist received two death threats over the phone. Ramírez had spent several years reporting on topics concerning the drug trade. Reporters Without Borders/IFEX. March 3, 2008. *Death threats and attempted frame-up of journalist linked to his investigation of drug lord Fernando Zevallos*. Available at: <http://www.campaigns.ifex.org/en/content/view/full/91341>. Instituto Prensa y Sociedad. February 25, 2008. *Narcos amenazan a periodista e intentan implicarlo en delito de extorsión*. Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1417>.

<sup>328</sup> According to the information received, during 2008, the journalist for the radio station *La Pegajosa* received several phone threats. The first occurred on July 9, 2008 as he was transmitting his program, *Tribuna Libre*, live. On September 2, 2008, he was threatened once again by an anonymous caller who warned that if he continued to "misinform" about the coca leaf, he would be murdered. That same day, the journalist had criticized the illegal cultivation of coca. Instituto Prensa y Sociedad. July 9, 2008. *Amenazan a periodista por oponerse a cultivos ilegales de hoja de coca*. Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1530>. Reporters Without Borders. September 9, 2008. *Impunity blamed for a new wave of threats and attacks on provincial journalists*. Available at: [http://www.rsf.org/article.php3?id\\_article=28453](http://www.rsf.org/article.php3?id_article=28453).

<sup>329</sup> This case was reported during the public hearing on October 23, 2008. In September 2008, the journalist received several death threats by phone. The journalist had made denunciations about the then-General Commander of the Army. Instituto Prensa y Sociedad/IFEX. September 17, 2008. *Journalist received death threat, possibly for reporting on issues related to the army's high command; IPYS correspondent in Loreto receives death threat*. Available at: <http://www.ifex.org/en/content/view/full/97044>. Reporters Without Borders. September 19, 2008. *Death threats made against journalist specialising in highly sensitive investigations*. Available at: <http://www.ifex.org/en/content/view/full/97044>.

<sup>330</sup> According to the information received, on February 4, 2008, the journalists were charged with the crime of aggravated criminal defamation for having photographed two officials sleeping in an establishment after drinking alcohol. Asociación Nacional de Periodistas del Perú. February 6, 2008. *Demandan a periodistas por publicar fotos*. Available in Spanish at: <http://www.ifj.org/es/articles/anp-querellan-a-periodistas-de-jaen-per-por-difundir-fotografias-dos-funcionarios-del-sector-de-educ>. Instituto Prensa y Sociedad. February 6, 2008. *Demandan a periodistas por publicar fotos*. Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1386>.

<sup>331</sup> According to the information received, on March 24, 2008, the Minister of the Interior, Luis Alva Castro, introduced a complaint for aggravated defamation against journalist Ernesto Barreda Arias. The journalist had reported that a possible link existed between the Minister and the drug trade. Asociación Nacional de Periodistas del Perú. April 18, 2008. *Querellan a director del diario La Industria en Trujillo*. Alert received in the email inbox of the Office of the Special Rapporteur for Freedom of Expression. Ideele Radio. April 16, 2008. *Director de diario "La Industria" de Trujillo dispuesto a confrontarse con ministro Luis Alva Castro*. Available in Spanish at: <http://www.ideeleradio.org.pe/look/portal/article.tpl?IdLanguage=13&IdPublication=7&NrIssue=50&NrSection=50&NrArticle=20178>.

<sup>332</sup> According to the information received, on July 24, 2008, the journalists were notified of a complaint introduced against them by the Mayor of Kimbi District. The reporters had questioned why the mayor would not adequately invest gas resources in his region. Asociación Nacional de Periodistas del Perú. August 1, 2008. Alert received in the email inbox of the Office of the Special Rapporteur for Freedom of Expression. Instituto Prensa y Sociedad. 6 de agosto de 2008. *Alcalde querella a periodista por comentar noticia que lo acusa de presunta malversación de fondos*. Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1562>.

<sup>333</sup> Known for her inquiries into the private life of celebrities, the journalist reported that a soccer star had engaged in acts of indiscipline before a game. Reporters Without Borders. October 17, 2008. *President says jailed TV host should be freed*. Available at: [http://www.rsf.org/article.php3?id\\_article=29002](http://www.rsf.org/article.php3?id_article=29002). Committee to Protect Journalists. October 17, 2008. *Gossip journalist and producer serving jail for defamation*. Available at: <http://cpj.org/2008/10/gossip-journalist-and-producer-serving-jail-for-de.php>.

the sentence was modified afterward to two years of probation subject to conduct review, in January 2009, the journalist announced her temporary retirement from television.<sup>334</sup> The Office of the Special Rapporteur reaffirms 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.”

217. The Special Rapporteurship was informed about the initiation of judicial proceedings due to the publication of artistic or symbolic expressions. In June 2008, the Ministry of Defense charged a local model with the crime of insult to national symbols (*ultraje a los símbolos patrios*) after she posed nude on horseback with the national flag. A criminal prosecution began against the model for these deeds.<sup>335</sup> The Office of the Special Rapporteur recalls that Principle 5 of the Declaration of Principles indicates 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.”

218. Likewise, the Office of the Special Rapporteur received reports of possible cases of telephone wiretapping of journalists. On April 6, 2008, *El Comercio* newspaper reported that it had found a telephone wiretapping device in the home of Juan Paredes Castro, the newspaper’s chief political editor.<sup>336</sup> The Special Rapporteurship calls on the authorities to investigate these acts and try those responsible.

219. On another note, the Office of the Special Rapporteur received information about the creation of an *ad hoc* commission in the Congress to investigate the existence of an alleged network of telephone wiretaps. The *ad hoc* commission requested that the Public Prosecutor’s Office study a judicial process that would force journalists Fernando Ampuero and Pablo O’Brien to reveal the identity of their sources. The case is related to a series of recorded telephone calls that unidentified persons made to reveal a corruption ring. The journalists divulged the information obtained in the recorded calls.<sup>337</sup> 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.”

220. Reports of public officials that allegedly prevented journalists from accessing public information were also received. On July 31, 2008, the Public Prosecutor of Pomabamba refused to

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<sup>334</sup> The producer was absolved. Asociación Nacional de Periodistas del Perú. January 1, 2009. *Excarcelan a periodista acusada de difamación*. Available in Spanish at: <http://www.fipcolombia.com/noticiaAmpliar.php?noticia=2888>. Perú 21. December 31, 2008. *Magaly Medina abandonó el penal de mujeres tras 76 días de reclusión*. Available in Spanish at: <http://peru21.pe/noticia/229945/magaly-medida-ney-guerrero-abandonaran-prision-proximas-horas>.

<sup>335</sup> Instituto Prensa y Sociedad. September 10, 2008. *Bailarina y modelo desnudan a los censores de América Latina*. Available in Spanish at: [http://www.regioncoquimbo.cl/diario/index.php?option=com\\_content&task=view&id=3771&Itemid=1](http://www.regioncoquimbo.cl/diario/index.php?option=com_content&task=view&id=3771&Itemid=1). El Comercio. December 23, 2008. *Bailarina Leysi Suárez se salva de ir a la cárcel*. Available in Spanish at: <http://www.elcomercio.com.pe/ediciononline/HTML/2008-12-23/bailarina-leysi-suarez-salva-ir-carcel.html>.

<sup>336</sup> El Comercio. April 6, 2008. *Detectan interceptación a línea telefónica de periodista de El Comercio*. Available in Spanish at: <http://www.elcomercio.com.pe/edicionimpresa/Html/2008-04-06/detectan-interceptacion-linea-telefonica-periodista-comercio.html>. Instituto Prensa y Sociedad/IFEX. April 9, 2008. *Newspaper editor’s telephone tapped; police detain reporters for more than four hours*. Available at: <http://www.ifex.org/en/content/view/full/92446>.

<sup>337</sup> Perú 21. December 13, 2008. *Consejo de la Prensa discrepa con la comisión que investiga el “chuponeo”*. Available in Spanish at: <http://peru21.pe/noticia/224812/consejo-prensa-peruana-discrepa-comision-petroaudios>. El Comercio. December 2, 2008. *Pedirán a fiscal que evalúe levantar secreto profesional a periodistas por “chuponeo”*. Available in Spanish at: <http://www.elcomercio.com.pe/edicionimpresa/Html/2008-12-02/pedirian-fiscal-que-evalue-levantar-secreto-profesional-periodistas-chuponeo.html>.

allow journalist Otilio Norberto Ríos to film the transfer for burning of a drug shipment confiscated by the National Police.<sup>338</sup> The Office of the Special Rapporteur recalls that according to Principle 2 of the Declaration of Principles, “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.”

221. The Office of the Special Rapporteur was informed of public statements made by high government officials regarding certain non-governmental human rights organizations that have manifested opinions different from those held by high government authorities.<sup>339</sup> On April 22, 2008, the Asociación Pro Derechos Humanos (APRODEH) responded to a request by the European Parliament about the possible inclusion of the Movimiento Revolucionario Túpac Amaru (MRTA) on a list of terrorist organizations. APRODEH’s response distanced itself from the government’s opinion on the same topic. Days after their response, the President of Peru, Alan García, suggested that responses like that of APRODEH would constitute “treason” (*traición a la patria*).<sup>340</sup> Likewise, on April 2008, the Agencia Peruana de Cooperación Internacional (APCI) requested that APRODEH explain “what source of funding and what aspect of the Annual Budget allows the organization to intervene on behalf of the terrorist organization MRTA before international organisms”<sup>341</sup>. Following these declarations, APRODEH received various telephone threats and prosecutorial processes were instituted against the organization, which will be further discussed.<sup>342</sup>

222. The Office of the Special Rapporteur expresses its concern about these public statements and official declarations, as they have the potential to foment a climate of intolerance against those who dissent from government opinions. Likewise, the Special Rapporteurship calls attention to the need to avoid any reference, direct or indirect, that undermines the presumption of innocence and criminalizes critical or dissident forms of expression.

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<sup>338</sup> Instituto Prensa y Sociedad/IFEX. August 6, 2008. *Radio journalists harassed, threatened for trying to record drug disposal operation*. Available at: <http://www.ifex.org/en/content/view/full/95945>. Asociación Nacional de Periodistas del Perú. August 6, 2008. *Journalist impeded from doing journalistic work*. Alert received in the email inbox of the Office of the Special Rapporteur for Freedom of Expression.

<sup>339</sup> During the hearing held on October 23, 2008, the IDL representative said that: “there can be no talk of a systematic repressive policy by the Peruvian Government in regards to the exercise of freedom of expression, or of the utilization of the state apparatus with the goal of repressing this right. However, despite the existence of some advances, after two years of the government of President Alan García, [...], we view with concern that this lapse of time has been characterized by a recent climate of intolerance by the President and his team of government toward citizens’ expressions of discrepancy, and criticism of his policies”. The State, on the other hand, indicate that “in Peru [...] there is no persecution whatsoever of any organization for its expressed opinions”.

<sup>340</sup> This case was reported during the public hearing on October 23, 2008. According to the information received, the President of Peru, Alan García, noted the following: “I know that an organization inside Peru has been working [...] with one argument or another aiming to promote nonrecognition about the terrorist role of the MRTA. I think this is unfortunate. It is treason (*traición a la patria*). It is treason, that’s what I would call it, to alter the truth and allow so many victims like those who lived in fear or all of those that suffered the economic consequences of those terrorist acts to be forgotten. To seek to justify the actions of those who have destroyed so much inside our country is treason.” Perú 21. April 25, 2008. *García: APRODEH ha cometido traición a la patria por carta sobre el MRTA*. Available in Spanish at: [http://www.peru.com/noticias/idocs/2008/4/25/DetalleDocumento\\_504209.asp](http://www.peru.com/noticias/idocs/2008/4/25/DetalleDocumento_504209.asp). El Comercio. April 26, 2008. *Alan García califica de lamentable y grave decisión europea sobre MRTA*. Available in Spanish at: <http://www.elcomercio.com.pe/ediciononline/HTML/2008-04-25/alan-garcia-califica-lamentable-y-grave-decision-europea-sobre-mrta.html>.

<sup>341</sup> This case was summarized during the public hearing of October 23, 2008. Information provided by IDL to the IACHR on October 23, 2008 as part of the 133<sup>rd</sup> Period of Sessions. El Comercio. April 23, 2008. *APCI pide que APRODEH rinda cuentas en próximas 48 horas*. Available at: <http://www.elcomercio.com.pe/edicionimpresa/Html/2008-04-26/apci-pide-que-aprodeh-rinda-cuentas-proximas-48-horas.html>.

<sup>342</sup> This information was submitted by APRODEH to the IACHR on May 1, 2008 during the processing of precautionary measures on behalf of Francisco Soberón Garrido and other members of APRODEH.

223. According to information received, on April 25, 2008, the Peruvian Agency of International Cooperation (APCI) initiated a prosecutorial process against APRODEH,<sup>343</sup> and on April 27, 2008, APRODEH and 63 other non-governmental human rights organizations were removed from the Consejo Nacional de Derechos Humanos by supreme decree.<sup>344</sup> According to the information provided by the State, “no evidence or conduct indicating administrative infractions were found” during the audit conducted.<sup>345</sup>

224. Likewise, other non-governmental human rights organizations critical of the government were also subjected to audits that, according to the ones affected, were aimed to inhibit dissident opinions and critical voices. According to the information received, in 2007 and 2008, the Instituto de Defensa Legal (IDL) was subjected to at least two audits by the APCI.<sup>346</sup> The development of the organization’s activities was also discussed by both the Congressional Committee on Intelligence and the Congressional Committee on Defense and Internal Order.<sup>347</sup> The Asociación Interétnica de Desarrollo de la Selva del Perú (AIDESEP) was also audited.<sup>348</sup> The State has explained that these audits were planned in advance (in the case of organizations with the highest levels of international financial support per year) or according to a lottery among organizations. According to the State, the audits obey technical, rather than political, criteria and have the objective of analyzing the adequate investment of international contributions in various projects, not the work of the organizations.<sup>349</sup>

225. The Special Rapporteurship recognizes the important role that the State plays in guaranteeing the enforcement of the law in cases in which it has been violated. Nevertheless, the organizations investigated have indicated that neither the criteria used nor the chronograms of the visits to these organizations are available to the public.<sup>350</sup> On the other hand, it calls the attention of the Special Rapporteur that the debates and audits are being initiated after denouncements or the pronouncement of dissident opinions<sup>351</sup>. The Special Rapporteurship considers it important to remind the State that prosecutions should not be used as mechanisms of censorship or for the inhibition of

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<sup>343</sup> According to the information received, the APCI, an entity dependent on the Executive Branch, requested that APRODEH explain “what source of funding and what aspect of the Annual Budget allows the organization to intervene on behalf of the terrorist organization MRTA before international organisms.” Information presented by APRODEH to the IACHR on May 1, 2008 during the processing of precautionary measures on behalf of Francisco Soberón Garrido and other members of APRODEH.

<sup>344</sup> The National Human Rights Council is an organism dependent on the Ministry of Justice and charged with implementing policies in support of the protection of human rights. Available at: <http://www.minjus.gob.pe/directoriogeneral.asp>. El Comercio. April 28, 2008. *Ejecutivo retira a 64 ONG del Consejo Nacional de Derechos Humanos*. Available in Spanish at: <http://www.elcomercio.com.pe/edicionimpresa/Html/2008-04-28/ejecutivo-retira-64-ong-consejo-nacional-ddhh.html>.

<sup>345</sup> Information presented by the State to the IACHR on October 23, 2008 during its 133rd period of sessions.

<sup>346</sup> Information submitted by the State to the IACHR on October 23, 2008 during its 133rd period of sessions. The State informed the IACHR that it was planning a new period of audits for the third trimester of 2008.

<sup>347</sup> This case was reported during the public hearing on October 23, 2008. Information submitted by the IDL to the IACHR on October 23, 2008 during its 133rd period of sessions.

<sup>348</sup> This case was reported during the public hearing on October 23, 2008. Information submitted by the IDL to the IACHR on October 23, 2008 during its 133rd period of sessions.

<sup>349</sup> This case was reported during the public hearing on October 23, 2008. Information submitted by the State to the IACHR on October 23, 2008 during its 133rd period of sessions.

<sup>350</sup> Information submitted by the IDL to the IACHR on December 5, 2008.

<sup>351</sup> According to the information received, in the case of AIDESEP, the prosecution followed a mobilization that the organization led against the flexibilization of the property regime for community land. Information provided by IDL to the IACHR on October 23, 2008, as part of the 133rd Period of Sessions. La República. September 3, 2008. *Esta fiscalización a AIDESEP es una forma de amedrentamiento*. Available at: <http://www.larepublica.com.pe/content/view/241559/483/>.



critical speech. Prosecutions must obey strict criteria and be subjected to national and international human rights standards, as the Peruvian Constitutional Court noted in its August 29, 2007 judgment about laws No. 28875 and 28925, regarding the system of international cooperation.<sup>352</sup>

226. The Office of the Special Rapporteur would like to recall that the voices of dissent and criticism are essential for democracy. Non-governmental organizations, especially those that defend human rights, should be protected by the State. In this regard, the Special Rapporteurship will continue to closely observe the situations described.

## 25. St. Kitts and Nevis

227. The Office of the Special Rapporteur received information that the photojournalist Stachio Williams, of *SKN Vibes*, was detained by the Police on December 12, 2008, while he was photographing a crime scene. According to the information submitted, Williams was taking photos with his cellular telephone, when a police officer told him to stop. When he refused, the reporter was detained for obstructing the work of the police. His cellular telephone was also confiscated. He was released an hour later without any charges being presented against him.<sup>353</sup>

## 26. United States

228. The Office of the Special Rapporteur views positively the fact that on December 31, 2007 amendments to the Freedom of Information Act (FOIA)<sup>354</sup> were finally passed. Most notable among the changes to the FOIA are the creation of the Office of Government Information Services within the National Archives and Records Administration, an entity that can mediate in conflicts between federal agencies and parties requesting information,<sup>355</sup> the opening of a permanent telephone hotline for servicing information requests, and the implementation of a follow-up system for petitions that take more than 10 days to be processed.<sup>356</sup> A system of penalties was also established for those government agencies that fail to comply with the time limits established under

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<sup>352</sup> Constitutional Court of Peru. August 29, 2007. *Files 0009-2007-PI/TC*. In this case, the Court decided a constitutionality challenge filed by Luis Miguel Sirumbal Ramos and 8,438 citizens and members of Congress against several provisions of Law No. 28925 (Law that modifies Law No. 27692, Law of creation of the APCI), and Law No. 28875 (Law that creates the national Decentralized System of Cooperation). Available at: <http://www.tc.gob.pe/jurisprudencia/2007/00009-2007-AI%2000010-2007-AI.html>.

<sup>353</sup> Winn FM. December 12, 2008. *We should not be attacking each other like this! Journalist outraged over arrest*. Available at: <http://www.winnfm.com/news2.asp?NewsID=2960>. Sun Weekend. December 20, 2008. *Journalist arrested*. Available at: <http://sun-weekend.com/paper/?asw=view&asw=view,view&sun=145336097312132008&an=263525087512202008&ac=Local#StoryTop>. Caribbeannet News. December 13, 2008. *Journalist arrested for taking crime scene pictures in St Kitts*. Available at: [http://www.caribbeannetnews.com/article.php?news\\_id=12925](http://www.caribbeannetnews.com/article.php?news_id=12925).

<sup>354</sup> 110<sup>th</sup> Congress, December 14, 2007, S. 2488. *OPEN Government Act of 2007*. Available at: <http://www.gwu.edu/~nsarchiv/news/20071218/S2488%20text.pdf>; Reporters Without Borders. January 7, 2008. *Reforma de la ley de acceso público a los documentos gubernamentales: "un avance importante aunque tardío"*. Available at: [http://www.rsf.org/article.php3?id\\_article=24955](http://www.rsf.org/article.php3?id_article=24955).

<sup>355</sup> Section 10 of the *OPEN Government Act of 2007* states that, "[t]he Office of Government Information Services shall offer mediation services to resolve disputes between persons making requests under this section and administrative agencies as a non-exclusive alternative to litigation and, at the discretion of the Office, may issue advisory opinions if mediation has not resolved the dispute."

<sup>356</sup> Section 7 of the *OPEN Government Act of 2007* states that, "[e]ach agency shall establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request; and establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including—"(i) the date on which the agency originally received the request; and "(ii) an estimated date on which the agency will complete action on the request."



the FOIA for responding to requests,<sup>357</sup> and the right of complainants to recover attorney fees and litigation costs when forced to request the information through the courts.<sup>358</sup> Principle 4 of the Declaration of Principles establishes that “[a]ccess to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right.”

229. The Office of the Special Rapporteur is also pleased with the July 24, 2008 decision of the U.S. District Court for the Central District of California, which recognized the right of journalist Bill Gertz of the *Washington Times* to protect the confidentiality of his sources. In an article published on May 16, 2006, Gertz had indicated that “senior Justice Department officials” had provided him with information on a case of espionage. The court’s decision was issued in the context of a legal investigation into the alleged commission of federal crimes by government officials who had leaked classified information.<sup>359</sup>

230. The Office of the Special Rapporteur received information on the November 17, 2008 decision of the United States Court of Appeals for the District of Columbia Circuit, which suspended the court order that imposed a fine of up to US\$ 5,000 per day against Toni Locy as long as she continued to keep the identity of her sources confidential. In 2002, Locy published articles in *USA Today* on the anthrax attacks of 2001. In the articles she mentioned the military scientist Steven Hatfill as a “person of interest” linked to the investigations into the attacks. After the articles were published, Hatfill filed civil suit against the Department of Justice for having “leaked” his name to the press. Locy and other journalists were subpoenaed by the court to reveal the identity of the government officials who had provided her with the information.<sup>360</sup>

231. The Office of the Special Rapporteur was also informed that during 2008 the Free Flow of Information Act, a law that would provide federal protection for the right of journalists to keep sources confidential, has still not been approved by the Senate.<sup>361</sup> The House of Representatives passed the bill in October of 2007. The Office of the Special Rapporteur reminds the State that Principle 8 of the Declaration of Principles establishes that “[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.”

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<sup>357</sup> See Section 6 of the *OPEN Government Act of 2007*, entitled: “Time limits for agencies to act on requests.”

<sup>358</sup> See Section 4 of the *OPEN Government Act of 2007* entitled: “Recovery of attorney fees and litigation costs.”

<sup>359</sup> Reporters Without Borders. July 24, 2008. *Un juez norteamericano sentencia a favor de un periodista y reafirma el derecho a preservar la confidencialidad de sus fuentes*. Available at: [http://www.rsf.org/article.php3?id\\_article=27881](http://www.rsf.org/article.php3?id_article=27881). The Washington Post. July 31, 2008. *Vote on Journalist Shield Stalled*. Available at: <http://www.washingtonpost.com/wp-dyn/content/article/2008/07/30/AR2008073001321.html>.

<sup>360</sup> The payment of the fine was suspended temporarily in March of 2008. In June of 2008, Hatfill settled his case against the Department of Justice. The Associated Press. November 18, 2008. *D.C. Circuit throws out contempt order, fines against reporter*. Available at: <http://www.firstamendmentcenter.org/news.aspx?id=20899&SearchString=toni+locy>. The New York Times. June 28, 2008. *Scientist is paid millions by U.S. in Anthrax suit*. Available at: <http://www.nytimes.com/2008/06/28/washington/28hatfill.html>; April 20, 2008, *Squeezed by the Courts*. Available at: <http://www.nytimes.com/2008/04/20/opinion/20pubed.html>. Reporters Without Borders. March 12, 2008. *Un tribunal de apelación suspende las sanciones económicas a la periodista Toni Locy*. Available at: [http://www.rsf.org/article.php3?id\\_article=26168](http://www.rsf.org/article.php3?id_article=26168). Committee to Protect Journalists. March 13, 2008. *Appeals court stays fines against USA Today reporter*. Available at: <http://cpj.org/2008/03/appeals-court-stays-fines-against-usa-today-report.php>.

<sup>361</sup> Reporters Without Borders. October 22, 2008. *RSF pide a los candidatos a la elección presidencial que se comprometan a proteger mejor la libertad de prensa*. Available at: [http://www.rsf.org/article.php3?id\\_article=29068](http://www.rsf.org/article.php3?id_article=29068). Office of the Special Rapporteur – IACHR. 2007 *Annual Report*, Volume II, Chapter II, para. 202. Available at: <http://www.cidh.oas.org/annualrep/2007sp/Anual%202007%20Vol.%20II%20esp.pdf>.

232. The Office of the Special Rapporteur was informed that on August 23, 2008, a law enforcement official in Onslow, North Carolina had ordered one of his officers to pose as a journalist from a weekly publication in order to investigate who was “leaking” confidential information pertaining to a criminal investigation.<sup>362</sup> The Office of the Special Rapporteur expresses its concern with regard to these practices, which in certain contexts could unduly restrict the right to practice journalism and adversely affect the right to receive, seek and impart information.

233. During 2008 the Office of the Special Rapporteur also received information on the status of the investigation into the August, 2007 murder of journalist Chauncey Bailey, former editor of the *Oakland Post*.<sup>363</sup> In January of 2008, it was reported to the Office of the Special Rapporteur that journalist Paul Cobb, the current editor of the *Oakland Post*, was receiving police protection. Cobb had become aware of a plan to kill him that was allegedly linked to Bailey’s murder.<sup>364</sup> Principle 9 of the Declaration of Principles states that the murder, intimidation and threats to journalists “violate the fundamental rights of individuals and strongly restrict freedom of expression.” The Office of the Special Rapporteur urges the State to investigate these acts effectively, and to prosecute and punish the perpetrators.

234. The Office of the Special Rapporteur takes note of the fact that *Al-Jazeera* cameraman Sami al-Haj was released from custody on May 1, 2008. The Office of the Special Rapporteur notes with concern that the cameraman had been detained at the Guantánamo naval base since 2002 without having been tried for any criminal offense.<sup>365</sup> On this issue, the Office of the Special Rapporteur underscores that in its Resolution No. 2/06 of July 28, 2006, the IACHR urged the United States “to close the Guantánamo detention center immediately” and “to remove the detainees from Guantánamo [Bay] through a process undertaken in full accordance with [applicable norms] of international human rights and humanitarian law.”<sup>366</sup>

235. Finally, the Office of the Special Rapporteur regrets that complaints were received in 2008 of the arrests of journalists during the performance of their work. The cases that occurred

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<sup>362</sup> Committee to Protect Journalists. August 26, 2008. *Deputy Sheriff poses as Newsweek journalist*. Available at: <http://cpj.org/blog/2008/08/deputy-sheriff-poses-as-newsweek-journalist-in-sou.php>. Reporters Without Borders. August 23, 2008. *Un policía se hace pasar por periodista para determinar el origen de unas filtraciones informativas relativas a una investigación criminal*. Available at: [http://www.rsf.org/article.php3?id\\_article=28294](http://www.rsf.org/article.php3?id_article=28294).

<sup>363</sup> Committee to Protect Journalists. November 16, 2008. *Bailey colleagues hold detectives accountable*. Available at: <http://cpj.org/blog/2008/11/bailey-colleagues-hold-detectives-accountable.php>; November 4, 2008. *Bailey slaying to be investigated anew*. Available at: <http://cpj.org/2008/11/bailey-slaying-to-be-investigated-anew.php>. Reporters Without Borders. December 19, 2008. *La muerte de Chauncey Bailey se pudo evitar: RSF continúa pidiendo una investigación federal*. Available at: [http://www.rsf.org/article.php3?id\\_article=29760](http://www.rsf.org/article.php3?id_article=29760). Office of the Special Rapporteur – IACHR. 2007 *Annual Report*, Volume II, Chapter II, para. 203. Available at: <http://www.cidh.oas.org/annualrep/2007sp/Anual%202007%20Vol.%20II%20esp.pdf>.

<sup>364</sup> Reporters Without Borders. January 31, 2008. *Amenazan de muerte al director del semanario Oakland Post, complicaciones en la investigación del asesinato de Chauncey Bailey*. Available at: [http://www.rsf.org/article.php3?id\\_article=25299](http://www.rsf.org/article.php3?id_article=25299). Committee to Protect Journalists. February 15, 2008. *Publisher threatened after editor’s murder*. Available at: <http://cpj.org/2008/01/publisher-threatened-after-editors-murder.php>.

<sup>365</sup> Office of the Special Rapporteur – IACHR. 2007 *Annual Report*, Volume II, Chapter II, para. 201. Available at: <http://www.cidh.oas.org/annualrep/2007sp/Anual%202007%20Vol.%20II%20esp.pdf>. The Associated Press. May 2, 2008. *Al-Jazeera cameraman freed from Guantanamo*. Available at: [http://www.firstamendmentcenter.org/news.aspx?id=20000&SearchString=sami al haj](http://www.firstamendmentcenter.org/news.aspx?id=20000&SearchString=sami%20al%20haj). Reporters Without Borders. May 2, 2008. *En libertad el camarógrafo de Al-Jazeera, tras permanecer seis años detenido en la base de Guantánamo*. Available at: [http://www.rsf.org/article.php3?id\\_article=26788](http://www.rsf.org/article.php3?id_article=26788). Committee to Protect Journalists. May 1, 2008. *After six years, Al-Jazeera cameraman freed from Guantanamo*. Available at: <http://cpj.org/2008/05/after-six-years-aljazeera-cameraman-freed-from-gua.php>.

<sup>366</sup> IACHR. July 28, 2006. *Press Release No. 27/06*. Available at: <http://www.cidh.org/Comunicados/Spanish/2006/27.06sp.htm>.

during the coverage of the presidential elections received particular attention. On August 28, 2008, television producer Asa Eslocker from *ABC News* was arrested by Police while his team was filming outside a hotel where the Democratic Party was holding a meeting in Denver. Eslocker was later charged with the violation of several municipal ordinances, including trespassing.<sup>367</sup> On September 1, 2008, Amy Goodman, Sharif Abdel Kouddos and Nicole Salazar, of the television program *Democracy Now!*, were arrested by Police as they reported on the protests outside the Republican Convention in Minnesota. Following her arrest, Goodman was charged with the offense of interference with a peace officer. According to the information received, the charges were dropped in all of the cases and the journalists were released.<sup>368</sup>

## 27. Uruguay

236. The Office of the Special Rapporteur is pleased with the advances in Uruguayan law during 2008 to guarantee freedom of expression. On October 17, 2008, the Parliament enacted the Public Information Access Act<sup>369</sup> in an effort to bring its laws into compliance with standards on freedom of expression. The Office of the Special Rapporteur understands that this law is complemented by the National Archives Act<sup>370</sup> and the Community Broadcasting Service Act,<sup>371</sup> both enacted in December of 2007, which also further develop the right to freedom of expression.

237. The Office of the Special Rapporteur views positively the enactment of a law on access to information, and in its implementation invites the State to bear in mind Principle 4 of the Declaration of Principles, which states that “[a]ccess to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right.”

238. In addition, the Office of the Special Rapporteur notes with interest that the Senate unanimously approved in December of 2008 the draft bill to reform the legal concept of *desacato*, eliminate the offense of insulting patriotic symbols, and decriminalize the expression of critical or

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<sup>367</sup> Reporters Without Borders. October 20, 2008. *Sobreséidos los cargos contra un periodista de ABC News detenido durante la Convención Demócrata*. Available at: [http://www.rsf.org/article.php3?id\\_article=28363](http://www.rsf.org/article.php3?id_article=28363). Committee to Protect Journalists. August 28, 2008. *News reporter arrested in Denver*. Available at: <http://cpj.org/blog/2008/08/abc-news-reporter-arrested-in-denver.php>; August 28, 2008. *CPJ alarmed by arrest, harassment of ABC producer in Denver*. Available at: <http://cpj.org/2008/08/cpj-alarmed-by-arrest-harassment-of-abc-producer-i.php>.

<sup>368</sup> Committee to Protect Journalists. September 5, 2008. *Dozens of journalists arrested while covering RCN*. Available at: <http://cpj.org/2008/09/dozens-of-journalists-arrested-while-covering-rcn.php>; September 2, 2008. *Four arrested covering protest at GOP convention*. Available at: <http://cpj.org/2008/09/four-arrested-covering-protest-at-gop-convention.php>; September 2, 2008. *Democracy Now! producers arrested at RCN*. Available at: <http://cpj.org/blog/2008/09/democracy-now-journalists-arrested-at-rcn-in-minne.php>. Reporters Without Borders. September 22, 2008. *Van a levantar los cargos imputados a los periodistas detenidos durante la Convención Republicana*. Available at: [http://www.rsf.org/article.php3?id\\_article=28391](http://www.rsf.org/article.php3?id_article=28391).

<sup>369</sup> The law was backed by the Archives and Public Information Access Group [*Grupo Archivos y Acceso a la Información Pública*], a coalition of social organizations including the Uruguayan Press Association [*Asociación de la Prensa del Uruguay*], the Peace and Justice Service [*Servicio Paz y Justicia*], the World Association of Community Broadcasters, Transparency Uruguay [*Transparencia Uruguay*], the Uruguayan Institute for Legal and Social Studies [*Instituto de Estudios Legales y Sociales del Uruguay*], the School of Library Science at the University of the Republic [*Escuela de Bibliotecología de la Universidad de la República*], the Uruguay Chapter of Amnesty International, the Media and Society Group [*Grupo Medios y Sociedad*], Archivists without Borders and the Uruguayan Association of Archivists and Citizen Action for Civil Rights [*Asociación Uruguaya de Archivólogos y Acción Ciudadana por los Derechos Civiles*]. Law 18.381. October 17, 2008. *Public Information Access Act*. Available at: <http://www.presidencia.gub.uy/web/leyes/2008/10/EC1028-00001.PDF>. Presidency of Uruguay. November 13, 2008. *Nueva Ley garantiza marco legal al derecho para acceder a la información pública*. Available at: <http://www.presidencia.gub.uy/web/noticias/2008/11/2008111307.htm>.

<sup>370</sup> Law 18.220. December 5, 2007. *Ley Nacional de Archivos*. Available at: [http://www.presidencia.gub.uy/web/leyes/2007/12/EC789\\_19%2010%202007\\_00001.PDF](http://www.presidencia.gub.uy/web/leyes/2007/12/EC789_19%2010%202007_00001.PDF).

<sup>371</sup> Law 18.232. December 22, 2007. *Ley Servicio de Radiodifusión Comunitaria*. Available at: [http://www.presidencia.gub.uy/web/leyes/2007/12/IE527\\_19%2010%202007\\_00001.PDF](http://www.presidencia.gub.uy/web/leyes/2007/12/IE527_19%2010%202007_00001.PDF).

offensive opinions concerning public officials or individuals who voluntarily expose themselves to the public, provided that it is not proven that the person expressing his opinion acted with actual malice.<sup>372</sup> According to the information received, the draft bill was sent to Parliament in October of 2008 by the Executive Branch, through the Ministry of Education and Culture, after it received a draft prepared by experts and representatives of various social organizations.<sup>373</sup> On December 16, 2008, with the vote of the Senate, the initiative was taken under consideration by the House of Representatives to continue working its way through the legislature.<sup>374</sup> However, the Office of the Special Rapporteur notes that the criminal offense of *desacato* in some cases is preserved in this initiative,<sup>375</sup> and that it also does not exempt from liability for criminal defamation individuals who violate the privacy of others.<sup>376</sup> These and other points may give rise to ambiguous interpretations that jeopardize the effective exercise of freedom of expression.

239. The Office of the Special Rapporteur expects that any law on this issue will take into account Principle 10 of the Declaration of Principles: “[t]he protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a

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<sup>372</sup> The initiative amends Law 16.099, known as the Press Act, and articles 138, 173 and 336 of the Criminal Code. Presidency of Uruguay. September 29, 2008. Draft Bill. Available at: [http://www.presidencia.gub.uy/web/proyectos/2008/09/CM556\\_26%2006%202008\\_00001.PDF](http://www.presidencia.gub.uy/web/proyectos/2008/09/CM556_26%2006%202008_00001.PDF).

<sup>373</sup> World Association of Community Broadcasters /IFEX. October 28, 2008. *Gobierno envía al parlamento proyecto para despenalizar figuras que limitan la libertad de expresión*. Available at <http://www.ifex.org/altrlts/content/view/full/97964/>.

<sup>374</sup> Committee to Protect Journalists. December 17, 2008. *In Uruguay, Senate approves new press bill*. Available at: <http://cpj.org/blog/2008/12/in-uruguay-senate-approves-new-press-bill.php>. Grupo Medios y Sociedad. December 2008. *Cámara de Senadores aprueba proyecto que modifica la Ley de Prensa*. Available at: <http://www.infoycom.org/?q=node/2775>. Knight Center for Journalism. January 7, 2009. *Senado aprueba reforma a ley de prensa; despenaliza delito de difamación*. Available at: <http://knightcenter.utexas.edu/blog/?q=es/node/2639>.

<sup>375</sup> Article 6. Article 173 of the Criminal Code is hereby replaced with the following:

“Article 173 (*Desacato*).- *Desacato* is committed by undermining the authority of public officials in one of the following ways:

- 1) By actual insults made in the presence of the official or in the place where he is performing his duties.
- 2) By the open disobedience of the legitimate order of a public official, undermining his authority. The offense shall be punishable by a term of imprisonment ranging from three to eighteen months. No person shall be punished for expressing his disagreement with the authority’s order.”

<sup>376</sup> Article 4. Article 336 of the Criminal Code is hereby replaced with the following:

“Article 336 (Exemption from liability and proof of truth). The following shall be exempt from liability:

- a) Any person who makes or disseminates any kind of statement regarding matters of public interest, matters referring to public officials and individuals who, due to their profession or occupation, have relevant exposure to society, or matters regarding any person who has become involved voluntarily in matters of public interest;
- b) Any person who repeats any kind of statement concerning matters of public interest, when the author of such statement is identified;
- c) Any person who makes or disseminates any kind of humorous or artistic statement, provided that it falls into one of the above categories.

There shall be no exemption from liability when it is demonstrated that the author acted with actual malice in attacking others or invading their privacy.

Persons charged with the offenses provided for in Article 333 and even in 334, when there is an accusation at issue, shall have the right to prove the truth of the facts and the likelihood of the qualities attributed to the person, except in cases concerning the private life of the person, or when the disclosure of the facts is not in the public interest. If truth or likelihood is proven, the author of the accusation shall be exempt from punishment, except when he has acted with actual malice.”

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 also reminds the State that Principle 11 of the Declaration of Principles indicates 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.”

240. On the issue of community radio, the Office of the Special Rapporteur appreciates the implementation in 2008 of the Community Broadcasting Service Act, which was passed in December of 2007, as well as the commercial broadcasting regulations enacted this year. For example, it was informed that the Executive Branch issued two executive orders, one on April 14, 2008 concerning community broadcasting,<sup>377</sup> and the other on August 4, 2008, which creates new procedures and criteria for granting commercial broadcast licenses.<sup>378</sup> According to the information received, these new rules have created bodies for academic and citizen participants to submit opinions during the frequency allocation process and to oversee the government’s actions in this area. The Honorary Advisory Board of Community Broadcasting was created for community broadcasting, and the Independent Honorary Advisory Board, which includes representatives from business associations, was created for the commercial media. In both cases, public meetings and consultations were held, the former through the Internet and the latter in local meetings. According to the information received, the first 38 community broadcasting licenses were issued during 2008 pursuant to the new law.<sup>379</sup> In addition, the government provided for one-third of all broadcasting bands in the radio spectrum to be reserved for community and non-commercial media, including the new digital TV bands.<sup>380</sup> The Office of the Special Rapporteur recalls that Principle 12 of the Declaration of Principles, among other points, establishes that “[t]he concession of radio and television broadcast frequencies should take into account the democratic criteria that provide equal opportunity of access for all individuals.”

241. The Office of the Special Rapporteur has received information during 2008 about journalists that have been attacked or threatened for practicing their profession. On March 29, 2008, the daughter of journalist Enrique Aldabe was shot at in her parents’ home after the journalist reported on his radio program “Micrófono Abierto” on *Radio Tacuarembó* on alleged irregularities involving members of the Police. According to the information received, the alleged perpetrators of the attack were brought to justice a week later.<sup>381</sup> The Office of the Special Rapporteur was also

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<sup>377</sup> Executive Order 208/008. April 14, 2008. *Integración del Consejo Honorario asesor de radiodifusión comunitaria*. Available at: [http://www.presidencia.gub.uy/web/decretos/2008/04/82\\_19%2010%202007\\_00002.PDF](http://www.presidencia.gub.uy/web/decretos/2008/04/82_19%2010%202007_00002.PDF).

<sup>378</sup> Executive Order 374/008. August 4, 2008. *Se actualiza los aspectos relativos al otorgamiento del uso de frecuencia para radiodifusión comercial*. Available at: [http://www.presidencia.gub.uy/web/decretos/2008/08/IE654\\_26%2006%202008\\_00001.PDF](http://www.presidencia.gub.uy/web/decretos/2008/08/IE654_26%2006%202008_00001.PDF).

<sup>379</sup> Order 885/008. Ministry of Industry, Energy and Mining. October 24, 2008. *Regularización de la prestación de servicio de radiodifusión comunitaria de las asociaciones civiles constituidas o en trámite de formación*. Available at: [http://www.presidencia.gub.uy/web/resoluciones/2008/10/IE726\\_00001.PDF](http://www.presidencia.gub.uy/web/resoluciones/2008/10/IE726_00001.PDF). Order 888/008. Ministry of Industry, Energy and Mining. October 24, 2008. *Regularización de la prestación de servicio de radiodifusión comunitaria de los grupos de personas organizadas sin fines de lucro*. Available at: [http://www.presidencia.gub.uy/web/resoluciones/2008/10/IE729\\_00001.PDF](http://www.presidencia.gub.uy/web/resoluciones/2008/10/IE729_00001.PDF).

<sup>380</sup> Grupo Medios y Sociedad. *Informe sobre estado de la libertad de expresión en Uruguay durante 2008*. Requested and received by the Office of the Special Rapporteur for Freedom of Expression on December 31, 2008. World Association of Community Broadcasters. August 2008. *Uruguay reserva un tercio del espectro de TV Digital para el sector comunitario*. Available at: <http://amarcuuguay.org/content/view/77/26/>.

<sup>381</sup> Grupo Medios y Sociedad. *Informe sobre estado de la libertad de expresión en Uruguay durante 2008*. Requested and received by the Office of the Special Rapporteur for Freedom of Expression on December 31, 2008. Inter Continued...



informed that on July 26, 2008, photographer Nicolás Celaya, who worked for the newspaper *La República*, was detained and held incommunicado for several hours at a police station after police prevented him from taking pictures of an operation being conducted at a basketball game. The Court later dismissed the charges against him.<sup>382</sup>

242. The Office of the Special Rapporteur was also informed that on April 17, 2008, journalist Luis Elisburu of the "Sin Censura TV" program aired on the Trinidad cable channels, reported having been pressured to report on alleged irregularities involving a member of Parliament and a former governor.<sup>383</sup> In April of 2008 journalist Marlene Vaz, editor of the weekly publication *Opción Cero* of Río Branco, was threatened in relation to a report published in her newspaper.<sup>384</sup> In addition, on July 25, 2008, journalist Williams Pérez and his wife received death threats after the journalist reported on *Radio Continental* of Pando that 60 town councilmen of Canelones collected for fuel expenses without having vehicles.<sup>385</sup> On September 19, 2008, journalist Luis Carlos Coteló of *Radio Nacional* reported to authorities that he had received death threats for comments he had made on the air.<sup>386</sup>

243. The Office of the Special Rapporteur recalls that Principle 9 of the Declaration of Principles establishes that, "[t]he murder, kidnapping, intimidation and/or threats to social communicators, as well as to the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the State to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

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American Press Association/IFEX. April 8, 2008. *Atentado contra hija de periodista radial en Tacuarembó*. Available at: <http://www.ifex.org/en/content/view/full/92409/>. Círculo de Periodistas de Tacuarembó. March 31, 2008. *El Círculo de Periodistas de Tacuarembó se solidariza con el colega Enrique Aldabe Dini y repudia el atentado que sufrió su familia*. Available at: <http://circuloperiodistastacuarembowordpress.com/2008/03/31/el-circulo-de-periodistas-de-tacuarembowordpress.com/2008/03/31/el-circulo-de-periodistas-de-tacuarembowordpress.com/se-solidariza-con-el-colega-enrique-algabe-dini-y-repudia-el-atentado-que-sufriera-su-familia/>.

<sup>382</sup> Grupo Medios y Sociedad. *Informe sobre estado de la libertad de expresión en Uruguay durante 2008*. Requested and received by the Office of the Special Rapporteur for Freedom of Expression on December 31, 2008. La República. July 27, 2008. *Fotógrafo de la República fue esposado y detenido en comisaría*. Available at: <http://www.larepublica.com.uy/politica/321736-fotografo-de-la-republica-fue-detenido-y-esposado-en-comisaria>. Inter American Press Association. *Uruguay Report, 64<sup>th</sup> General Assembly, Madrid, Spain*. Available in Spanish at: [http://www.sipiapa.org/v4/index.php?page=det\\_informe&asamblea=20&infoid=329&idioma=sp](http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=20&infoid=329&idioma=sp).

<sup>383</sup> Grupo Medios y Sociedad. *Informe sobre estado de la libertad de expresión en Uruguay durante 2008*. Requested and received by the Office of the Special Rapporteur for Freedom of Expression on December 31, 2008. Inter American Press Association. *Uruguay Report, 64<sup>th</sup> General Assembly, Madrid, Spain*. Available in Spanish at: [http://www.sipiapa.org/v4/index.php?page=det\\_informe&asamblea=20&infoid=329&idioma=sp](http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=20&infoid=329&idioma=sp).

<sup>384</sup> Inter American Press Association. *Uruguay Report, 64<sup>th</sup> General Assembly, Madrid, Spain*. Available in Spanish at: [http://www.sipiapa.org/v4/index.php?page=det\\_informe&asamblea=20&infoid=329&idioma=sp](http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=20&infoid=329&idioma=sp). Reporters Without Borders. April 14, 2008. *Reporteros Sin Fronteras solicita protección para una periodista y sus hijos, amenazados de muerte*. Available at: [http://www.rsf.org/article.php3?id\\_article=26567](http://www.rsf.org/article.php3?id_article=26567).

<sup>385</sup> Grupo Medios y Sociedad. *Informe sobre estado de la libertad de expresión en Uruguay durante 2008*. Requested and received by the Office of the Special Rapporteur for Freedom of Expression on December 31, 2008. Inter American Press Association. *Uruguay Report, 64<sup>th</sup> General Assembly, Madrid, Spain*. Available in Spanish at: [http://www.sipiapa.org/v4/index.php?page=det\\_informe&asamblea=20&infoid=329&idioma=sp](http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=20&infoid=329&idioma=sp). El País. July 25, 2008. *Amenazan de muerte a edil y periodista*. Article reprinted at the following site: <http://politicas.infoycor.org.uy/?q=node/2240>.

<sup>386</sup> Grupo Medios y Sociedad. *Informe sobre estado de la libertad de expresión en Uruguay durante 2008*. Requested and received by the Office of the Special Rapporteur for Freedom of Expression on December 31, 2008. Inter American Press Association. *Uruguay Report, 64<sup>th</sup> General Assembly, Madrid, Spain*. Available in Spanish at: [http://www.sipiapa.org/v4/index.php?page=det\\_informe&asamblea=20&infoid=329&idioma=sp](http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=20&infoid=329&idioma=sp). La República. September 21, 2008. *Amenaza II*. Available at: <http://www.larepublica.com.uy/politica/332246-amenaza-ii>.



244. The Office of the Special Rapporteur was further informed of other criminal complaints filed against journalists in connection with the practice of their profession. Also in April of 2008, the Court of Criminal Appeals sentenced Marlene Vaz from *Opción Cero* to five months in prison (with a suspended execution of sentence due to her first-time offender status) for criminal defamation.<sup>387</sup> The Office of the Special Rapporteur also notes with concern that on September 19, 2008, the Court of Criminal Appeals affirmed the four month prison sentence (suspended due to his first-time offender status) of journalist Norberto Costabel, editor of the weekly publication *Noticias* in the city of Colonia, for the criminal offense of defamation. According to the information received, the journalist had published an announcement warning readers that a former subscriptions collector from the publication no longer had ties to the company and could catch clients off guard in their good faith. In spite of the fact that it had been proven at trial that “subscription payments were received on at least three occasions without the issuance of a receipt”, the Court held that it was improper to apply “the truth exception” provided for in paragraph 5 of Article 336 of the Criminal Code. The Court reasoned that Costabel had not acted according to a “public interest” but rather was motivated by a “private interest”. The judgment is currently being considered by the Supreme Court of Justice.<sup>388</sup> In another case, Carlos Tutzó, a leader of the Communist Party of Uruguay (PCU), filed a criminal complaint in November of 2008 against journalist Álvaro Alfonso alleging criminal defamation stemming from references to the complainant in his book entitled *Secretos del PCU (Secrets of the PCU)*.<sup>389</sup>

245. The Office of the Special Rapporteur notes that a criminal complaint filed against journalist Roger Rodríguez by a former member of the military who alleged criminal defamation following the publication of an investigative report was dismissed in April of 2008. In the report, the complainant had been named as an alleged participant in the murder of a student months prior to the 1973 coup.<sup>390</sup> The Office was also informed that journalist Ana María Mizrahi, against whom a criminal defamation complaint was filed by the daughter of Military Colonel Artigas Álvarez (executed by a Tupamaro commando unit in the 1970s), was acquitted in May of 2008. It also received information that the Court of Criminal Appeals acquitted Federico Fasano, editor of the newspaper *La República*, of the criminal charges brought by a former Naval officer against a

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<sup>387</sup> Grupo Medios y Sociedad. *Informe sobre estado de la libertad de expresión en Uruguay durante 2008*. Requested and received by the Office of the Special Rapporteur for Freedom of Expression on December 31, 2008. Reporters Without Borders. April 14, 2008. *Reporteros sin Fronteras solicita protección para una periodista y sus hijos, amenazados de muerte*. Available at: [http://www.rsf.org/article.php3?id\\_article=26567](http://www.rsf.org/article.php3?id_article=26567).

<sup>388</sup> Grupo Medios y Sociedad. *Informe sobre estado de la libertad de expresión en Uruguay durante 2008*. Requested and received by the Office of the Special Rapporteur for Freedom of Expression on December 31, 2008. Inter American Press Association. *Uruguay Report, 64<sup>th</sup> General Assembly, Madrid, Spain*. Available in Spanish at: [http://www.sipiapa.org/v4/index.php?page=det\\_informe&asamblea=20&infoid=329&idioma=sp](http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=20&infoid=329&idioma=sp). La República. May 23, 2008. *Jueza y Fiscal de Rosario, Colonia, condenaron a 4 meses de prisión a un veterano periodista al que le impidieron probar la verdad de sus dichos*. Available at: <http://www.larepublica.com.uy/larepublica/2008/05/23/nota/312343>.

<sup>389</sup> Grupo Medios y Sociedad. *Informe sobre estado de la libertad de expresión en Uruguay durante 2008*. Requested and received by the Office of the Special Rapporteur for Freedom of Expression on December 31, 2008. La República. July 21, 2008. *Edil comunista denuncia a periodista por libro*. Available at: <http://www.larepublica.com.uy/politica/320971-edil-comunista-denuncia-a-periodista-por-libro>. El País. July 2008. *Denuncia de edil del PCU contra periodista*. Available at: [http://www.elpais.com.uy/Registro/Login.asp?refacc=0&vurl=%2F08%2F07%2F22%2Fpnacio\\_359156.asp&erracc=99&url\\_qs](http://www.elpais.com.uy/Registro/Login.asp?refacc=0&vurl=%2F08%2F07%2F22%2Fpnacio_359156.asp&erracc=99&url_qs).

<sup>390</sup> Grupo Medios y Sociedad. *Informe sobre estado de la libertad de expresión en Uruguay durante 2008*. Requested and received by the Office of the Special Rapporteur for Freedom of Expression on December 31, 2008. Inter American Press Association. *Uruguay Report, 64<sup>th</sup> General Assembly, Madrid, Spain*. Available in Spanish at: [http://www.sipiapa.org/v4/index.php?page=det\\_informe&asamblea=20&infoid=329&idioma=sp](http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=20&infoid=329&idioma=sp).

columnist from the paper who questioned his integrity during the military dictatorship of the 1970s.<sup>391</sup>

246. The Office of the Special Rapporteur was also informed of a tense meeting between journalists from the weekly publication *Búsqueda*, Iván Kirichenko and Ismael Grau, and the president of Banco República (BROU), Fernando Calloia, concerning the April 17, 2008 publication of an article on alleged irregularities in the payment of a debt owed to the bank by a high-ranking government official. According to the information received, on May 7, 2008, the Office of the Director of BROU informed to *Búsqueda* that it was canceling in advance a purchase order for government advertising that it had submitted on April 11, 2008, prior to the publication of the article at issue and the meeting with the BROU Director. According to this information, the bank asked to be billed for the advertising space that had been used up to that date, and for the remaining part of the purchase order to be cancelled.<sup>392</sup> This situation, according to this information, was the subject of debate for a parliamentary committee in August of 2008, at which the President of the BROU justified the bank's withdrawal from the advertising contract by stating that the amount that the BROU was permitted to spend on a direct purchase had been exceeded. According to the information available, the banking institution has since returned to contracting specific advertising in the weekly publication.<sup>393</sup>

247. The Office of the Special Rapporteur underscores that Principle 13 of the Declaration of Principles indicates that "[t]he arbitrary and discriminatory placement of official advertising and government loans [...], 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."

## 28. Venezuela<sup>394</sup>

248. As in previous years, exercise of the right to freedom of expression in Venezuela continues to be a matter of special concern to the IACHR. In 2008, the IACHR received information, especially through the Office of the Special Rapporteur for Freedom of Expression, on situations detrimental to the normal exercise of this right. The State indicates in this regard that the IACHR employs a biased monitoring mechanism that leads it to condemn the State without any evidence. It

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<sup>391</sup> Grupo Medios y Sociedad. *Informe sobre estado de la libertad de expresión en Uruguay durante 2008*. Requested and received by the Office of the Special Rapporteur for Freedom of Expression on December 31, 2008. La República. October 10, 2008. *El juez absolvió ayer a Fasano*. Available at: <http://www.larepublica.com.uy/politica/334807-el-juez-absolvio-ayer-a-fasano>.

<sup>392</sup> Inter American Press Association. April 24, 2008. *Preocupación de la SIP por amenazas contra periodistas en Uruguay y agresiones en México*. Available at: [http://www.sipiapa.org/v4/index.php?page=cont\\_comunicados&seccion=detalles&id=3918&idioma=sp](http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=3918&idioma=sp). Inter American Press Association/IFEX. May 14, 2008. *Banco estatal retira publicidad oficial para penaliza a semanario tras artículo crítico*. Available at: <http://www.ifex.org/es/content/view/full/93742/>.

<sup>393</sup> *Búsqueda* No. 1459. May 29, 2008. *Publicidad oficial: el diputado Jorge Gandini pide la comparecencia en el Poder Legislativo del presidente del Banco Republica*. Print version available by subscription at: [www.busqueda.com.uy](http://www.busqueda.com.uy). Transcript No. 1683. August 6, 2008. *Sesión de Comisión de Hacienda de Cámara de Representantes: Medidas adoptadas por el Banco República Oriental del Uruguay respecto de la publicidad en el semanario Búsqueda*. Available at: <http://www.parlamento.gub.uy/IndexDB/Distribuidos/ListarDistribuido.asp?TIPO=CON&URL=/distribuidos/contenido/camara/D20080806-0078-1683.htm>.

<sup>394</sup> This section corresponds to the chapter on freedom of expression in Venezuela, part of Chapter IV, Volume I of the Annual Report of the IACHR.

notes that “there is no country in the world where freedom of expression is more respected, and the facts have borne this out; despite the fact that the media act as political parties, and have participated in the coup d’état, no media outlet has been closed, and no journalist has been arrested for exercising his or her right.”

249. Among the development of particular concern to the IACHR in the area of freedom of expression is the assassination of the Vice President of the newspaper *Reporte Diario de la Economía*, Pierre Fould Gerges, on June 2, 2008. According to the information supplied, two unidentified persons on a motorcycle shot the victim at least twelve times when he was at a service station in Caracas.<sup>395</sup> According to the information reported to the IACHR, a various of newspaper executives and editors were allegedly threatened because of the newspaper’s editorial position, which had been critical with regard to supposed cases of corruption. Following the murder, the attorney representing the *Reporte Diario de la Economía* also complained of having received threats from private criminal groups, for making statements about the case. Through its Office of the Special Rapporteur for Freedom of Expression, the IACHR deplored the murder and urged Venezuelan authorities to investigate the crime promptly and effectively, and to duly prosecute those responsible.<sup>396</sup> However, no progress in this investigation has been reported thus far.

250. As observed in previous years, in 2008 the IACHR continues to be troubled by the intimidation targeted at private media outlets, particularly the *Globovisión* television channel, whose executives and staff continued to be protected by provisional measures first ordered by the Inter-American Court in 2004 and confirmed on January 29, 2008.<sup>397</sup> Despite the provisional measures ordered, the severe aggression by private groups against this media outlet has not stopped. On September 23, 2008, the *Globovisión* television channel was the target of an attack. The group calling itself the “La Piedrita Working Group,” which later claimed responsibility for the attack, threw two teargas bombs against the façade of the television station’s building and then issued a communication in which it declared “War to the death” on the channel and declared them to be “military objectives” should their plans for assassination and a coup d’état materialize.”<sup>398</sup> Later, on January 1, 2009, a teargas bomb was thrown onto the roof of *Globovisión* headquarters, forcing security staff to empty the building. According to reports, pamphlets with the initials of the *La Piedrita* group, which claimed responsibility for the attack, were found on the site; this group reaffirmed that both the television channel and the newspaper *El Nacional* were considered “military targets.”<sup>399</sup>

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<sup>395</sup> CPJ. June 3. *Ejecutivo de diario asesinado en Caracas* [Newspaper executive murdered in Caracas]. Available at: <http://cpj.org/es/2008/06/ejecutivo-de-diario-asesinado-en-caracas.php>. RSF. June 4, 2008. *Asesinado a disparos en Caracas el vicepresidente de un diario económico, su hermano está amenazado de muerte* [Business newspaper vice president shot to death in Caracas, his brother receives death threats]. Available at: [http://www.rsf.org/article.php3?id\\_article=27306](http://www.rsf.org/article.php3?id_article=27306).

<sup>396</sup> See Press Release R24/08 issued by the Office of the Special Rapporteur for Freedom of Expression. June 5, 2008. Available at: <http://www.Cidh.oas.org/relatoria/showarticle.asp?artID=731&IID=2>.

<sup>397</sup> Inter-American Court, Order of January 29, 2008, Provisional Measures. Matter of “Globovision” Television regarding Venezuela.

<sup>398</sup> Information supplied during the 133rd Session. IPYS. *Lanzan panfletos y bombas lacrimógenas a la sede del canal de noticias Globovisión* [Pamphlets and teargas thrown at the headquarters of the *Globovisión* news channel]. September 29, 2008. Available at <http://www.ifex.org/es/content/view/full/97326>. According to press information the group *La Piedrita* identifies it self as a “guerrilla organization”, see [http://www.el-nacional.com/www/site/detalle\\_noticia.php?q=nodo/23350](http://www.el-nacional.com/www/site/detalle_noticia.php?q=nodo/23350).

<sup>399</sup> Reporters without Borders. January 2, 2008. On New Year’s day the radical group *La Piedrita* carries out another attack on the television station. Available at: [http://www.rsf.org/article.php3?id\\_article=29876](http://www.rsf.org/article.php3?id_article=29876). *El Universal*. January 2, 2009. *La Piedrita* group attacked *Globovisión* with teargas bomb. Available at: [http://www.eluniversal.com/2009/01/01/pol\\_ava\\_grupo-la-piedrita\\_01A2180231.shtml](http://www.eluniversal.com/2009/01/01/pol_ava_grupo-la-piedrita_01A2180231.shtml).

251. On October 16, 2008 two new teargas attacks occurred. One was on the home of Leopoldo Castillo, moderator of the *Globovisión* editorial program; the other attack was on the newspaper *El Nuevo País*, where Poleo is director. According to the information received, the “La Piedrita” group, which describes itself as sharing an affinity with the government of Venezuela, claimed responsibility for the attack on the newspaper. Members of this group allegedly distributed a communiqué in which they declared Poleo to be a “military objective” because of the statements he had made about Hugo Chávez.<sup>400</sup> The statements made by La Piedrita do not appear to have been followed by a clear disavowal or disclaimer or any investigation on the part of Venezuelan authorities. It is worth noting that, using this same plan of attack, a serious attempt was made against journalist Marta Colomina on December 1, 2008; allegedly she was seriously injured in the attack, which was perpetrated despite on provisional measures ordered on her behalf by the Inter-American Court. A teargas bomb was launched against her home, along with some pamphlets declaring her a “battle objective” and accusing her of promoting the plan to assassinate President Hugo Chávez. According to the information obtained, the “La Piedrita” group allegedly claimed responsibility for this incident.

252. The IACHR received reports of attacks by private groups against the headquarters of other media outlets in various parts of the country. The weekly *Dicho y Hecho* in Bejuma, state of Carabobo, was reportedly the target of a gunfire attack on May 11, 2008.<sup>401</sup> On June 29, 2008, the facades of the *Radio Pueblo*, *Rumbera Network*, *Plata*, *Pachanga*, *Guarachera*, *Sonido*, *Favorita* and *Radio San Carlos* stations, all in the state of Cojedes, were painted with graffiti the night before accusing them of lies and threatening them with attack.<sup>402</sup> On July 15, 2008, two unidentified persons fired on the headquarters of *Radio Marabina 1420 AM*, in the state of Zulia.<sup>403</sup> In late July, a group of unidentified persons threw rocks and metal objects against the booth of *Radio Color 99.5*. In August 2008, the premises of *Radio Auténtica 107.5* in Maracay, state of Aragua, was also the target of gunfire; its journalists had complained of receiving threats.<sup>404</sup> Another similar incident of intimidation was allegedly reported in October 2008, with the newspaper *Panorama* in the city of Maracaibo.<sup>405</sup>

253. The IACHR, through the Office of the Rapporteur for Freedom of Expression, also received a report of numerous acts of aggression, threats and attacks on journalists, either by

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<sup>400</sup> SIP. October 15, 2008. *Condena la SIP agresión contra diario El Nuevo País en Venezuela* [The SIP condemns attack on the newspaper *El Nuevo País* in Venezuela]. Available at: [http://www.sipiapa.org/v4/index.php?page=cont\\_comunicados&seccion=detalles&id=4075&idioma=sp](http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4075&idioma=sp). IPYS. October 24, 2008. *Amenazan a director de diario y lanzan bombas lacrimógenas a sede* [Newspaper director threatened and teargas bombs hurled at the newspaper’s headquarters]. Available at: <http://www.ipys.org/alertas/atentado.php?id=1632>.

<sup>401</sup> RSF. May 14, 2008. *Atentado a disparos a la sede de un semanario en el State de Carabobo* [Shots fired at the headquarters of a weekly in the state of Carabobo]. Available at: [http://www.rsf.org/article.php3?id\\_article=27005](http://www.rsf.org/article.php3?id_article=27005); IPYS. May 16, 2008. *Abalean sede de semanario en Carabobo* [They fire shots at the headquarters of a weekly newspaper in Carabobo]. Available at: <http://www.ipys.org/alertas/atentado.php?id=1485>.

<sup>402</sup> IPYS. July 17, 2008. *Desconocidos hacen pintas amenazantes contra medios de comunicación* [Unidentified persons paint threatening graffiti on radio stations]. Available at: <http://www.ipys.org/alertas/atentado.php?id=1535>.

<sup>403</sup> RSF. July 21, 2008. Received in the e-mail of the Office of the Special Rapporteur. IPYS. July 30, 2008. *Sujetos desconocidos disparan contra sede de radio* [Unidentified persons fire on radio station]. Available at: <http://www.ipys.org/alertas/atentado.php?id=1550>.

<sup>404</sup> IPYS. August 27, 2008. *Disparan contra sede de medios de comunicación* [Shots fired at radio station]. Available at: <http://www.ipys.org/alertas/atentado.php?id=1582>.

<sup>405</sup> SIP. October 21, 2008. *Preocupación de la SIP por varios atentados en contra de periodistas y medios de comunicación* [SIP concerned over various attacks on journalists and media outlets]. Available at: [http://www.sipiapa.org/v4/index.php?page=cont\\_comunicados&seccion=detalles&id=4079&idioma=sp](http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4079&idioma=sp); IPYS. October 13, 2008. *Estudiantes intentan impedir distribución de diario regional* [Students attempt to stop the distribution of a regional newspaper]. Available at: <http://www.ipys.org/alertas/atentado.php?id=1606>.

representatives of the State or private persons. On July 23, 2008, for example, a journalist with the newspaper *La Verdad*, Dayana Fernández, and photographer Luis Torres allegedly were the target of hostile acts by municipal agents in Maracaibo while the two were investigating issues of environmental contamination.<sup>406</sup> In another case, Guillermo Torín, sound engineer at channel ANTV, was reported to have been beaten by a group of supporters of the mayor of Chacao when Torín was there to cover the mayor's registration for the regional elections on August 22, 2008.<sup>407</sup>

254. In some of the cases reported, the assault or attack was intended to prevent the journalist from gathering or reporting information. This was what happened on July 25, 2008, when the Police at Barinas Airport detained Dimas Medinas from the newspaper *El Nacional* and confiscated an official document about a robbery that happened to someone close to the President of Venezuela, Hugo Chávez.<sup>408</sup> Complaints and alerts have also come in from reporters and media outlets that received threats about articles published or news stories carried on radio and television. In July 2008, the attorney for and President of the newspaper *Reporte de la Economía* received death threats after they announced that they would disclose the names of those alleged to be responsible for the death of that newspaper's vice president.<sup>409</sup> As it did in earlier reports, the IACHR must express its concern over attacks of this kind, which obstruct the unfettered exercise of the right to freedom of expression both by independent journalists and by media outlets that support the government's policies.

255. As for the reported acts of hostility and violence against Globovisión, the State has affirmed: "The Commission persists in pointing to intimidation of and acts of hostility against social communicators, television channels like Globovisión that have protective measures which at all times have been observed by the Venezuelan State, with the exception of minor incidents by third parties who on some occasions have conducted protests outside the station and have painted graffiti and thrown a few teargas bombs, the perpetrators of which have not been identified, as protests against that television channel's bias against the government of President Chávez."

256. The IACHR observes that the present environment of hostility and polarization has been prompted by the institution of administrative actions seeking to attach responsibility to media outlets independent of the government for views expressed on live programs by persons not belonging to the channel. On October 13, 2008, Rafael Poleo, invited to an opinion program on the *Globovisión* channel, broadcast live, said that the President of Venezuela "is going to end up like Mussolini: hanging head-down."<sup>410</sup> Immediately, the program director asked him to moderate his remarks. In application of Article 29, item 1, of the Law on Social Responsibility in Radio and Television, the National Telecommunications Commission (Conatel) opened an administrative action against the channel for alleged incitement to assassination and issued a precautionary measure

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<sup>406</sup> See press article, Reporters Without Borders. July 29, 2008. Unos funcionarios agreden a varios periodistas que tenían información comprometedor [Officials attack various journalists in possession of compromising information]. Available at: [http://www.rsf.org/article.php3?id\\_article=27967](http://www.rsf.org/article.php3?id_article=27967).

<sup>407</sup> See IFEX press note. August 22, 2008. *Empleado de la televisora ANTV sufre graves heridas por simpatizantes de candidato de oposición* [ANTV television employee sustains serious injuries inflicted by supporters of an opposition candidate]. Available at <http://egypt.ifex.org/es/content/view/full/96351.1.html>.

<sup>408</sup> See press note, Reporters Without Borders, July 29, 2008. *Unos funcionarios agreden a varios periodistas que tenían información comprometedor* [Officials attack various journalists in possession of compromising information]. Available at: [http://www.rsf.org/article.php3?id\\_article=27967](http://www.rsf.org/article.php3?id_article=27967).

<sup>409</sup> See press note. Reporters Without Borders. August 1, 2008. *Amenazan de muerte al presidente y la abogada de Reporte de la Economía* [The president of *Reporte de la Economía* and the newspaper's attorney receive death threats]. Available at: [http://www.rsf.org/imprimir.php3?id\\_article=27306](http://www.rsf.org/imprimir.php3?id_article=27306).

<sup>410</sup> Ver nota Unionradio. Conatel:Globovisión tiene 30 días hábiles para defenderse. 16 de octubre de 2008. Available at <http://www.unionradio.com.ve/Noticias/Noticia.aspx?noticiaid=258346>.



ordering the channel to refrain from broadcasting unlawful messages at any hour. As of the date of this report, December 1, 2008, a final decision in this action remains still pending.

257. Later, CONATEL opened a new administrative action against *Globovisión*. In the early hours of November 24, 2008, after the polls closed, this media outlet broadcast statements from the then-candidate for governor of the State of Carabobo, which said “here in Carabobo we demand the results from the CNE without delay, but since they continue to slow the process I want to ask all of the people of Carabobo, all you who support me, to go with me to the Electoral Board to claim victory in Carabobo.” On that same date, in the evening, President Hugo Chávez asked CONATEL to open an investigation of one channel, which he did not identify, for having reporting election results prematurely. Later, one of the rectors of the National Electoral Council (CNE) reported that no media outlet had committed any electoral offense. It clarified, furthermore, that the only body competent to issue administrative sanctions in electoral matters was the Electoral Authority<sup>411</sup>. Despite these statements, CONATEL found that the broadcast might constitute a violation of the provisions of Article 29, item 1, of the Law on Social Responsibility in Radio and Television, in the sense of broadcasting messages that could incite disruptions of law and order. This same article provides that a repeat offense could lead to a permanent revocation of *Globovisión*’s franchise<sup>412</sup>.

258. In addition to the investigations mentioned in previous paragraphs, there have been reports of an additional action against independent communicators or those critical of the government. On November 27, 2008, deputy Mario Isea presented to the plenary National Assembly a final report on an alleged plan to assassinate President Chávez. Among those accused as masterminds of the plan are nine persons, five of whom are media outlet directors, including: Alberto Federico Ravell, director general of *Globovisión*; Nelson Mezerhane, director of *Globovisión*; Rafael Poleo, director of the newspaper *El Nuevo País*; Marcel Granier, director general of *RCTV*; and Miguel Henrique Otero, managing editor of *El Nacional*<sup>413</sup>.

259. The IACHR recognizes the legitimate right of the State to investigate situations that threaten State security. However, in matters of such gravity, investigations and public accusations by high-ranking officials should be supported by sufficient and convincing evidence, not by the issuance of opinions that are critical of or even offensive to government officials, as seems to be the case in this instance, according to public information available on the official page<sup>414</sup>. This takes on greater weight if one considers that death threats and violent attacks on communicators and media outlets critical of the government have been conducted with the excuse of private justice against those who allegedly perpetrated the crimes mentioned in the previous paragraph.

260. On this matter, the State indicates that, after the matter is considered by the Commission of the National Assembly, “the Office of the Attorney General is in charge of the corresponding criminal investigation, and for this reason one cannot speak of intimidation or attacks against the *Globovisión* channel.”

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<sup>411</sup> National College of Journalists. November 28, 2008. Alert regarding threats to *Globovisión*. Available at <http://cnpcaracas.org/?p=4852>.

<sup>412</sup> Reporters without Borders. November 28, 2008. At the request of President Hugo Chávez, an administrative action has been open against private channel *Globovisión*. Available at [http://www.rsf.org/article.php3?id\\_article=29480](http://www.rsf.org/article.php3?id_article=29480).

<sup>413</sup> *El Universal*. November 27, 2008. Isea describes the three forms of magnicidio planned, in the report of the Commission. Available at [http://www.eluniversal.com/2008/11/27/pol\\_ava\\_isea-destaca-las-tre\\_27A2148949.shtml#](http://www.eluniversal.com/2008/11/27/pol_ava_isea-destaca-las-tre_27A2148949.shtml#).

<sup>414</sup> Ver al respecto Debate ante la Asamblea Nacional del documento de investigación presentado por el diputado Mario Isea. Available at [http://www.asambleanacional.gob.ve/index.php?option=com\\_content&task=view&id=20680&Itemid=27](http://www.asambleanacional.gob.ve/index.php?option=com_content&task=view&id=20680&Itemid=27).



261. Some provisions of the Law on Social Responsibility in Radio and Television are of special concern for the IACHR.<sup>415</sup> For example, provisions like Article 29(1) set very punitive sanctions for violating restrictions that are defined in vague or generic language.<sup>416</sup> The IACHR is also concerned that its application could result in the attachment of responsibility to a media outlet for an activity of a third party, not employed by the channel, in a program broadcast live, or for the broadcast of the speech of a politician.

262. The IACHR recalls that principle 5 of the Inter-American Declaration of Principles on Freedom of Expression states that “[r]estrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression;” as the IACHR has noted previously, “these restrictions, defined in vague terms and combined with highly punitive sanctions, create ideal conditions for self-censorship of the media.”<sup>417</sup>

263. As for the placement of official advertising, the IACHR has received information that allegedly shows a tendency to place advertising with media outlets that support the Government. According to the research findings provided by the organization “Espacio Público,” 89% of the advertising in print media appears in newspapers and magazines sympathetic to the government. In this connection the State indicates that “sovereign States like Venezuela have the authority to place their advertising in the outlets most advantageous to the national interest.”

264. Here, the IACHR should point out that Principle 13 of the Inter-American Declaration of Principles on Freedom of Expression provides that “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.”

265. The IACHR has also been informed that there may be a discriminatory policy as regards the right to access public information has also been reported. For example, on May 8, 2008, a team from *Globovisión* allegedly prevented access to the opening of the “First South American Energy Council;” on April 14, 2008, entry allegedly was denied to the Ministry of Education, where it wanted to cover the discussion on “Curriculum Design for the Bolivarian Educational System.”<sup>418</sup>

266. The IACHR has also been informed that serious limitations hinder access by private parties to public information. According to a research study presented by the organization “Espacio Público” at the Commission’s 133<sup>rd</sup> session, authorities did not reply to 70.7% of the information requests that the organization tracked, all of which were submitted in writing to State

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<sup>415</sup> See IACHR, Annual Report 2005, OEA/Ser.L/V/II.124, Doc. 7 (2006), para. 354 *et seq.*

<sup>416</sup> The article states that “radio and television broadcasters shall face suspension for 72 consecutive hours when the messages they broadcast defend or encourage war, disturbances of law and order, the commission of crime or are discriminatory or contrary to the Nation’s security.”

<sup>417</sup> See IACHR, Annual Report 2005, OEA/Ser.L/V/II.124, Doc. 7 (2006), para. 355; and Annual Report 2004, Follow-up of the Recommendations Formulated by the IACHR in Its Reports on the Situation of Human Rights in Venezuela 2003, OEA/Ser.L/V/II.122, Doc. 5 rev. 1 (2005), para. 293.

<sup>418</sup> IPYS. May 9, 2008. *Niegan acceso de Globovisión a Reunión de Ministros* [Globovisión denied access to Meeting of Ministers]. Available at <http://www.ipys.org/alertas/atentado.php?id=1482>. IPYS. April 17, 2008. *Agente de seguridad prohíbe a equipo de Globovisión ingresar al ministerio* [Security agent bars Globovisión from entering ministry]. Available at <http://www.ipys.org/alertas/atentado.php?id=1460>.

institutions.<sup>419</sup> The same study found that less public information is being reported at government agency Web sites. For example, in the case of persons with dengue or infected with HIV, the report found that fewer figures are available and that most of the information disclosed concerns the guidelines for advertising and reporting the government's achievements.

267. In the decisions delivered by the Venezuelan courts, the IACHR finds jurisprudence that could establish regressive standards vis-à-vis freedom of information. For example, in a September 12, 2008 ruling, the Supreme Court declared inadmissible a petition seeking *amparo* relief that a cooperative had filed against the mayor's office of the capital district to get information on certain relocations. The Court held that because officials at the mayor's office had met with individuals from the cooperative on a number of occasions and there discussed the matter at issue in the petition of *amparo*, the administration could be said to have responded appropriately. The IACHR should point out that the Inter-American Court has written that "the State must guarantee that there is a simple, prompt and effective recourse that makes it possible to determine whether there has been a violation of the right of the person requesting information and, where appropriate, to order the corresponding body to disclose the information."<sup>420</sup>

268. It is the Commission's view that the conduct and behavior described in this section do not foster the climate of tolerance that is conducive to active participation and the free flow of ideas among the various sectors of Venezuelan society. The numerous violent acts of intimidation by private groups against journalists and media outlets, in addition to the discrediting statements of high officials, and the systematic institution of administrative actions based on legal provisions the application of which is highly discretionary and that allow for drastic penalties, together with other facts, create a restrictive climate that dampens the exercise of freedom of expression that is one of the essential preconditions for a vigorous democracy built upon pluralism and public discourse.

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<sup>419</sup> According to the study, 7.01% got a positive response with partial access to information; 5.1% got a positive but inadequate response; 4.46% got a qualified positive response; 1.01% were unable to file, and only 10.10% got an adequate and positive response.

<sup>420</sup> I/A Court H.R., *Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151, para. 137.

## CHAPTER III

### INTER-AMERICAN LEGAL FRAMEWORK OF THE RIGHT TO FREEDOM OF EXPRESSION

1. This chapter explains the content and scope of the right to freedom of expression within the legal framework of the Inter-American System of Human Rights. The purpose of this chapter is to systematize the jurisprudence and doctrines developed by the Inter-American Court of Human Rights and by the Inter-American Commission on Human Rights, as well as the reports and opinions of the Office of the Special Rapporteur on the matter.

2. The following sections summarize the Inter-American doctrine and jurisprudence on the following topics: the importance and function of the right to freedom of expression; the principal characteristics of the right to freedom of expression; the types of protected speech, especially protected and not protected, by the right to freedom of expression, and the limitations to the right to freedom of expression. The chapter also discusses the standards that apply to the prohibition of censorship and of indirect restrictions to freedom of expression, as well as to the right to access to information. Finally, specific sections are dedicated to various problems that have been discussed by the doctrine and jurisprudence, which are fundamental because of their importance to current democratic society: the protection of journalists and social communications media; the exercise of freedom of expression by public officials; freedom of expression in the area of electoral processes; and pluralism and diversity in the process of mass communication.

#### A. IMPORTANCE AND FUNCTION OF THE RIGHT TO FREEDOM OF EXPRESSION

##### 1. Importance of freedom of expression within the Inter-American legal framework

3. The legal framework of the Inter-American system for the protection of human rights is probably the international framework that provides the greatest scope and the broadest guarantees of protection to the right to freedom of thought and expression. In effect, Article 13 of the American Convention on Human Rights,<sup>1</sup> Article IV of the American Declaration of the Rights and Duties of Man,<sup>2</sup> and Article 4 of the Inter-American Democratic Charter,<sup>3</sup> offer a number of reinforced guarantees that do not seem to be equaled in the universal system or in any other regional system of protection.

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<sup>1</sup> **Article 13. "Freedom of Thought and Expression"** 1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice. // 2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: (1) respect for the rights or reputations of others; or (2) the protection of national security, public order, or public health or morals. // 3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions. // 4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence. // 5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law."

<sup>2</sup> American Declaration of the Rights and Duties of Man, Article IV: "Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever."

<sup>3</sup> Inter-American Democratic Charter, Article 4: "Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy. // The constitutional subordination of all state institutions to the legally constituted civilian authority and respect for the rule of law on the part of all institutions and sectors of society are equally essential to democracy."

4. From a comparative perspective, when the texts of article 13 of the American Convention, Article IV of the American Declaration of the Rights and Duties of Man and Article 4 of the Inter-American Democratic Charter are contrasted with the relevant provisions of other international human rights treaties—specifically with article 19 of the International Covenant on Civil and Political Rights or with article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms—it is clear that the Inter-American framework was designed by the American States to be more generous and to reduce to a minimum the restrictions to the free circulation of information, opinions and ideas.<sup>4</sup> This has been interpreted by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights as a clear indication of the importance ascribed to free expression within the hemisphere's societies. Specifically referring to Article 13 of the American Convention on Human Rights, the Inter-American Commission has pointed out that its wording "is indicative of the importance that the authors of the Convention attached to the need to express and receive any kind of information, thoughts, opinions and ideas"<sup>5</sup>. The importance that article 13 confers upon freedom of expression also means that the restrictions provided for in other international instruments are not applicable in the American context; nor should such instruments be used to interpret the American Convention restrictively, given that, by virtue of the pro homine principle –broadly accepted by all democratic States- the Convention must take precedence because it is more favorable to the individual.<sup>6</sup>

5. Inter-American case law has explained that the Inter-American legal framework places this high value on freedom of expression because it is based on a broad concept of the autonomy and dignity of the individual, and because it takes into account the instrumental value of freedom of expression for the exercise of all other fundamental rights, as well as its essential role within democratic systems, as discussed below.

## **2. Functions of freedom of expression**

6. The importance of freedom of expression stems mainly from its triple function within democratic systems.

7. First, it is one of the individual rights that most clearly reflects the virtue that marks –and characterizes- human beings: the unique and precious capacity to think the world from our own perspective and communicate with one another in order to construct, through a deliberative process, not only the model of life that each one has a right to adopt, but the model of society in which we want to live. All our creative potential in arts, in science, in technology, in politics – in short, all our individual and collective creative capacity, fundamentally depends on the respect and promotion of the right to freedom of expression, in all its dimensions. This is therefore an individual right without which the first and foremost of our liberties would be denied: our right to think by ourselves and share our thoughts with others.<sup>7</sup>

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<sup>4</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 50. IACHR; 1994 Annual Report. Chapter V: *Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights*. Title III: The convention protects and promotes a broad concept of freedom of expression to preserve the existence of democratic societies in OAS member States. February 17, 1995. 88th Session.

<sup>5</sup> IACHR, Report No. 11/96. Case No. 11.230. *Francisco Martorell*. Chile. May 3, 1996. Para. 56.

<sup>6</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 52.

<sup>7</sup> Article 13, American Convention on Human Rights.

8. Second, the Inter-American Commission and Court have underlined in their case-law that the importance of freedom of expression within the catalogue of human rights also stems from its structural relationship to democracy<sup>8</sup>. This relationship, which has been characterized by the bodies of the inter-American human rights system as “close”, “indissoluble”, “essential” and “fundamental”, explains in large part the interpretive developments on the issue of freedom of expression in the various pertinent decisions of the Commission and the Court<sup>9</sup>. The link between freedom of expression and democracy is so important that, according to the Inter-American Commission, the very purpose of article 13 of the American Convention is to strengthen the operation of deliberative and pluralistic democratic systems through the protection and promotion of the free circulation of information, ideas and expressions of all kinds<sup>10</sup>. Likewise, Article 4 of the Inter-American Democratic Charter characterizes freedom of expression and freedom of the press as “essential components of the exercise of democracy”. Similarly, the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe [OSCE] Representative on Freedom of the Media and the OAS Special Rapporteur for Freedom of Expression recalled in their first Joint Declaration of 1999 that “freedom of expression is a fundamental international human right and a basic component of civil society based on democratic principles.” Indeed, the full exercise of the right to express one’s own ideas and opinions, and to circulate all available information, as well as the possibility of deliberating in an open and uninhibited manner about the matters that concern us all, is an indispensable condition for the consolidation, functioning and preservation of democratic regimes. The formation of an informed public opinion that is aware of its rights, citizen control over the conduct of public affairs and the accountability of public officials, would not be possible if this right was not guaranteed. In this same sense, the case-law has emphasized that the democratic function of freedom of expression deems it a necessary condition to prevent the consolidation of authoritarian systems, and to facilitate personal and collective self-determination<sup>11</sup>. In this regard, if the exercise of the right to freedom of expression tends not only towards the personal fulfillment of those who express themselves but also towards the consolidation of truly democratic societies, the State is in the obligation of generating the conditions to ensure that the public debate not only satisfies the legitimate needs of all as consumers of a given information (entertainment information, for example), but also as citizens. That is to say, the necessary conditions must be given for there to be a public, plural and open deliberation about the matters that concern us all as citizens of a given State.

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<sup>8</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights), Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 70. I/A Court H.R., *Case of Claude Reyes et al. v. Chile*, Judgment of September 19, 2006, Series C No. 151. Para. 85. I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C No. 107. Para. 112. I/A Court H.R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111. Para. 82.

<sup>9</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights), Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 70. I/A Court H.R., *Case of Claude Reyes et al. v. Chile*, Judgment of September 19, 2006, Series C No. 151. Para. 85. I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C No. 107. Para. 116. I/A Court H.R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111. Para. 86.

<sup>10</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ivcher Bronstein v. Peru*, cited in the Judgment of February 6, 2001, Series C No. 74. Para. 143.d). IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of “The Last Temptation of Christ” (Olmedo Bustos et al. v. Chile)*, cited in the Judgment of February 5, 2001, Series C No. 73. Para. 61.b).

<sup>11</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights), Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 70. I/A Court H.R., *Case of Claude Reyes et al. v. Chile*, Judgment of September 19, 2006, Series C No. 151. Para. 85. I/A Court H.R., *Case of Herrera Ulloa*, Judgment of July 2, 2004, Series C No. 107. Para. 116. I/A Court H.R., *Case of Ricardo Canese*, Judgment of August 31, 2004, Series C No. 111. Para. 86. I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo Bustos et al. v. Chile)*, Judgment of February 5, 2001, Series C No. 73. IACHR, Report No. 130/99. Case No. 11.740. *Víctor Manuel Oropeza*. México. November 19, 1999. Para. 46.

9. Finally, Inter-American case law has explained that freedom of expression is a key instrument for the exercise of all other human rights. Indeed, it is an essential mechanism for the exercise of the rights to participation, religious freedom, education, ethnic or cultural identity and, needless to say, equality, understood not only as the right to be free from discrimination, but as the right to enjoy certain basic social rights. Given the important instrumental role it fulfils, freedom of expression is located at the heart of the human rights protection system in the hemisphere. In terms of the Inter-American Commission, "lack of freedom of expression is a cause that 'contributes to lack of respect for the other human rights'".<sup>12</sup>

10. In short, the preservation of freedom of expression is a necessary condition for the free and peaceful functioning of democratic societies in the Americas. According to the Inter-American Commission, "...full and free discussion keep a society from becoming stagnant and unprepared for the stresses and strains that work to tear all civilizations apart. A society that is to be free both today and in the future must engage openly in rigorous public debate about itself".<sup>13</sup>

## **B. MAIN CHARACTERISTICS OF THE RIGHT TO FREEDOM OF EXPRESSION**

### **1. Entitlement to the right to freedom of expression**

11. Pursuant to article 13 of the American Convention, freedom of expression is a right of *every person*, under equal conditions and without discrimination of any kind.

### **2. Dual dimension -individual and collective- of freedom of expression**

12. As the case law of the inter-American system has explained on numerous occasions, freedom of expression is a right that has two dimensions: an individual dimension, consisting of the right of each person to express her own thoughts, ideas and information, and a collective dimension, consisting of society's right to obtain and receive any information, to know the thoughts, ideas and information of others, and to be well-informed<sup>14</sup>.

13. Bearing in mind this dual dimension, it has been held that freedom of expression is a *means for the exchange* of information and ideas among individuals and for mass communication among human beings, which involves not only the right to communicate to others one's own point of view and the information or opinions of one's choosing but also the right of all people to receive

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<sup>12</sup> IACHR, Report No. 38/97. Case No. 10.548. *Hugo Bustíos Saavedra*. Peru. October 16, 1997. Para. 72.

<sup>13</sup> IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights*. Title III: The convention protects and promotes a broad concept of freedom of expression to preserve the existence of democratic societies in OAS member States. February 17, 1995.88<sup>th</sup> Session.

<sup>14</sup> I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177. Para. 53. I/A Court H.R., *Case of Claude Reyes et al. v. Chile*, Judgment of September 19, 2006, Series C No. 151. Para. 75. I/A Court H.R., *Case of López Alvarez v. Honduras*, Judgment of February 1, 2006, Series C No. 141. Para. 163. IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*, cited in the Judgment of July 2, 2004, Series C No. 107. Para. 101.1). a). I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C No. 107. Para. 108. I/A. Para. 108. I/A Court H.R., *Case of Ivcher Bronstein v. Peru*, Judgment of February 6, 2001, Series C No. 74. Para. 146. I/A Court H.R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111. Para. 77. I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo Bustos et al. v. Chile)*, Judgment of February 5, 2001, Series C No. 73. Para. 64. I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 30. IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights*. Title III: The convention protects and promotes a broad concept of freedom of expression to preserve the existence of democratic societies in OAS member States. February 17, 1995.88<sup>th</sup> Session. IACHR, Report No. 130/99, Case No. 11.740. *Víctor Manuel Oropeza*. México. November 19, 1999. Para. 51. IACHR, Report No. 11/96, Case No. 11.230. *Francisco Martorell*. Chile. May 3, 1996. Para. 53.



and have knowledge of such points of view, information, opinions, reports and news, freely and without any interference that blocks or distorts them<sup>15</sup>. It has been specified in this respect that it is as important for the average citizen to have knowledge of others' opinions, or of the information made available by others, as it is for him to have the right to impart his own<sup>16</sup>.

14. A specific act of expression involves both dimensions simultaneously. To the same extent, a limitation to the right to freedom of expression affects both dimensions at the same time<sup>17</sup>. Thus, for example, in the *Case of Palamara Iribarne v. Chile*, the Inter-American Court held that when Chilean military criminal justice authorities prevented (by means of prohibitions and physical seizures) the petitioner from publishing a book that he had already written and that was in the process of being printed and distributed, both dimensions of freedom of expression were violated; Mr. Palamara's right to exercise his freedom by writing and publishing the book was adversely affected, and the right of the Chilean public to receive the information, ideas and opinions set forth in that writing was also infringed.

15. The two dimensions of freedom of expression are of equal importance; they are inter-dependent and must be guaranteed simultaneously, in full, in order for the right enshrined in the Inter-American instruments to be totally effective<sup>18</sup>.

16. One of the main consequences of the duty to guarantee both dimensions simultaneously is that one of them cannot be affected by invoking the preservation of the other as a justification; thus, for example, "[o]ne cannot legitimately rely on the right of a society to be honestly informed in order to put in place a regime of prior censorship for the alleged purpose of eliminating information deemed to be untrue in the eyes of the censor. It is equally true that the right to impart information and ideas cannot be invoked to justify the establishment of private or public monopolies of the communications media designed to mold public opinion by giving expression to only one point of view"<sup>19</sup>.

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<sup>15</sup> I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C No. 107. Para. 110. I/A Court H.R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111. Para. 79. I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo Bustos et al. v. Chile)*, Judgment of February 5, 2001, Series C No. 73. Para. 66. I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 32. IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights*. Title III: The convention protects and promotes a broad concept of freedom of expression to preserve the existence of democratic societies in OAS member States. February 17, 1995. 88th Session.

<sup>16</sup> I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo Bustos et al. v. Chile)*, Judgment of February 5, 2001, Series C No. 73. Para. 66. I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 32.

<sup>17</sup> I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135. Para. 107. I/A Court H.R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111. Para. 81. I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 33. Arguments before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*, cited in the Judgment of July 2, 2004, Series C No. 107. Para. 101.1). a). IACHR, Report on the Merits No. 90/05. Case No. 12.142. *Alejandra Matus Acuña. Chile*. October 24, 2005. Para. 39.

<sup>18</sup> I/A Court H.R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111. Para. 80. I/A Court H.R., *Case of Ivcher Bronstein v. Peru*, Judgment of February 6, 2001, Series C No. 74. Para. 149. I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo Bustos et al. v. Chile)*, Judgment of February 5, 2001, Series C No. 73. Para. 67. IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*, cited in the Judgment of July 2, 2004, Series C No. 107. Para. 101.1). a).

<sup>19</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 33.

### **3. Duties and responsibilities contained within freedom of expression**

17. The exercise of freedom of expression entails duties and responsibilities for those who express themselves. The basic duty derived from it is to not violate the rights of others upon exercising this fundamental freedom. The scope of the duties and responsibilities also depends on the specific situation in which the right is exercised, and the technical method used to voice and impart the expression.

18. The following chapters will examine in greater detail the content of this responsibility specifically as it concerns journalists, the communications media and public officials or those who aspire to hold public office, as it acquires specific features in regard to them.

#### **C. Types of speech protected by freedom of expression; main characteristics of the right**

##### **1. Types of protected speech according to form**

###### **1.1 Forms of expression specifically protected by Inter-American instruments**

19. Article 13 of the American Convention on Human Rights establishes the right of every person to freedom of expression, and specifies that this right encompasses the “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.” In its interpretation of the scope of the right to freedom of expression, the Declaration of Principles on Freedom of Expression issued by the Inter-American Commission on Human Rights indicates that this fundamental and inalienable right refers to human expression “in all its forms and manifestations”, and that it covers the right of every person, under equal conditions, “to seek, receive and impart information and opinions freely”, “by any means of communication”, as well as the “right to communicate his/her views by any means and in any form.” The Declaration of Principles also states expressly that every person has the right to “access to information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries”, and to “update it, correct it and/or amend it” if necessary, as well as the right to “access to information held by the State.”

20. In their decisions, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have given a broad content to the right to freedom of expression enshrined in article 13 of the Convention, and have derived from its individual and collective dimensions a series of rights protected by that article in relation to different forms of human expression.<sup>20</sup> According to these bodies, article 13 of the American Convention reflects a broad concept of freedom of expression that is based on the autonomy and dignity of the individual,<sup>21</sup> and is meant to serve an important democratic function, as we will discuss below<sup>22</sup>.

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<sup>20</sup> I/A Court H.R., *Case of Claude Reyes et al. v. Chile*, Judgment of September 19, 2006, Series C No. 151. Para. 75.

<sup>21</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ivcher Bronstein v. Peru*, cited in the Judgment of February 6, 2001, Series C No. 74. Para. 143.d).

<sup>22</sup> IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights*. Title III: The convention protects and promotes a broad concept of freedom of expression to preserve the existence of democratic societies in OAS member States. February 17, 1995. 88<sup>th</sup> Session.

21. The main specific types of expression that have been addressed in the decisions of the Inter-American Commission and the Inter-American Court are the ones set forth below.

22. *The right to speak*, that is, to express one's thoughts, ideas, information or opinions orally. This is a basic right which, according to the Commission and the Court, is one of the pillars of freedom of expression<sup>23</sup>.

23. The right to speak necessarily entails people's right to use the language of their choice to express themselves<sup>24</sup>. Accordingly, the Inter-American Court in the *Case of López Alvarez v. Honduras* examined the case of a member of an ethnic group who had been deprived of his liberty, and during the course of his incarceration had been adversely affected by the prohibition, imposed by the prison Director, against speaking in the language of his ethnic group. In the Court's opinion, this prohibition was a violation of article 13 of the American Convention, in that "one of the mainstays of the freedom of expression is precisely the right to speak, and [this] necessarily implies the right of people to use the language of their choice when expressing their thoughts. The expression and dissemination of thoughts and ideas are indivisible; therefore a restriction to the possibilities of spreading information directly represents, in the same measure, a limit to the right to express oneself freely."<sup>25</sup>

24. *The right to write*, that is, to express one's thoughts, ideas, information or opinions in written or printed form,<sup>26</sup> also in the language of one's choice. The Inter-American Commission and the Inter-American Court have protected various manifestations of the right to write, for example, in the case of those who write books,<sup>27</sup> news articles<sup>28</sup> and opinion pieces<sup>29</sup>.

25. *The right to disseminate* spoken or written expressions of thoughts, information, ideas or opinions, through the means of dissemination of one's choosing, in order to communicate them to the greatest possible number of people. On this point the Inter-American Court has stressed the following: (a) freedom of expression is not limited to the abstract right to speak or write; rather, it encompasses inseparably the right to disseminate the thought, information, ideas and opinions by any appropriate means chosen, in order to reach as many people as possible<sup>30</sup>; (b) to guarantee this

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<sup>23</sup> I/A Court H.R., *Case of López Alvarez v. Honduras*, Judgment of February 1, 2006, Series C No. 141. Para. 164. I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C No. 107. Para. 109. I/A Court H.R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111. Para. 78. I/A Court H.R., *Case of Ivcher Bronstein v. Peru*, Judgment of February 6, 2001, Series C No. 74. Para. 147. I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo Bustos et al. v. Chile)*, Judgment of February 5, 2001, Series C No. 73. Para. 65. I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 31.

<sup>24</sup> I/A Court H.R., *Case of López Alvarez v. Honduras*, Judgment of February 1, 2006, Series C No. 141. Para. 164.

<sup>25</sup> I/A Court H.R., *Case of López Alvarez v. Honduras*, Judgment of February 1, 2006, Series C No. 141. Para. 164.

<sup>26</sup> I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C No. 107. Para. 109. I/A Court H.R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111. Para. 78. I/A Court H.R., *Case of Ivcher Bronstein v. Peru*, Judgment of February 6, 2001, Series C No. 74. Para. 147. I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo Bustos et al. v. Chile)*, Judgment of February 5, 2001, Series C No. 73. Para. 65.

<sup>27</sup> I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135. I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008. Series C. No. 177.

<sup>28</sup> I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C No. 107.

<sup>29</sup> I/A Court H.R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111.

<sup>30</sup> I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135. Para. 73. I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C No. 107. Para. 109. I/A Court H.R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111. Para. 78. I/A Court H.R., *Case of Ivcher Bronstein v. Peru*, Judgment of February 6, 2001, Series C No. 74. Para. 147. I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo Bustos et al. v. Chile)*, Judgment of February 5, 2001, Series C No. 73. Para. 65. I/A Court

freedom effectively, the State must not only protect the exercise of the right to speak or write ideas and information but it also has the duty to refrain from restricting their dissemination through the prohibition or disproportionate regulation of the means chosen for others to receive them<sup>31</sup>; and (c) in establishing that freedom of expression encompasses the right to impart information and ideas “by any (...) medium”, the American Convention establishes that the expression and dissemination of thoughts and ideas are indivisible, and therefore any limitation to the means and possibilities for the dissemination of the expression is, directly and in the same measure, an infringement of freedom of expression<sup>32</sup> – which implies, among other things, that restrictions on the communications media are also restrictions to freedom of expression.<sup>33</sup> As such, in the *Case of Palamara Iribarne v. Chile*, the Inter-American Court held that respect for freedom of expression requires States not only to allow individuals to express themselves verbally or in writing but also to refrain from preventing the dissemination of their expressions through means such as the publishing of a book. According to the Court, “in order to ensure the effective exercise of Mr. Palamara Iribarne’s right to freedom of thought and expression, it was not enough for the State to allow him to write his ideas and opinions. The protection of such right implied the duty of the State not to restrict their dissemination, enabling him to distribute his book by any appropriate means to make his ideas and opinions reach the maximum number of people and, in turn, allowing these people to receive this information.”<sup>34</sup>

26. *The right to artistic and symbolic expression, to the dissemination of artistic expression, and to access to art*, in all its forms.<sup>35</sup>

27. *The right to seek, receive and have access to expressions, ideas, opinions and information of all kinds*. According to the Inter-American Commission and the Inter-American Court, the right to freedom of expression also enables individuals to seek, procure, obtain and receive all types of information, ideas, expressions, opinions and thoughts. The right of access to information, particularly information held by the State, is a specific and crucial manifestation of this freedom that has warranted particular attention in the inter-American system, and will be examined in greater detail later.

28. *The right of access to information about oneself contained in public or private databases or registries*, with the corresponding right to update, correct or amend it. This matter will be dealt with in more detail in chapter IV of the present report.

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H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 31.

<sup>31</sup> *Id.*

<sup>32</sup> I/A Court H.R., *Case of López Alvarez v. Honduras*, Judgment of February 1, 2006, Series C No. 141. Para. 164. I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135. Para. 72. I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C No. 107. Para. 109. I/A Court H.R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111. Para. 78. I/A Court H.R., *Case of Ivcher Bronstein v. Peru*, Judgment of February 6, 2001, Series C No. 74. Para. 147. I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo Bustos et al. v. Chile)*, Judgment of February 5, 2001, Series C No. 73. Para. 36.

<sup>33</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 36.

<sup>34</sup> I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135. Para. 73.

<sup>35</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of “The Last Temptation of Christ” (Olmedo Bustos et al. v. Chile)*, cited in the Judgment of February 5, 2001, Series C No. 73. Para. 61.b).

29. *The right to possess information, whether written or in any other medium, to transport such information, and to distribute it.* The Inter-American bodies have protected this manifestation of freedom of expression, for example, in cases involving the possession of printed media for distribution or personal use,<sup>36</sup> or the possession, transportation, sending and receipt of books.<sup>37</sup>

## 2. Types Of Speech Protected According To Content

### 2.1 Presumption of coverage *ab initio* for all types of speech, including offensive, shocking or disturbing speech

30. In principle, all forms of speech are protected by the right to freedom of expression, independently of their content and degree of government and social acceptance. This general presumption of coverage of all expressive speech is explained by the State's primary duty of content-neutrality and, as a consequence, by the necessity to guarantee that, in principle, there are no persons, groups, ideas or means of expression excluded *a priori* from public debate.

31. Particularly important is the rule according to which freedom of expression must be guaranteed not only with regard to the dissemination of ideas and information that are received favorably or considered inoffensive or indifferent but also in cases of speech that is offensive, shocking, unsettling, unpleasant or disturbing to the State or to any segment of the population<sup>38</sup>. This is required by the pluralism, tolerance and spirit of openness without which a democratic society cannot exist<sup>39</sup>. In this vein, the Commission has pointed out the special importance of protecting freedom of expression "as regards minority views, including those that offend, shock or disturb the majority,"<sup>40</sup> and it has emphasized that restrictions to freedom of expression "must not 'perpetuate prejudice or promote intolerance'"<sup>41</sup>. Likewise, it is clear that the duty to not interfere with the right of access to information of all kinds extends to the circulation of information, ideas and forms of expression that may or may not have the personal approval of those who represent State authority at a given time.<sup>42</sup>

### 2.2 Specially protected speech

32. While it is true that all forms of expression are protected in principle by the freedom enshrined in article 13 of the Convention, there are certain types of speech that receive special protection because of their importance to the exercise of other human rights, or to the

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<sup>36</sup> IACHR, Report No. 3/98. Case No. 11.221. *Tarcisio Medina Charry. Colombia*. April 7, 1998. Para. 77.

<sup>37</sup> IACHR, Report No. 2/96. Case No. 10.325. *Steve Clark et al. Grenada*. March 1, 1996.

<sup>38</sup> I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C No. 107. Para. 113. I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo Bustos et al. v. Chile)*, Judgment of February 5, 2001, Series C No. 73. Para. 69. IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights*. Title III: The convention protects and promotes a broad concept of freedom of expression to preserve the existence of democratic societies in OAS member States. February 17, 1995.88<sup>th</sup> Session.

<sup>39</sup> *Id.*

<sup>40</sup> IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights*. Title III: The convention protects and promotes a broad concept of freedom of expression to preserve the existence of democratic societies in OAS member States. February 17, 1995.88<sup>th</sup> Session.

<sup>41</sup> IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights*. Title III: The convention protects and promotes a broad concept of freedom of expression to preserve the existence of democratic societies in OAS member States. February 17, 1995.88<sup>th</sup> Session.

<sup>42</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of "The Last Temptation of Christ" (Olmedo Bustos et al. v. Chile)*, cited in the Judgment of February 5, 2001, Series C No. 73. Para. 61.c).

consolidation, proper functioning and preservation of democracy. In the case law of the inter-American system, these types of specially protected speech are the following three: (a) political speech and speech involving matters of public interest; (b) speech regarding public officials in the exercise of their duties and candidates for public office; and (c) speech that is an element of the identity or personal dignity of the person expressing herself.

### *2.2.1 Political speech and speech involving matters of public interest*

33. The operation of democracy demands the greatest possible degree of public debate on the functioning of society and the State in all of their aspects, that is, on matters of public interest. In a democratic and pluralistic system, the acts and omissions of the State and of government officials must be subject to rigorous scrutiny, not only by the internal control authorities, but also by the press and by public opinion. The conduct of public affairs and issues of common interest must be controlled by society as a whole. The democratic control of government through public opinion encourages the transparency of State activities and the accountability of public officials for their actions, and is a means of achieving the maximum degree of citizen participation. It follows that the adequate functioning of democracy requires the greatest possible circulation of reports, opinions and ideas on matters of public interest<sup>43</sup>.

34. Along these lines, inter-American case law has defined freedom of expression as “the right of the individual and the entire community to engage in active, challenging and robust debate about all issues pertaining to the ‘normal and harmonious functioning of society’”<sup>44</sup>. Such case law has emphasized that freedom of expression is one of the most effective ways to denounce corruption; and that, in the debate of matters concerning public interest, the right to freedom of expression protects both, expressions that are inoffensive and well-received by public opinion, as well as those that shock, irritate or unsettle public officials, candidates for public office or any sector of the population<sup>45</sup>.

35. Consequently, the expression of statements, information and opinions regarding matters of public interest, the State and its institutions, enjoy greater protection under the American Convention on Human Rights. This means that the State must refrain more rigorously from placing limitations on these forms of expression, and that State entities and officials, as well as those who aspire to hold government positions, must have a higher threshold of tolerance in the face of criticism because of the public nature of their duties<sup>46</sup>. In a democratic society, given the

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<sup>43</sup> I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177. Para. 57 and 87. I/A Court H.R., *Case of Claude Reyes et al. v. Chile*, Judgment of September 19, 2006, Series C No. 151. Para. 84, 86 and 87. I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135. Para. 83. I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C No. 107. Para. 127.

<sup>44</sup> IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights*. Title IV: Desacato laws are incompatible with article 13 of the American Convention on Human Rights because they suppress the freedom of expression necessary for the proper functioning of a democratic society. February 17, 1995. 88<sup>th</sup> Session. IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in the Judgment of August 31, 2004, Series C No. 111. Para. 72.c).

<sup>45</sup> I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177. Para. 88. I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo Bustos et al. v. Chile)*, Judgment of February 5, 2001, Series C No. 73. Para. 69. I/A Court H.R., *Case of Ivcher Bronstein v. Peru*, Judgment of February 6, 2001, Series C No. 74. Para. 152. I/A Court H.R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111. Para. 83.

<sup>46</sup> I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135. Para. 83. I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C No. 107. Para. 125. IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*, cited in the Judgment of July 2, 2004, Series C No. 107. Para. 101.2.c)



importance of monitoring the conduct of public affairs through opinion, there is a shorter margin for any restriction of political debate or discourse on matters of public interest<sup>47</sup>.

36. The prevailing importance of discussion on matters of public interest leads, in addition, to a heightened protection of the right of access to information on public affairs. Although this topic shall be explained in greater detail further ahead, it is pertinent to recall that citizens are able to question, investigate and consider whether public duties are being performed properly only when they have access to information of public interest that is under the State's control<sup>48</sup>.

37. The case law of the inter-American system has similarly stressed the importance of the role of the communications media in providing broad information about public interest issues affecting society.<sup>49</sup> It has asserted on this point that freedom of expression grants the heads of communications media, as well as the journalists who work for them, the right to investigate and publicize events of public interest.<sup>50</sup> It has also held that the prosecution of individuals, including journalists and other media professionals, for the mere act of investigating, writing and publishing public interest information violates freedom of expression because it has a chilling effect on the public debate of issues that are of interest to society<sup>51</sup> and results in self-censorship.<sup>52</sup>

### *2.2.2 Speech regarding public officials in the exercise of their duties and candidates for public office*

38. The expression of statements, information, ideas and opinions on public officials in the exercise of their duties and on candidates for public office also enjoy a special degree of protection under the American Convention, for the same reasons that support the special protection of political speech and speech on matters of public interest.

39. As mentioned before, the democratic oversight of government through public opinion promotes the transparency of the State's activities and the responsibility of public officials for their performance; it also encourages broader citizen participation. As such, in the democratic context, speech regarding public officials or individuals who perform public duties, as well as those regarding candidates for public office, must enjoy a particularly strong margin of openness. In this sense, in a democratic society, public officials and those who aspire to be public officials have a distinct threshold of protection that exposes them to a greater degree of scrutiny and public criticism. This is justified by the public interest nature of the activities they engage in, as they have exposed

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<sup>47</sup> I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C No. 107. Para. 127. I/A Court H.R., *Case of Ivcher Bronstein v. Peru*, Judgment of February 6, 2001, Series C No. 74. Para. 155. IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights*. Title III: The convention protects and promotes a broad concept of freedom of expression to preserve the existence of democratic societies in OAS member States. And Title IV: Desacato laws are incompatible with article 13 of the American Convention on Human Rights because they suppress the freedom of expression necessary for the proper functioning of a democratic society. February 17, 1995.88<sup>th</sup> Session.

<sup>48</sup> I/A Court H.R., *Case of Claude Reyes et al. v. Chile*, Judgment of September 19, 2006, Series C No. 151. Para. 86.

<sup>49</sup> I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177. Para. 57.

<sup>50</sup> I/A Court H.R., *Case of Ivcher Bronstein v. Peru*, Judgment of February 6, 2001, Series C No. 74. Para. 157.

<sup>51</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Eduardo Kimel v. Argentina*, cited in the Judgment of May 2, 2008. Series C No. 177. Para. 37.

<sup>52</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Palamara Iribarne v. Chile*, cited in the Judgment of November 22, 2005, Series C No. 135. Para. 64.e).

themselves voluntarily to heightened scrutiny, and because they have an enormous capacity to call information into question through their power to appeal to the public.<sup>53</sup>

40. Given that speech and information concerning public officials, private citizens who involve themselves voluntarily in public affairs, candidates for public office, or politicians, enjoy a greater degree of protection<sup>54</sup>, the State must refrain to a higher degree from imposing limitations on these forms of expression. Such individuals, because of the public nature of the duties they perform, are subject to a different type of protection to their reputation or their honor as compared to other people, and, correspondingly, must have a higher threshold of tolerance to criticism.<sup>55</sup> In this sense, given that the right to freedom of expression enables the individual and the community to participate in active, robust and challenging debate on all aspects relative to the functioning of society, this right covers debate that may be critical of or even offensive to public officials, candidates for public office or individuals involved in shaping public policy.<sup>56</sup> As stated by the Inter-American Commission, “[t]he sort of political debate encouraged by the right to free expression will inevitably generate some speech that is critical of, and even offensive to those who hold public office or are intimately involved in the formation of public policy.”<sup>57</sup> This does not mean that public officials cannot be judicially protected when their honor is subjected to unjustified attack, but such protection must be consistent with the principles of democratic pluralism,<sup>58</sup> and it must be afforded through mechanisms that do not have a potential for creating inhibition or self-censorship.

41. The case law of the inter-American system has also held that freedom of expression includes the right to denounce human rights violations committed by public officials; that the obstruction or silencing of this type of complaint is a violation of freedom of expression in both its individual and collective dimensions;<sup>59</sup> and that in a democratic society the press has the right to inform freely and to criticize the government, and the people have the right to be informed of

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<sup>53</sup> I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177. Para.86-88. I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135. Para. 83. I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo Bustos et al. v. Chile)*, Judgment of February 5, 2001, Series C No. 73. Para. 69. I/A Court H.R., *Case of Ivcher Bronstein v. Peru*, Judgment of February 6, 2001, Series C No. 74. Para. 152 and 155. I/A Court H.R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111. Para. 83. I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C No. 107. Para. 125 - 129. I/A Court H.R., *Case of Claude Reyes et al. v. Chile*, Judgment of September 19, 2006, Series C No. 151. Para. 87.

<sup>54</sup> I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177. Para. 86. I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135. Para. 82.

<sup>55</sup> I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177. Para. 86-88. I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135. Para. 83-84. I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo Bustos et al. v. Chile)*, Judgment of February 5, 2001, Series C No. 73. Para. 69. I/A Court H.R., *Case of Ivcher Bronstein v. Peru*, Judgment of February 6, 2001, Series C No. 74. Para. 152 and 155. I/A Court H.R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111. Para. 83. I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C No. 107. Para. 128. IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*, cited in the Judgment of July 2, 2004, Series C No. 107. Para. 125 - 129. I/A Court H.R., *Case of Claude Reyes et al. v. Chile*, Judgment of September 19, 2006, Series C No. 151. Para. 87.

<sup>56</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in the Judgment of August 31, 2004, Series C No. 111. Para. 72.c).

<sup>57</sup> IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights*. Title IV: Desacato laws are incompatible with article 13 of the American Convention on Human Rights because they suppress the freedom of expression necessary for the proper functioning of a democratic society. Subtitle: B. February 17, 1995.88<sup>th</sup> Session.

<sup>58</sup> I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C No. 107. Para. 128.

<sup>59</sup> IACHR, Report No. 20/99. Case No. 11.317. *Rodolfo Robles Espinoza and Sons. Peru*. February 23, 1999.

different views as to what happens in the community. The denunciation of human rights violations committed by agents of the State is especially protected.<sup>60</sup>

42. Different decisions of the Inter-American Commission and the Inter-American Court illustrate the type of speech covered under this increased level of protection. One example of this rule is given by the *Case of Palamara Iribarne v. Chile*. Mr. Palamara had been criminally convicted for the offence of *desacato*, because of critical declarations he had made against the officers of a military criminal court who were in charge of a prosecution against him.

43. The Inter-American Court, referring to Mr. Palamara's statements to the media in which he criticized the actions of the military criminal court in his case, stated that it was "logical and appropriate that statements concerning public officials and other individuals who perform public services are afforded, as set forth in Article 13(2) of the Convention, greater protection, thus allowing some latitude for broad debate, which is essential for the functioning of a truly democratic system." The Court found that this standard was applicable to Palamara's critical statements regarding the actions of the military criminal court in the proceedings against him. According to the Inter-American Court, "[d]emocratic checks and balances, exercised by society through public opinion, encourage transparency in State activities and promote accountability of public officials for their administration. This is why there should be more tolerance and openness to criticism in the face of statements and opinions advanced by individuals in the exercise of said democratic mechanism. This is applicable to officers and members of the Navy, including those who preside over courts. Moreover, said democratic mechanism of checks and balances promotes greater participation among people in matters of social interest."

44. Along these same lines, in the *Case of Herrera Ulloa v. Costa Rica*<sup>61</sup>, the Inter-American Court ruled that the accurate reprinting in a local newspaper of certain statements published in the European press, which seriously affected the reputation of a high Costa Rican government official stationed in Belgium, was entitled to special protection. The publications were about the alleged commission of serious criminal offenses by the (then) diplomatic representative of Costa Rica before the International Atomic Energy Agency, in relation to the alleged payment of secret illegal commissions. The Court emphasized that, in relation to the admissible limitations to freedom of expression, a distinction must always be made between expressions referring to public officials and those that refer to private citizens. It explained that, "it is logical and appropriate that statements concerning public officials and other individuals who exercise functions of a public nature should be accorded, in the terms of Article 13(2) of the Convention, a certain latitude in the broad debate on matters of public interest that is essential for the functioning of a truly democratic system. The foregoing considerations do not, by any means, signify that the honor of public officials or public figures should not be legally protected, but that it should be protected in accordance with the principles of democratic pluralism." It also held that, "A different threshold of protection should be applied, which is not based on the nature of the subject, but on the characteristic of public interest inherent in the activities or acts of a specific individual. Those individuals who have an influence on matters of public interest have laid themselves open voluntarily to a more intense public scrutiny and, consequently, in this domain, they are subject to a higher risk of being criticized, because their activities go beyond the private sphere and belong to the realm of public debate."

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<sup>60</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ivcher Bronstein v. Peru*, cited in the Judgment of February 6, 2001, Series C No. 74. Para. 143. g) y h).

<sup>61</sup> I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C No. 107.

45. A third case from the Inter-American Court of Human Rights that addresses speech that receives special protection under the American Convention is the *Case of Canese v. Paraguay*<sup>62</sup>. In this case, the Court examined the situation of Ricardo Canese, a candidate in the 1992 Paraguayan presidential election, who was convicted of defamation as a result of statements he made while he was a candidate and during the course of the campaign. He had said that his opponent in the race was the “straw man” of the family of the former dictator Stroessner and had covertly represented its financial interests in a consortium that was involved in the construction and development of the Itaipú Hydroelectric Complex. A criminal complaint was filed by certain partners of the consortium, and as a result of those statements Mr. Canese was convicted of the offense of defamation and sentenced to a term of incarceration and the payment of a fine, and while the case was pending he was permanently barred from leaving the country; this bar was lifted only under exceptional circumstances, and in an inconsistent manner. The Inter-American Court, after reiterating the important democratic function of the full exercise of freedom of expression and its heightened importance in the electoral arena, concluded that in this case there had been a violation of the freedom of expression protected by article 13. To arrive at this conclusion, the Court took into particular consideration that Mr. Canese’s statements had been made in the context of a presidential election campaign with regard to matters of public interest, “circumstances in which opinions and criticisms are issued in a more open, intense and dynamic way, according to the principles of democratic pluralism,” reason for which in this case “the judge should have weighed respect for the rights or reputations of others against the value for a democratic society of an open debate on topics of public interest or concern.”

46. As it had done in its prior decisions, the Court concluded that the criminal proceedings and the judgment against Mr. Canese constituted an unnecessary and excessive punishment that limited the open debate of issues of public interest and restricted the victim’s freedom of expression during the rest of the election campaign. In the Court’s judgment, “the freedom of thought and expression of the alleged victim was restricted disproportionately, without taking into consideration that his statements referred to matters of public interest”; the case therefore entailed a restriction or limitation to freedom of expression that was excessive in a democratic society, contrary to article 13 of the Convention.

47. A fourth case from the Inter-American Court that illustrates this same rule is the *Case of Kimel v. Argentina*<sup>63</sup>. In this case the Inter-American Court examined the situation of an Argentinean writer and journalist, Eduardo Kimel, who had written and published a book in which he harshly criticized the actions of a federal judge. The judge, who was by then retired, had previously been assigned the task of investigating the massacre of certain members of a religious order during the military dictatorship. In the book, Mr. Kimel asserted that the judge had acted condescendingly with the dictatorship because, having been aware of evidence that the crime was committed on the orders of high military commanders, he halted the investigation<sup>64</sup>. As a consequence of the book,

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<sup>62</sup> I/A Court H.R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111.

<sup>63</sup> I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177.

<sup>64</sup> The relevant fragment of Mr. Kimel’s book which is cited in the Inter-American Court’s judgment, is as follows: “[Judge Rivarola] adopted all applicable steps and procedures. He collected the police reports containing the preliminary information, requested and had forensic and ballistics reports made, and summoned to appear a number of people who might be able to provide information for the elucidation of the case. Notwithstanding, an examination of the judicial record poses an initial question: Did the authorities actually intend to find out clues which might lead to the murderers? Under the military dictatorship judges were normally acquiescent, if not accomplices to the dictatorial regime. In the case of the Palotine clergymen, the [J]udge (...) complied with most of the formal requirements regarding the investigation, though it is evident that a number of decisive elements that could have shed light on the murder were not taken into consideration. The evidence that the order to carry out the murder had come from within the core of the military structure in power checked the development of the investigation, bringing it to a standstill.” I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177. Para. 42.

the retired judge filed a criminal action for libel against Mr. Kimel, who was sentenced to one year in prison (suspended) and ordered to pay monetary compensation as a result of the book's publication. The Inter-American Court ruled that this case involved a violation of article 13 of the Convention in that the Argentine State used its punitive authority unnecessarily and disproportionately. It arrived at this conclusion by taking into account, among other factors, (i) that Mr. Kimel's criticism was with respect to issues of notorious public interest; and (ii) that the book in question concerned the actions of a judge in the exercise of his official duties. In this respect, the Inter-American Court stressed that, as a public official, the judge under criticism was exposed to a greater degree of criticism by public opinion; that "democratic checks promote the transparency of the actions of the State and foster the accountability of public officials", reason for which they must demonstrate "greater tolerance to the statements and opinions expressed by individuals in the exercise of such democratic power", given that "[t]hese are the requirements of the pluralism inherent in a democratic society, which requires the greatest possible flow of information and opinions on issues of public interest"; and that in debate on matters of public interest, the American Convention protects both expressions that are inoffensive and well-received by public opinion and those that "shock, irritate or disturb public officials or any sector of society", because "in a democratic society, the press must inform extensively on issues of public interest which affect social rights, and public officials must account for the performance of their duties."

### *2.2.3 Speech that expresses essential elements of personal identity or dignity*

48. A third type of expression that enjoys special protection under the American Convention involves forms of speech that express constituent elements of one's personal identity or dignity.

49. The case law of the inter-American system has addressed this point expressly in reference to the use of language by ethnic or minority groups. It has held that the use of one's own language is one of the most important elements in the identity of an ethnic group, in that it safeguards the expression, dissemination and transmission of its culture. It has further held that it is one of the elements that distinguish the members of indigenous groups from the general population, and shape their cultural identity. As such, it has concluded that the prohibition to use one's own language, insofar as it is an expression of belonging to a cultural minority, is especially serious and violates the personal dignity of its members; it is also discriminatory<sup>65</sup>.

50. This was the decision adopted by the Inter-American Court in the *Case of López Alvarez v. Honduras*, which examined the prohibition imposed by the warden of a prison, banning the Garífuna inmates from speaking in their own language. The Court held that this constituted a restriction that was not only unnecessary and unjustified but also was particularly serious, "since the mother tongue represents an element of identity of Mr. Alfredo López Álvarez as a Garífuna. In this way, the prohibition affected his personal dignity as a member of that community. (...) States must take into consideration the information that differentiates the members of the Indian populations from that of the population in general and that make up their cultural identity. Language [is] one of the most important elements of identity of any people, precisely because it guarantees the expression, diffusion, and transmission of their culture."

51. Other forms of speech that, in accordance with the previous reasoning, should enjoy a special level of protection are religious speech and speech that expresses one's own sexual orientation and gender identity, because they express an integral element of personal identity and dignity. In effect, article 12-1 of the Convention, by protecting freedom of conscience and religion, provides expressly that this right entails "freedom to profess or disseminate one's religion or beliefs,

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<sup>65</sup> I/A Court H.R., *Case of López Alvarez v. Honduras*, Judgment of February 1, 2006, Series C No. 141.

either individually or together with others, in public or in private”; and article 12-3 establishes that “freedom to manifest one’s religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedom of others.” Therefore, because of its close relation with the dignity, liberty, and equality of all human beings, speech that expresses one’s own sexual orientation and gender identity is part of this category of specially protected speech. In this respect, it is worth recalling that Resolution 2435/08<sup>66</sup> of the General Assembly of the Organization of American States marked a milestone on the matter at the international level.

### **3. Speech not protected by freedom of expression**

52. Without prejudice to the presumption of coverage *ab initio* of all forms of human expression by freedom of expression, there are certain types of speech that are excluded from this freedom’s scope of coverage by virtue of express prohibitions set forth in international human rights law. There are three principle types of speech that do not enjoy protection under article 13 of the Convention, according to the international treaties in force:

53. War propaganda and hate speech that constitutes incitement to violence. Article 13-5 of the Convention provides expressly that “[a]ny propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.”

54. Direct and public incitement to genocide, proscribed under international treaty law by article III(c) of the Convention on the Prevention and Punishment of the Crime of Genocide, as well as under customary international law.

55. Child pornography, prohibited in absolute terms by the Convention on the Rights of the Child (article 34-c), by the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and by ILO Convention No. 182 on the Worst Forms of Child Labor (article 3-b). This prohibition, read in conjunction with article 19 of the American Convention on Human Rights, under which “[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state,” means necessarily that child pornography, as a form of speech that is violently harmful to the prevailing rights of children and their best interests, must be excluded from the protection provided by freedom of expression.

### **D. Limits to freedom of expression**

#### **1. Admissibility of limitations under the American Convention on Human Rights**

56. Freedom of expression is not an absolute right.<sup>67</sup> Article 13 of the American Convention provides expressly—in paragraphs 2, 4 and 5—that it can be subject to certain limitations, and establishes the general framework of the conditions required for such limitations to

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<sup>66</sup> AG/RES. 2435 (XXXVIII-O/08)

<sup>67</sup> I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177. Para. 54. I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135. Para. 79. I/A Court H.R., *Case of Herrera Ulloa*. Judgment of July 2, 2004. Series C No. 107. Para. 120. IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights*. Title IV: Desacato laws are incompatible with article 13 of the American Convention on Human Rights because they suppress the freedom of expression necessary for the proper functioning of a democratic society. February 17, 1995.88<sup>th</sup> Session.



be legitimate.<sup>68</sup> The general rule is set forth in paragraph 2, according to which: “[t]he exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: (a) respect for the rights or reputations of others; or (b) the protection of national security, public order, or public health or morals.” Paragraph 4 provides that “[n]otwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence”; and paragraph 5 establishes that “[a]ny propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.”

57. In the interpretation of this article, the case law of the inter-American system has developed a three-part test to control the legitimacy of limitations, according to which they must meet a set of specific conditions in order to be admissible under the American Convention. These conditions are explained in detail below. The Inter-American Commission and the Inter-American Court have also considered that (a) certain forms of limitations of freedom of expression are inadmissible, and (b) certain types of limitations, due to the type of speech they affect or the means that they use, must be put to a more strict and rigorous test in order to be valid under the Convention. This issue will also be addressed below.

58. The standards for the admissibility of restrictions are applied to all of the constitutive elements of freedom of expression in its diverse manifestations. Thus, for example, limitations imposed upon the expression of a person’s own thoughts and ideas, access to information, the dissemination and circulation of information and upon the communications media must all meet these conditions.<sup>69</sup>

59. In addition, the rules setting the conditions that restrictions to freedom of expression must meet in order to be legitimate are applied to the laws that establish them as such, as well as to the administrative, judicial, police or other decisions that bring them into being—that is, to every manifestation of State authority that affects the full exercise of freedom of expression.<sup>70</sup> The types of State acts constituting limitations to freedom of expression addressed in the case law of the inter-American system include: the decisions of prosecutors and judges of the military criminal justice system in cases they are prosecuting,<sup>71</sup> orders given by members of the Armed Forces to their subordinates,<sup>72</sup> orders given by the Directors of prison centers regarding the conduct of

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<sup>68</sup> I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C No. 107. Para. 120. I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 35. IACHR, Report No. 11/96. Case No. 11.230. *Francisco Martorell*. Chile. May 3, 1996. Para. 55. IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in the Judgment of August 31, 2004, Series C No. 111. Para. 72. a)

<sup>69</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 36.

<sup>70</sup> I/A Court H.R., *Case of López Alvarez v. Honduras*, Judgment of February 1, 2006, Series C No. 141. Para. 165.

<sup>71</sup> I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135.

<sup>72</sup> I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135.

inmates,<sup>73</sup> the decisions of criminal courts<sup>74</sup>, administrative acts of the executive branch<sup>75</sup>, and even legal and constitutional provisions<sup>76</sup>, among others.

60. The Inter-American Court has also held that the compatibility of limitations with the American Convention must be evaluated considering the facts of the case in their totality and the circumstances and context in which they arose, and not by examining only the act in question<sup>77</sup>.

## **2. Conditions that limitations must meet in order to be legitimate under the American Convention**

### *2.1 General rule: compatibility of limitations with the democratic principle*

61. In general terms, the case law of the inter-American system has maintained that “restrictions on freedom of expression must incorporate the just demands of a democratic society,”<sup>78</sup> that “[t]he norms under which these restrictions are interpreted must be compatible with the preservation and development of democratic societies as articulated in Articles 29 and 32 of the Convention”,<sup>79</sup> and that “interpretation of the Article 13(2) restrictions on freedom of expression must be “judged by reference to the legitimate needs of democratic societies and institutions,” precisely because freedom of expression is essential to democratic forms of governance.”<sup>80</sup> In the following paragraphs, the specific conditions that arise from this general rule are explained.

### *2.2 Specific conditions derived from article 13-2: the three-part test*

62. As it has been interpreted in the case law of the inter-American system, article 13-2 of the Convention requires that the following three conditions be met in order for a limitation to freedom of expression to be admissible: (1) the limitation must have been defined in a precise and clear manner by a law, in the formal and material sense; (2) the limitation must serve compelling objectives authorized by the Convention; and (3) the limitation must be necessary in a democratic society to serve the compelling objectives pursued; strictly proportionate to the objective pursued; and appropriate to serve said compelling objective.

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<sup>73</sup> I/A Court H.R., *Case of López Alvarez v. Honduras*, Judgment of February 1, 2006, Series C No. 141.

<sup>74</sup> I/A Court H.R., *Case of Herrera Ulloa*. Judgment of July 2, 2004. Series C No. 107. I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177.

<sup>75</sup> I/A Court H.R., *Case of Ivcher Bronstein v. Peru*, Judgment of February 6, 2001, Series C No. 74.

<sup>76</sup> I/A Court H.R., *“The Last Temptation of Christ” Case (Olmedo Bustos et al.)*. Judgment of February 5, 2001. Series C No. 73.

<sup>77</sup> I/A Court H.R., *Case of Ivcher Bronstein v. Peru*, Judgment of February 6, 2001, Series C No. 74. Para. 154.

<sup>78</sup> IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights*. Title IV: Desacato laws are incompatible with article 13 of the American Convention on Human Rights because they suppress the freedom of expression necessary for the proper functioning of a democratic society. Subtitle: A. February 17, 1995.88<sup>th</sup> Session.

<sup>79</sup> IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights*. Title IV: Desacato laws are incompatible with article 13 of the American Convention on Human Rights because they suppress the freedom of expression necessary for the proper functioning of a democratic society. Subtitle: A. February 17, 1995.88<sup>th</sup> Session.

<sup>80</sup> IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights*. Title IV: Desacato laws are incompatible with article 13 of the American Convention on Human Rights because they suppress the freedom of expression necessary for the proper functioning of a democratic society. Subtitle: A. February 17, 1995.88<sup>th</sup> Session.

63. It is incumbent upon the authority imposing the limitations to prove that these conditions have been met. Furthermore, all of the stated conditions must be met simultaneously in order for the limitations to be legitimate pursuant to the American Convention. The content of each of them is explained in greater detail below.

#### *2.2.1 The limitations must be set forth in laws that are drafted clearly and precisely*

64. Every limitation to freedom of expression must be established in advance, expressly, restrictively and clearly<sup>81</sup>, in a law –in the formal and material sense<sup>82</sup>. This means that the text of the law must establish unambiguously the grounds for subsequent liability for the exercise of freedom of expression. The laws that set limits to freedom of expression must be drafted in the clearest and most specific terms possible, as the legal framework must provide legal certainty to the public.

65. In this sense, vague or ambiguous legal provisions that grant, through this channel, very broad discretionary powers to the authorities, are incompatible with the American Convention, because they can support potential arbitrary acts that are tantamount to prior censorship, or that establish disproportionate liabilities for the expression of protected speech.

66. 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.

#### *2.2.2 The limitations must serve compelling objectives authorized by the Convention*

67. The restrictions imposed must pursue one of the limited compelling objectives set forth in the American Convention, to wit: the protection of the rights of others, the protection of national security, public order, or public health or morals. These are the only objectives authorized by the Convention, which is explained by the fact that the limitations must be necessary to imperative public interests that, because of their importance in specific cases, clearly prevail over the social need for the full enjoyment of freedom of expression protected by article 13.

68. States are not free to interpret in any way the content of these objectives for purposes of justifying a limitation to freedom of expression in specific cases. The case law of the inter-American system has paid considerable attention to the interpretation of some of them, specifically, to the notion of “protection of the rights of others”, and to the notion of “public order”, as indicated below.

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<sup>81</sup> 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. Pars. 39 and 40. I/A Court H.R., *Case of Herrera Ulloa*. Judgment of July 2, 2004. Series C No. 107. Para. 120. I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 79. IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights*. Title IV: Desacato laws are incompatible with article 13 of the American Convention on Human Rights because they suppress the freedom of expression necessary for the proper functioning of a democratic society. Subtitle: A). February 17, 1995.88<sup>th</sup> Session. IACHR, Report No. 11/96. Case No. 11.230. *Francisco Martorell*. Chile. May 3, 1996. Para. 55. IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in the Judgment of August 31, 2004, Series C No. 111. Para. 72.a).

<sup>82</sup> In this respect, the applicable definition is the one provided by the Inter-American Court in Advisory Opinion 6/86, by which the expression “laws” does not refer to any legal provision, but to general normative acts adopted by the constitutionally established and democratically elected legislative body, in accordance with the procedures established in the Constitution, and for the pursuit of the common good.

### 2.2.2.1 The “protection of the rights of others” as an objective that justifies limiting freedom of expression

69. The Inter-American Commission and the Inter-American Court have held that the exercise of human rights must be carried out with respect for other rights, and that in the process of harmonizing competing rights, the State plays a critical role by establishing the subsequent liability necessary to achieve such harmonization.<sup>83</sup> Particular emphasis has been placed throughout the case law of the inter-American system on the guidelines that must govern this exercise of balancing and harmonization whenever the exercise of freedom of expression conflicts with the right of others to their honor, reputation and good name. In view of the importance of the rules established with regard to such conflicts, this issue will be addressed separately in the next chapter of the first section.

70. In addition, the case law of the inter-American system has been clear in specifying that in cases where limitations to freedom of expression are imposed for the protection of the rights of others, it is necessary for those rights to be clearly harmed or threatened, and that it is the burden of the authority imposing the limitation to demonstrate this requirement; if there is no clear harm to another’s right, the subsequent imposition of liability is unnecessary.

71. The Inter-American Court has also specified that the protection of freedom of expression or freedom of information cannot be invoked as an objective that in turn justifies the restriction of freedom of expression or information, because that is an antinomy: “In principle, it would be a contradiction to invoke a restriction to freedom of expression as a means of guaranteeing it. Such an approach would ignore the primary and fundamental character of that right, which belongs to each and every individual as well as the public at large.”<sup>84</sup> Likewise, the Court has indicated that it is also impossible to justify the imposition of a system for the control of freedom of expression in the name of a supposed guarantee of the accuracy and truthfulness of the information society receives, as it could be the source of gross abuses, and in the end it violates society’s right to information,<sup>85</sup> which includes the right to be informed of different interpretations and views of the world and to choose the one considered most suitable.

72. In any case—as discussed below—when there is an actual abuse of freedom of expression that causes harm to the rights of others, the means least restrictive to freedom of expression must be used to repair that harm. The first means to be used is the right of correction or reply enshrined in article 14 of the American Convention. If that is not sufficient, and if it is shown that serious harm was caused intentionally or with obvious disregard for the truth, it is possible to resort to the imposition of civil liability in accordance with the strict conditions derived from article 13-2 of the Convention. Finally, with respect to the use of criminal law mechanisms, it should be noted that both the Inter-American Commission and the Inter-American Court of Human Rights have considered, in all of the specific cases submitted for their consideration and decision, that the protection of the honor or reputation of public officials, politicians or individuals involved in the formulation of public policy through the instruments of criminal law—that is, through criminal prosecution or conviction for criminal defamation offenses, or through *desacato* legislation [laws

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<sup>83</sup> I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177.

<sup>84</sup> IACHR, *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 77.

<sup>85</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 77.

against insulting, threatening or injuring a public official]—was disproportionate and unnecessary in a democratic society. This topic will be examined in greater detail in section 4 of this chapter.

#### *2.2.2.2 The notion of “public order” for purposes of the imposition of limitations to freedom of expression.*

73. According to the Inter-American Court, in general terms, “public order” cannot be invoked to suppress a right guaranteed by the Convention, to change its nature or to deprive it of its real content. If this concept is invoked as a basis for limitations to human rights, it must be interpreted in strict adherence to the just demands of a democratic society, which take into account the balancing of different interests at stake, and the necessity of preserving the purpose and aim of the American Convention.<sup>86</sup>

74. In this sense, for purposes of limitations to freedom of expression, the Court defines “public order” as “the conditions that assure the normal and harmonious functioning of institutions based on a coherent system of values and principles.”<sup>87</sup> Under this definition, it is clear to the Court that the defense of public order requires the broadest possible circulation of information, opinions, news and ideas—that is, the maximum degree of exercise of freedom of expression. According to the Court: “that same concept of public order in a democratic society requires the guarantee of the widest possible circulation of news, ideas and opinions as well as the widest access to information by society as a whole. Freedom of expression constitutes the primary and basic element of the public order of a democratic society, which is not conceivable without free debate and the possibility that dissenting voices be fully heard. (...) It is also in the interest of the democratic public order inherent in the American Convention that the right of each individual to express himself freely and that of society as a whole to receive information be scrupulously respected.”<sup>88</sup> The Inter-American Commission has likewise explained that a functional democracy is the highest guarantee of public order, and that the right to freedom of expression is the cornerstone of the existence of a democratic society.<sup>89</sup>

75. On the other hand, any impairment of public order that is invoked as a justification to limit freedom of expression must be based on real and objectively verifiable causes that present the certain and credible threat of a potentially serious disturbance of the basic conditions for the functioning of democratic institutions. Consequently, it is not sufficient to invoke mere conjecture regarding possible disturbances of public order, nor hypothetical circumstances derived from the interpretations of the authorities in the face of events that do not clearly present a reasonable threat of serious disturbances (“anarchic violence”). A broader or more indeterminate interpretation would inadmissibly open the door to arbitrariness and would fundamentally restrict the freedom of expression that is an integral part of the public order protected by the American Convention.

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<sup>86</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 67.

<sup>87</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 68.

<sup>88</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 69.

<sup>89</sup> IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights*. Title III: The convention protects and promotes a broad concept of freedom of expression to preserve the existence of democratic societies in OAS member States. Title IV: Desacato laws are incompatible with article 13 of the American Convention on Human Rights because they suppress the freedom of expression necessary for the proper functioning of a democratic society. February 17, 1995.88<sup>th</sup> Session.

*2.2.3 The limitations must be necessary in a democratic society to serve the compelling objectives pursued, strictly proportionate to the objective pursued, and appropriate to serve such compelling objective*

76. States that impose limitations upon freedom of expression are obligated to demonstrate that they are necessary in a democratic society to serve the compelling objectives pursued.<sup>90</sup>

77. Indeed, article 13-2 uses the term “*necessary*”; the link between the necessity of the limitations and democracy is derived, in the opinion of the Inter-American Court, from a harmonic and comprehensive interpretation of the American Convention in light of its object and purpose, and bearing in mind articles 29 and 32 as well as the preamble: “It follows from the repeated reference to “*democratic institutions*”, “*representative democracy*” and “*democratic society*” that the question whether a restriction on freedom of expression imposed by a state is “*necessary to ensure*” one of the objectives listed in subparagraphs (a) or (b) must be judged by reference to the legitimate needs of democratic societies and institutions. (...)The just demands of democracy must consequently guide the interpretation of the Convention and, in particular, the interpretation of those provisions that bear a critical relationship to the preservation and functioning of democratic institutions.”<sup>91</sup>

78. Now, the adjective “*necessary*” is not synonymous with “*timely*”, “*reasonable*” or “*convenient*”.<sup>92</sup> A compelling need to impose the limitation must be established clearly. That is, such legitimate and compelling objective cannot reasonably be accomplished by any other means less restrictive to human rights.

79. The requirement of “*necessity*” also means that the full exercise and scope of the right to freedom of expression must not be limited beyond what is strictly indispensable<sup>93</sup>. In order to determine the necessity of the restrictive measure, the existing alternatives for attaining the legitimate aim pursued must be studied, in order to select the one that limits or interferes with the effective exercise of freedom of expression to the least possible extent. In other words, among the different options available to obtain the same objective, the means least restrictive to the right protected by article 13 of the Convention must be chosen.

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<sup>90</sup> I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004, Series C No. 107. Para. 120 to 123. I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 46.

<sup>91</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 44.

<sup>92</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 46. I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004, Series C No. 107. Para. 122. IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights*. Title IV: Desacato laws are incompatible with article 13 of the American Convention on Human Rights because they suppress the freedom of expression necessary for the proper functioning of a democratic society. Subtitle: C). February 17, 1995.88<sup>th</sup> Session.

<sup>93</sup> I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177. Para. 83. I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135. Para. 85. I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004, Series C No. 107. Para. 121 to 122. I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 46.



80. In addition, any limitation to the right to freedom of expression must be an appropriate instrument for meeting the aim pursued through its imposition; that is, it must be a measure that is effectively conducive to attaining the legitimate and compelling objectives in question. In other words, the limitations must be suitable to contribute to the achievement of the aims compatible with the American Convention, or be capable of aiding in the accomplishment of such aims.<sup>94</sup>

81. But limitations to freedom of expression must not only be appropriate to meet their stated objectives and necessary. In addition, they must be strictly proportionate to the legitimate aims that justify them, and must be closely tailored to the accomplishment of that aim, interfering to the least possible extent with the legitimate exercise of that freedom.<sup>95</sup> To determine the strict proportionality of the restrictive measure, it must be determined whether the sacrifice of freedom of expression it entails is exaggerated or excessive in relation to the advantages obtained through such measure.<sup>96</sup>

82. According to the Inter-American Court, in order to establish the proportionality of a restriction when freedom of expression is limited for purposes of preserving other rights, three factors must be examined: (i) the degree to which the competing right is affected (serious, intermediate, moderate); (ii) the importance of satisfying the competing right; and (iii) whether the satisfaction of the competing right justifies the restriction to freedom of expression. There are no *a priori* answers or formulas of general application in this field. The results of the analysis will vary in each case; in some cases freedom of expression will prevail, and in others the competing right will prevail.<sup>97</sup> If the subsequent imposition of liability in a specific case is disproportionate, or does not conform to the interests of justice, there is a violation of article 13-2 of the Convention.

### *2.3 Types of limitations that are incompatible with Article 13*

83. On the other hand, also by virtue of article 13, it has been established that certain types of limitations are contrary to the American Convention: the limitations imposed upon freedom of expression may not be tantamount to censorship –for which reason they must be established through subsequent responsibilities for the exercise of this right-; they may not be discriminatory or produce discriminatory effects; they may not be imposed through indirect mechanisms such as those proscribed by article 13-3 of the Convention; and they must be exceptional.

*2.3.1 The limitations must not amount to censorship, for which reason they may be established only through the subsequent imposition of liability for the abusive exercise of freedom of expression*

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<sup>94</sup> I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177.

<sup>95</sup> I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177. Para. 83. I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135. Para. 85. I/A Court H.R., *Case of Herrera Ulloa*. Judgment of July 2, 2004. Series C No. 107. Para. 123. I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 46. IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*, cited in the Judgment of July 2, 2004, Series C No. 107. Para. 101.1.b).

<sup>96</sup> I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177. Para. 83

<sup>97</sup> I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177. Para. 84.

84. Limitations to freedom of expression may not constitute direct or indirect mechanisms of prior censorship.<sup>98</sup> In this respect we must take into account that, save the exception established in article 13-4 of the Convention, prior measures of limitation to freedom of expression inevitably entail the undermining of this freedom. In other words, this right cannot be subject to prior or preventive control measures, but whoever abuses its exercise may be subject to subsequent liability.<sup>99</sup> The content of the prohibition against censorship and the direct and indirect forms of censorship proscribed by the American Convention will be explored in more detail later.

85. Article 13-2 foresees expressly the possibility of requiring subsequent liability for the abusive exercise of freedom of expression, and it is only through this mechanism that admissible restrictions to freedom of expression may be established.<sup>100</sup> That is, the limitations must always be established through laws that prescribe subsequent liability for legally defined conduct, and not through prior controls on the exercise of freedom of expression. This is the precise meaning that the case law of the inter-American system has given expressly to the terms “restrictions” and “limitations” within the framework of the American Convention. According to the Inter-American Commission, “Under Article 13, any restriction of the rights and guarantees contained therein must take the form of a subsequent imposition of liability. Abusive exercise of freedom of expression may not be subject to any other kind of limitation. As that article indicates, anyone who has exercised this freedom shall be answerable for the consequences for which he is responsible.”<sup>101</sup> The manner in which these types of limitations have been approached by the case-law is explained in more detail further ahead.

### *2.3.2 The limitations cannot be discriminatory or have discriminatory effects*

86. Limitations imposed on freedom of expression “must not ‘perpetuate prejudice or promote intolerance.’”<sup>102</sup> Therefore, such limitations cannot be discriminatory nor have discriminatory effects, as that would additionally violate article 24 of the American Convention.<sup>103</sup> It must be recalled in this respect that according to article 13 of the Convention, freedom of expression is a right of “everyone”, and that by virtue of Principle 2 of the IACHR Declaration of Principles on Freedom of Expression, “[a]ll people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.”

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<sup>98</sup> I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177. Para. 54. I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135. Para. 79. I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C No. 107. Para. 120.

<sup>99</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 39. IACHR, Report No. 11/96. Case No. 11.230. *Francisco Martorell*. Chile. May 3, 1996. Para. 7.

<sup>100</sup> I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177. Para. 54. I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135. Para. 79. IACHR, Report No. 11/96. Case No. 11.230. *Francisco Martorell*. Chile. May 3, 1996. Para. 58. IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights*. Title IV: Desacato laws are incompatible with article 13 of the American Convention on Human Rights because they suppress the freedom of expression necessary for the proper functioning of a democratic society. Subtitle A. February 17, 1995. 88<sup>th</sup> Session.

<sup>101</sup> IACHR, Report No. 11/96. Case No. 11.230. *Francisco Martorell*. Chile. May 3, 1996. Para. 58.

<sup>102</sup> IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights*. Title III: The convention protects and promotes a broad concept of freedom of expression to preserve the Existence of democratic societies in OAS member States. February 17, 1995. 88<sup>th</sup> Session.

<sup>103</sup> I/A Court H.R., *Case of López Alvarez v. Honduras*, Judgment of February 1, 2006, Series C No. 141. Para. 170.

87. An illustrative example of the limitations to freedom of expression that are contrary to article 13 of the Convention due to their discriminatory nature is provided in the aforementioned judgment of the Inter-American Court in the *Case of López Alvarez v. Honduras*<sup>104</sup>. In this case, as previously discussed, it was ruled that the prohibition imposed by a prison Director banning inmates who were members of an ethnic group from speaking their own language was openly discriminatory against Mr. López Alvarez as a member of such ethnic group. As such, it constituted a violation of the freedom of expression protected in the American Convention on Human Rights.

*2.3.3 The limitations may not be imposed by indirect means such as those proscribed by article 13-3 of the Convention*

88. Restrictions to freedom of expression may not be established through mechanisms that amount to indirect restrictions to the exercise of this right, which are prohibited by article 13-3 of the Convention, and are explained in greater detail below. Indeed, the Inter-American Court has asserted that article 13-2 of the Convention must also be interpreted in accordance with article 13-3, which prohibits the restriction of freedom of expression by indirect means. Given that it is located immediately after article 13.2, paragraph 13.3 “suggests a desire to ensure that the language of Article 13(2) not be misinterpreted in a way that would limit, except to the extent strictly necessary, the full scope of the right to freedom of expression.”<sup>105</sup>

*2.3.4 Exceptional nature of the limitations*

89. The limitations imposed must be the exception to the general rule of respect for the full exercise of freedom of expression.<sup>106</sup> In this respect, the Inter-American Commission and the Inter-American Court have examined whether specific limitations fall within a State pattern or tendency to unduly limit or restrict the exercise of this right, in which case they would be inadmissible for lack of an exceptional nature. The logical reason underlying this condition is that the limitations regulated in article 13-2 are restricted as a guarantee of freedom of expression, so that certain persons, groups, ideas or means of expression are not excluded *a priori* from public debate.<sup>107</sup>

**3. Stricter standards of control for certain limitations due to the type of speech they address**

90. As discussed previously, there are certain forms of speech that are accorded a heightened degree of protection under article 13 of the American Convention, namely: (a) political speech and speech regarding matters of public interest; (b) speech regarding public officials in the exercise of their duties or candidates for public office; and (c) speech that expresses an essential element of the personal identity or dignity of the individual. This increased level of protection entails several stricter criteria to confirm the validity of the limitations imposed upon such speech by the authorities, given that, according to the case law of the inter-American system, there is a very short

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<sup>104</sup> I/A Court H.R., *Case of López Alvarez v. Honduras*, Judgment of February 1, 2006, Series C No. 141.

<sup>105</sup> 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. 47.

<sup>106</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in the Judgment of August 31, 2004, Series C No. 111. Para. 72.a).

<sup>107</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of “The Last Temptation of Christ” (Olmedo Bustos et al. v. Chile)*, cited in the Judgment of February 5, 2001, Series C No. 73. Para. 61. e).

margin for restrictions upon political debate, speech concerning matters of public interest, speech concerning public officials in the exercise of their duties or speech concerning candidates for public office, and speech that expresses a basic element of personal identity or dignity.

91. First, the Inter-American Court and the Inter-American Commission on Human Rights have held consistently that the test for the necessity of limitations must be applied more strictly whenever dealing with expressions concerning the State, matters of public interest, public officials in the performance of their duties, candidates for public office, private citizens involved voluntarily in public affairs, or political speech and debate.<sup>108</sup>

92. Second, in these cases the analysis of the proportionality of the measure must bear in mind the greater degree of protection accorded to speech concerning the suitability of public officials and their performance, or of those who aspire to hold public office, and speech concerning political debate or debate on matters of public interest. This is due to the need for a broader degree of openness for the wide-ranging debate required in a democratic system and the citizen oversight inherent in it, as well as to the correspondingly heightened threshold of tolerance for criticism that State institutions and officials must demonstrate, when confronted by the statements and opinions of persons exercising such oversight. In such cases, the demands of the protection of these individuals' right to their honor and reputation must be balanced with the interests of an open debate on public affairs.<sup>109</sup>

#### **4. Means of limitation of freedom of expression in order to protect the rights of others to honor and reputation**

##### **4.1 General rules**

93. The case law of the inter-American system has considered in general terms that fundamental rights must be exercised with respect for other rights, and that in the process of harmonization the State plays an essential role through the establishments of the limits and liabilities necessary for the purpose of such harmonization.<sup>110</sup>

94. The protection of honor, dignity and reputation is a human right enshrined in article 11 of the American Convention, which limits the interference of individuals and of the State<sup>111</sup>. According to article 13-2 of the Convention, the protection of the honor and reputation of others can be a reason to establish restrictions to freedom of expression; that is, it can be a reason for establishing subsequent liability for the abusive exercise of such freedom<sup>112</sup>. Nevertheless, it is clear—as previously mentioned—that the exercise of the right to honor, dignity and reputation must be reconciled with the right to freedom of expression, as it is not a right with a higher level or

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<sup>108</sup> I/A Court H.R., *Ivcher Bronstein Case*. Judgment of February 6, 2001. Series C No. 74.; I/A Court H.R., *Case of Herrera Ulloa*. Judgment of July 2, 2004. Series C No. 107.; I/A Court H.R., *Case of Ricardo Canese*. Judgment of August 31, 2004. Series C No. 111. I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135. I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177. ICHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights*. Title III: The convention protects and promotes a broad concept of freedom of expression to preserve the existence of democratic societies in OAS member States. February 17, 1995. 88th Session.

<sup>109</sup> I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177. I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135. I/A Court H.R., *Case of Herrera Ulloa*. Judgment of July 2, 2004. Series C No. 107.

<sup>110</sup> I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177. Para. 75.

<sup>111</sup> I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177. Para. 55.

<sup>112</sup> I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177. Para. 71.

hierarchy<sup>113</sup>. The honor of individuals must be protected without prejudice to the exercise of freedom of expression or the right to receive information. When a State exhibits a tendency or pattern of favoring the right to honor over freedom of expression, and of restricting the latter when there is tension, the principle of the indivisibility of human rights is violated<sup>114</sup>.

95. It has been specified in this regard that the simultaneous exercise of the rights to honor and to freedom of expression must be guaranteed through a process of balancing in each specific case, based on a perspective that takes into account the characteristics and circumstances of the particular case<sup>115</sup>.

96. However, in cases of conflict between freedom of expression and the right of public officials to honor, the balancing exercise must be carried out on the grounds of the *prima facie* prevalence of freedom of expression, which acquires a higher balanced weight in these situations, given that it is a specially protected type of speech under the American Convention.

97. In principle, in cases of imposition of subsequent liabilities aimed at protecting the rights of others to honor or reputation, the requirements established in article 13-2 of the Convention for limiting the right to freedom of expression must be strictly complied with. In terms of the Commission, “any potential conflict in the application of articles 11 and 13 of the Convention can be resolved by resorting to the language of Article 13 itself...”<sup>116</sup>, that is, through the subsequent imposition of liability that meets the specified requirements. As stated above, the requirements that must be met by any restriction of freedom of expression, have been clearly established in the case-law, and may be summarized as follows. First, the existence of a clear harm or threat of harm to the rights of others must have been proven: it is necessary for the rights whose protection is being sought to be clearly harmed or threatened, and the burden of proof is on the party requesting the limitation. Unless there is clear and arbitrary harm to the right of another, the subsequent imposition of liability is unnecessary<sup>117</sup>. In this sense, it is incumbent upon the State to demonstrate that it is truly necessary to restrict freedom of expression in order to protect a right which has effectively been harmed or is being threatened<sup>118</sup>. Second, there must be clear and precise legal provisions establishing such subsequent liabilities, drafted in unequivocal terms that delimit unlawful conduct clearly, set forth the elements of such conduct with specificity and enable it to be differentiated from lawful conduct. Otherwise, doubts will arise, the door will be opened to arbitrariness on the part of the authorities, the principle of legality will not be respected<sup>119</sup>, and the risk arises that these laws could be used to adversely affect freedom of expression. Laws that limit freedom of expression must be written with such clarity that any sort of interpretation is unnecessary. Even specific judicial interpretations of them are not sufficient to compensate for overly-broad formulations, as judicial interpretations change, or are not followed strictly, and they are not general

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<sup>113</sup> IACHR, Report No. 11/96. Case No. 11.230. *Francisco Martorell*. Chile. May 3, 1996. Para. 70.

<sup>114</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of “The Last Temptation of Christ” (Olmedo Bustos et al. v. Chile)*, cited in the Judgment of February 5, 2001, Series C No. 73. Para. 61. i)

<sup>115</sup> I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177. Para. 51.

<sup>116</sup> IACHR, Report No. 11/96. Case No. 11.230. *Francisco Martorell*. Chile. May 3, 1996. Para. 75.

<sup>117</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in the Judgment of August 31, 2004, Series C No. 111. Para. 72.f).

<sup>118</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in the Judgment of August 31, 2004, Series C No. 111. Para. 72.e).

<sup>119</sup> IACHR, *Case of Castillo Petruzzi*, cited in the *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177. Para. 63.

in nature.<sup>120</sup> Third, the absolute necessity of the imposition of liabilities must have been proven, bearing in mind that the test for the necessity of restrictions to freedom of expression, when they are imposed through laws that establish liabilities for those who express their opinions, is more demanding. In those cases, taking into account the requirement of reconciling the protection of freedom of expression and the protection of other rights in a rational and balanced manner, without adversely affecting the right to freedom of expression as a bulwark of a democratic system, the absolute necessity of resorting, in a truly exceptional manner, to the imposition of legal liability against those who express themselves must be demonstrated.

98. In particular, the strict necessity test to be applied requires that, in order to repair the harm which has been inflicted, the State must choose the less costly means for freedom of expression. Therefore, recourse must be made in the first place to the right of correction or reply, which is set forth expressly in article 14 of the Convention.<sup>121</sup> Only when this is insufficient to repair the harm which has been inflicted, may recourse be made to the imposition of legal liabilities, which are more costly for those who have made use of their right to freedom of expression.

99. In the events in which the right of correction or reply is insufficient to re-establish the right to reputation or honor of those who have been affected by a given exercise of freedom of expression, and recourse may therefore be had to other mechanisms of legal liability<sup>122</sup>, such recourse to the imposition of legal liability must strictly comply with certain specific requirements, in addition to the ones mentioned above, namely: (a) *Application of the standard of actual malice*. In resorting to the imposition of civil liability for alleged abuses of freedom of expression, the standard of assessment of actual malice must be applied; that is, it must be demonstrated that the person expressing the opinion did so with the intent to cause harm and the knowledge that she was disseminating false information, or that he did so with an obvious disregard for the truth of the facts. With regard to communications professionals and journalists, Principle 10 of the IACHR Declaration of Principles on Freedom of Expression provides that “in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.” (b) *Burden of proof*. In cases where legal liability is imposed against a person who has abused his right to freedom of expression, the party alleging harm is the one that must bear the burden of proof in demonstrating that the pertinent statements were false, and that they effectively caused the harm that is being invoked<sup>123</sup>. On the other hand, the Inter-American Court in the *Case of Herrera Ulloa v. Costa Rica* held that requiring the person who expressed herself to prove legally the veracity of the facts asserted in her statements, and failing to accept the *exceptio veritatis* on her behalf, “is an excessive limitation on freedom of expression that does not comport with Article 13(2) of the Convention.” In other words, whoever

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<sup>120</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in the Judgment of August 31, 2004, Series C No. 111. Para. 72. s) a 72. u).

<sup>121</sup> Article 14 provides: “1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish. // 2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred. // 3. For the effective protection of honor and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special privileges.”

<sup>122</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of “The Last Temptation of Christ” (Olmedo Bustos et al. v. Chile)*, cited in the Judgment of February 5, 2001, Series C No. 73. Para. 61. d)

<sup>123</sup> I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004, Series C No. 107. Para. 132. IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*, cited in the Judgment of July 2, 2004, Series C No. 107. Para. 101.2). I). IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in the Judgment of August 31, 2004, Series C No. 111. Para. 72.o) and 72.p).



has made use of the right to freedom of expression affecting the rights of others and is therefore subjected to mechanisms for the imposition of subsequent legal liabilities, must not in the first place be required to prove the veracity of the facts about which the expression was made, and in the second place, must be able to shield herself from said liabilities invoking, on her behalf, the *exceptio veritatis*. (c) Finally, it is important to bear in mind in this respect that only facts, and not opinions, are susceptible to judgments of truthfulness or untruthfulness<sup>124</sup>. Consequently, nobody may be punished for expressing opinions about other persons, when such opinions do not imply false accusations of verifiable facts.

100. The type of subsequent legal liabilities to which recourse may be had whenever the right of correction or reply has been insufficient to repair the harm caused to the rights of others, are in principle the mechanisms of civil liability. Such civil liabilities, according to the UN, OAS and OSCE Special Rapporteurs on Freedom of Expression stated in their Joint Declaration of 2000, “should not be so large as to exert a chilling effect on freedom of expression and should be designed to restore the reputation harmed, not to compensate the plaintiff or to punish the defendant; in particular, pecuniary awards should be strictly proportionate to the actual harm caused and the law should prioritize the use of a range of non-pecuniary remedies.”

101. Finally, it is important to point out that the Inter-American Commission and the Inter-American Court of Human Rights have both held, in all of the specific cases they have examined and decided on the issue, that the protection of the honor and reputation of public officials or candidates for public office through the prosecution or criminal conviction for defamation offenses of persons expressing themselves was disproportionate and unnecessary in a democratic society.

102. The Court’s decisions are based on: (i) the higher levels of protection granted to speech concerning the State, matters of public interest and public officials in the exercise of their duties and candidates who aspire to hold public office; (ii) the high demands placed on limitations to this type of speech; and (iii) the strict requirements of validity that resorting to legal sanctions must meet in order to limit freedom of expression. On this point, the case law has explained that public officials as well as candidates for public office enjoy, like everyone, the right to honor protected by the Convention. However, public officials in a democratic society have a different threshold of protection, which exposes them in greater measure to public criticism. This is justified by the public interest nature of the activities in which they engage; because they have exposed themselves voluntarily to stricter scrutiny; because their activities go beyond the private sphere into the realm of public debate; and because they have appropriate means of defense<sup>125</sup>. This does not mean that public officials cannot be legally protected with respect to their honor, but such protection must be consistent with democratic pluralism and must weigh the interest of such protection against the interests of open public debate on public affairs.<sup>126</sup> It has been emphasized that the imposition of criminal liability, such as under the criminal defamation laws, to protect the honor and reputation of public officials or candidates for public office causes fear and inhibition and has a chilling effect on the practice of critical expression and of journalism in general, preventing debate on matters of interest to society. It has also been underscored that there are other, less restrictive means by

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<sup>124</sup> I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177. Para. 93.

<sup>125</sup> I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177. Pars. 86 and 87. I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135. Pars. 83 and 84. I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004, Series C No. 107. Pars. 128, 129. IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights*. February 17, 1995. 88<sup>th</sup> Session. Title IV: Desacato laws are incompatible with article 13 of the American Convention on Human Rights because they suppress the freedom of expression necessary for the proper functioning of a democratic society. Subtitles B) and C).

<sup>126</sup> I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004, Series C No. 107. Para. 128.

which persons involved in matters of public interest can defend their reputation from unfounded attacks. Such means are, in the first place, the increase of democratic debate, to which public officials have broad access; and, should that prove to be insufficient for repairing a harmed inflicted willfully, recourse could be made to civil remedies, applying the standard of actual malice.<sup>127</sup> In addition, in the *Kimel* case, the Court stated that the legal definition of the criminal offense concerning the protection of honor in Argentina violated the principle of strict legality because of its extreme vagueness. Consequently, it ordered the amendment of that law.

103. The Inter-American Commission has considered that the use of criminal law mechanisms to punish speech concerning matters of public interest, public officials, candidates for public office or politicians violates *in and of itself* article 13 of the American Convention; there is no compelling social interest that justifies it; it is unnecessary and disproportionate; and it can also constitute an indirect means of censorship given its intimidating and inhibiting effect on debate concerning matters of public interest. The Inter-American Commission has also stressed that resorting to criminal law instruments in order to punish specially protected speech is not only a direct limitation to freedom of expression but also can be considered an indirect method of restricting the expression of opinions because of its intimidating, silencing and inhibiting effects on the free flow of ideas, opinions and information of all kinds. The mere threat of being criminally prosecuted for making critical statements on matters of public interest may lead to self-censorship given its threatening nature.<sup>128</sup> In the words of the Inter-American Commission, “[c]onsidering the consequences of criminal sanctions and the inevitable chilling effect they have on freedom of expression, criminalization of speech can only apply in those exceptional circumstances when there is an obvious and direct threat of lawless violence. (...) the State’s use of its coercive powers to restrict speech lends itself to abuse as a means to silence unpopular ideas and opinions, thereby repressing the debate that is critical to the effective functioning of democratic institutions. Laws that criminalize speech which does not incite lawless violence are incompatible with freedom of expression and thought guaranteed in Article 13, and with the fundamental purpose of the American Convention of allowing and protecting the pluralistic, democratic way of life.”<sup>129</sup>

104. Consistent with the above, Principle 10 of the IACHR Declaration of Principles on Freedom of Expression states that “[p]rivacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

105. In turn, the Inter-American Court, in its judgment in the *Case of Kimel v. Argentina*, held as follows: “The Court does not deem any criminal sanction regarding the right to inform or

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<sup>127</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in the Judgment of August 31, 2004, Series C No. 111. Para. 72. IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*, cited in the Judgment of July 2, 2004, Series C No. 107. Para. 101.4). c).

<sup>128</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*, cited in the Judgment of July 2, 2004, Series C No. 107. Para. 101.2). IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Palamara Iribarne v. Chile*, cited in the Judgment of November 22, 2005, Series C No. 135. Para. 64.e).

<sup>129</sup> IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights*. Title IV: Conclusion. February 17, 1995.88<sup>th</sup> Session.

give one's opinion to be contrary to the provisions of the Convention; however, this possibility should be carefully analyzed, pondering the extreme seriousness of the conduct of the individual who expressed the opinion, his actual malice, the characteristics of the unfair damage caused, and other information which shows the absolute necessity to resort to criminal proceedings as an exception." Interpreting this statement in accordance with the prior case law of the Court, it is reasonable to conclude that, in principle, recourse to criminal penalties is inapplicable with regard to specially protected speech, speech concerning public officials, candidates for public office, matters of public interest or matters involving the State, because they do not meet the requirements of extreme and absolute necessity. Therefore, in this very case, the Inter-American Court found Argentina guilty of violating the American Convention, in having convicted a journalist who, more or less, accused a judge of condescendence towards the commission of the worse violations of human rights.

#### *4.2 Cases in which the Inter-American Court of Human Rights has examined the conflict between the right to freedom of expression and the right to the honor, reputation, or good name of public officials*

106. It is illustrative to review briefly the three cases in which the Inter-American Court of Human Rights has ruled on this matter. The first case, *Herrera Ulloa v. Costa Rica*, discussed above, dealt with the situation of Costa Rican journalist Mauricio Herrera Ulloa, who was convicted of violating the honor of a Costa Rican government official stationed abroad, for having accurately reprinted information from European newspapers regarding the alleged unlawful conduct of that official. The journalist was convicted on four counts of criminal defamation, and was ordered to pay a fine and to publish the holding of the court's judgment in the newspaper. Furthermore, the judgment found the civil action for damages resulting from said crimes to be admissible, and ordered Mr. Herrera and the newspaper *La Nación* to pay damages and court costs. Finally, the newspaper *La Nación* was ordered to change the content of its online edition by removing the link from the diplomat's surname to the articles at the heart of the controversy, and providing a new link from those articles to the holding of the court's judgment.

107. The Inter-American Court of Human Rights held that the penalties constituted a violation of the freedom of expression protected by the American Convention on Human Rights. In its judgment, the Court highlighted the dual dimension —individual and collective—of freedom of expression, the crucial democratic function of this right, and the central role of the communications media. After recalling the requirements set forth in the Convention for restrictions to freedom of expression to be legitimate, it concluded that Mr. Herrera had been subjected to the excessive and unnecessary use of the punitive power of the State, which failed to respect said Convention requirements. It took into particular account that: (a) Mr. Herrera was a journalist who was conveying facts and opinions of public interest; (b) the exercise of his right resulted in statements critical of a public official in the exercise of his duties, and the official was exposed to a greater degree of criticism than private citizens; and (c) Mr. Herrera had limited himself to faithfully reprinting information published in the foreign press on the conduct of a Costa Rican diplomatic official. The Court emphasized that his criminal conviction had had a chilling effect on the practice of journalism and on debate concerning matters of public interest in Costa Rica, stating that "[t]he effect of the standard of proof required in the judgment is to restrict freedom of expression in a manner incompatible with Article 13 of the American Convention, as it has a deterrent, chilling and inhibiting effect on all those who practice journalism. This, in turn, obstructs public debate on issues of interest to society." Consequently, it found Costa Rica in violation of the Convention and ordered that it make reparations for the violation of article 13 of the Convention, in the form of setting aside the conviction, and paying compensation for non-pecuniary damages to journalist Herrera Ulloa.

108. In the second of these cases, *Canese v. Paraguay*, also discussed previously, the Court examined the situation of Ricardo Canese, a presidential candidate in the 1992 elections in

Paraguay. Mr. Canese was convicted of criminal defamation as a consequence of statements he made while he was a candidate, and during the course of the campaign, concerning the conduct of his opponent in relation to the Itaipú Hydroelectric Complex. He was sentenced to a term of incarceration and the payment of a fine. Also, during the course of the case he was permanently prohibited from leaving the country.

109. The Inter-American Commission argued before the Court that the imposition of criminal liability and criminal penalties for political speech within the context of an election is contrary to article 13 of the Convention, because there is no imperative social interest that justifies the criminal penalty; because the restriction is disproportionate; and because it is an indirect restriction—given that criminal penalties have an intimidating effect on all debate involving public figures and matters in the public interest. Consequently, it affirmed that statements made in electoral contests must not be criminalized, and that recourse should be made instead to civil penalties, based on the standard of actual malice; “in other words, it is necessary to prove that, by disseminating the information, the author intended to cause harm or knew full well that he was disseminating false information.”<sup>130</sup>

110. The Inter-American Court, after highlighting the considerable democratic function of the full exercise of freedom of expression and its heightened importance in the electoral arena, concluded that in this case the freedom of expression protected by article 13 was violated. Indeed, the Court took into account that: (a) criminal law is the most restrictive and severe means for establishing liability for unlawful conduct; and (b) Mr. Canese’s statements had been made in the context of a presidential election campaign with regard to matters of public interest, which places them in a category warranting greater protection under article 13 of the Convention. It therefore concluded that the case and the criminal sentence issued against Mr. Canese constituted an unnecessary and excessive punishment that limited the open debate of issues in the public interest and restricted the victim’s freedom of expression during the rest of the electoral campaign. Furthermore, it emphasized that the criminal case and the conviction, together with the accompanying restrictions on leaving the country, were indirect means of restricting freedom of expression.

111. The *Case of Kimel v. Argentina* was also examined in the preceding sections. In that case, upon finding that article 13 of the American Convention had been violated by means of the conviction of Mr. Eduardo Kimel for having published a book critical of the way in which a federal judge had conducted the investigation of a massacre committed during the years of the dictatorship, the Inter-American Court maintained that the punitive power of the State had been used unnecessarily and disproportionately. To arrive at this conclusion, the Court considered not only the greater degree of protection afforded to Mr. Kimel’s statements in his book because they referred to the conduct of a public official but it also considered other reasons; namely: (a) that the Argentinean criminal defamation laws were extremely vague and ambiguous, thus contradicting the requirement of specific legality; (b) the fact that the prosecution and punishment of the investigative journalist had reflected a notorious abuse of the punitive power of the State, “taking into consideration the crimes charged to Mr. Kimel, the impact they had on his legally protected interests, and the nature of the sentence imposed on the journalist –deprivation of freedom”; and (c) the obvious disproportionateness and excess in affecting Mr. Kimel’s freedom of expression in relation to the alleged harm to the right to honor of the individual who had served as a public official. Such disproportion was inferred by the Court from the joint evaluation of several factors, including that the exercise of freedom of expression was done through opinions that did not entail the accusation of crimes or the indication of facts or issues relating to the judge’s personal life; that the opinions

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<sup>130</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in the Judgment of August 31, 2004, Series C No. 111. Para. 72.h).

amounted to a critical value judgment on the conduct of the judicial power during the dictatorship; that the opinion was imparted bearing in mind the facts verified by the journalist; and that opinions, unlike facts, cannot be subjected to judgments of truthfulness or untruthfulness. As a consequence of the international responsibility of the State of Argentina for having violated the American Convention, the Court ordered that it: (1) compensate Mr. Kimel for pecuniary and non-pecuniary damages and reimburse his legal costs and expenses; (2) set aside the criminal conviction against him and all of the consequences derived from it; (3) remove Mr. Kimel's name from public records registering his criminal history; (4) duly publish the decision of the Inter-American Court as a measure of satisfaction; (5) hold a public act to recognize its responsibility; and (6) bring its domestic law in line with the American Convention on Human Rights insofar as it concerns criminal defamation offenses, "so that the lack of accuracy acknowledged by the State (...) be amended in order to comply with the requirements of legal certainty so that, consequently, they do not affect the exercise of the right to freedom of thought and expression."

#### *4.3 Fundamental incompatibility of desacato laws and the American Convention on Human Rights*

112. The Inter-American Commission and the Court have declared that so-called *desacato* laws contradict the freedom of expression protected by article 13 of the American Convention.<sup>131</sup>

113. The so-called *desacato* laws, according to the definition provided by the Inter-American Commission –and regardless of their specific denomination within domestic legal systems–, "are a class of legislation that criminalizes expression which offends, insults or threatens a public functionary in the performance of his or her official duties."<sup>132</sup> In the countries in which these laws exist, they are justified by several reasons, most notably the protection of the proper functioning of government, or public order: "...Desacato laws are said to play a dual role. First, by protecting public functionaries from offensive and/or critical speech, these functionaries are left unhindered to perform their duties and thus, the Government itself is allowed to run smoothly. Second, *desacato* laws protect the public order because criticism of public functionaries may have a destabilizing effect on national government since, the argument goes, it reflects not only on the individual criticized but on the office he or she holds and the administration he or she serves."<sup>133</sup>

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<sup>131</sup> IACHR, *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135. Para. 88. IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights*. Title IV: Desacato laws are incompatible with article 13 of the American Convention on Human Rights because they suppress the freedom of expression necessary for the proper functioning of a democratic society. February 17, 1995.88<sup>th</sup> Session.

<sup>132</sup> IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights*. Title II: "Desacato" Laws. February 17, 1995.88<sup>th</sup> Session.

<sup>133</sup> IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights*. Title II: "Desacato" Laws. February 17, 1995.88<sup>th</sup> Session. In this same opinion, the Commission explained that the design and content of *desacato* laws varies among the States that have them in force: "*The application of desacato laws varies between OAS member states. In certain countries, desacato laws penalize only insulting speech which is said in the presence of the public functionary or by direct communication, such as a letter or telephone call [see Article 456, Código Penal El Salvador]. Other desacato laws penalize any speech which insults, offends or threatens a public functionary, whether made directly to the person in question or through an indirect medium, such as the press [See Article 173, Código Penal de Uruguay]. In general, however, the protection of desacato laws only extends to public functionaries performing in their official capacity. In addition, OAS member states differ as to defenses allowed in charges of desacato. In some countries, desacato laws require that defendants prove the veracity of their impugned statements as a defense. [See Article 413, Código Penal de Guatemala]. In others, the law does not allow the defense of truth to be introduced with regard to insulting or offensive language against public functionaries. [See Article 307, Código Penal de Costa Rica]. Penalties for desacato range from fines to prison sentences.*"

114. In the Commission's view, these justifications do not find support in the American Convention on Human Rights. In its opinion, the *desacato* laws "conflict with the belief that freedom of expression and opinion is the 'touchstone of all freedoms to which the United Nations is consecrated' and 'one of the soundest guarantees of modern democracy'"<sup>134</sup>; as such, the *desacato* law are an illegitimate restriction to freedom of expression, because (a) they do not serve a legitimate purpose under the Convention, and (b) they are not necessary in a democratic society. According to the Commission, "The use of *desacato* laws to protect the honor of public functionaries acting in their official capacities unjustifiably grants a right to protection to public officials that is not available to other members of society. This distinction inverts the fundamental principle in a democratic system that holds the Government subject to controls, such as public scrutiny, in order to preclude or control abuse of its coercive powers. If we consider that public functionaries acting in their official capacity are the Government for all intents and purposes, then it must be the individual and the public's right to criticize and scrutinize the officials' actions and attitudes in so far as they relate to the public office."<sup>135</sup>

115. In the Commission's opinion, given that the right to freedom of expression enables individuals and society to participate in active and vigorous debates on all matters of interest to society, and that this type of debate necessarily generates certain speech that is critical of or offensive to public officials or those persons involved in the shaping of public policy, "[a] law that targets speech that is considered critical of the public administration by virtue of the individual who is the object of the expression, strikes at the very essence and content of freedom of expression. Such limitations on speech may affect not only those directly silenced, but society as a whole."<sup>136</sup> Principle 11 of the IACHR Declaration of Principles on Freedom of expression clearly affirms that, "[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as '*desacato* laws,' restrict freedom of expression and the right to information."

116. In addition to being a direct restriction to freedom of expression, the *desacato* laws also restrict it indirectly, "because they carry with them the threat of imprisonment and/or fines for those who insult or offend a public official (...) The fear of criminal sanctions necessarily discourages people from voicing their opinions on issues of public concern particularly when the legislation fails to distinguish between facts and value judgments. Political criticism often involves value judgments. (...) the burden *desacato* laws place on persons wishing to participate in debate over the proper functioning of the public administration is not lessened by the possibility to prove truth as a defense. Even those laws which allow truth as a defense inevitably inhibit the free flow of ideas and opinions by shifting the burden of proof onto the speaker. This is particularly the case in the political arena where political criticism is often based on value judgments, rather than purely fact-based statements. Proving the veracity of these statements may be impossible, since value judgments are not susceptible of proof."<sup>137</sup>

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<sup>134</sup> IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights*. Title I: Introduction. February 17, 1995.88<sup>th</sup> Session.

<sup>135</sup> IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights*. Title IV: *Desacato* laws are incompatible with article 13 of the American Convention on Human Rights because they suppress the freedom of expression necessary for the proper functioning of a democratic society. Subtitle B). February 17, 1995.88<sup>th</sup> Session.

<sup>136</sup> IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights*. Title IV: *Desacato* laws are incompatible with article 13 of the American Convention on Human Rights because they suppress the freedom of expression necessary for the proper functioning of a democratic society. Subtitle B). February 17, 1995.88<sup>th</sup> Session.

<sup>137</sup> IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights*. Title IV: *Desacato* laws are incompatible with article 13 of the American Convention on Human Rights because they suppress the freedom of expression necessary for the proper functioning of a democratic society. Subtitle B). February 17, 1995.88<sup>th</sup> Session.

Likewise, the threat of criminal liability for dishonoring the reputation of a public official, even if it is done through an opinion or a value judgment, can be used as a method to suppress criticism and silence political adversaries; and by protecting public officials from defamatory statements, they establish a structure that in the end protects the government itself from criticism.<sup>138</sup>

117. From another perspective, *desacato* laws are based on an erroneous notion of the preservation of public order, which is incompatible with democratic systems and contrary to the definition of such "public order" that may legitimately justify a limitation to freedom of expression: "the rationale behind *desacato* laws reverses the principle that a properly functioning democracy is indeed the greatest guarantee of public order. These laws pretend to preserve public order precisely by restricting a fundamental human right which is recognized internationally as a cornerstone upon which democratic society rests. *Desacato* laws, when applied, have a direct impact on the open and rigorous debate about public policy that Article 13 guarantees and which is essential to the existence of a democratic society. In this respect, invoking the concept of "public order" to justify *desacato* laws directly inverts the logic underlying the guarantee of freedom of expression and thought guaranteed in the Convention."<sup>139</sup>

118. In more specific terms, *desacato* laws are unnecessary because abusive attacks on the reputation and honor of public officials may be counteracted through other less restrictive means: "The special protection *desacato* laws afford public functionaries from insulting or offensive language is not congruent with the objective of a democratic society to foster public debate. This is particularly so in light of a Government's dominant role in society, and particularly where other means are available to reply to unjustified attacks through the government's access to the media or individual civil actions of libel and slander. Any criticism that is not related to the officials' position may be subject, as is the case for all private individuals, to ordinary libel, slander and defamation actions. In this sense, the Government's prosecution of a person who criticizes a public official acting in his or her official capacity does not comply with the requirements of Article 13(2) because the protection of honor in this context is conceivable without restricting criticism of the public administration. As such, these laws are also an unjustified means to limit certain speech that is already restricted by laws that all persons, regardless of their status, may invoke."<sup>140</sup> Moreover, *desacato* laws are contrary to the notion that in a democratic society public officials must be exposed to a greater extent to public scrutiny and demonstrate a higher tolerance for criticism.

119. In sum, in the opinion of the Inter-American Commission, the enforcement of criminal *desacato* laws against those who criticize public officials is *per se* contrary to the Convention, given that it is an imposition of subsequent liability for the exercise of freedom of expression that is unnecessary in a democratic society, and is disproportionate because of its serious effects on the person expressing the opinion and on the free flow of information in society. *Desacato* laws are a means of silencing unpopular ideas and opinions, and discourage criticism by generating fear of legal action, criminal punishment and monetary sanctions. *Desacato* laws are

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<sup>138</sup> IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights*. Title IV: *Desacato* laws are incompatible with article 13 of the American Convention on Human Rights because they suppress the freedom of expression necessary for the proper functioning of a democratic society. Subtitle B). February 17, 1995.88<sup>th</sup> Session.

<sup>139</sup> IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights*. Title IV: *Desacato* laws are incompatible with article 13 of the American Convention on Human Rights because they suppress the freedom of expression necessary for the proper functioning of a democratic society. Subtitle B). February 17, 1995.88<sup>th</sup> Session.

<sup>140</sup> IACHR, 1994 Annual Report. Chapter V: *Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights*. Title IV: *Desacato* laws are incompatible with article 13 of the American Convention on Human Rights because they suppress the freedom of expression necessary for the proper functioning of a democratic society. Subtitle C). February 17, 1995.88<sup>th</sup> Session.



disproportionate in terms of the penalties they establish for criticizing State institutions and their members; they suppress the debate that is essential to the functioning of a democratic system, and unnecessarily restrict freedom of expression.

120. The Inter-American Court has also examined, in specific cases, the disproportionate nature of *desacato* laws and of the prosecution under those laws of individuals who exercise their freedom of expression. For example, in the aforementioned *Case of Palamara Iribarne v. Chile*<sup>141</sup>, the Court examined the situation of a civilian employee of the Chilean Navy who had been criminally prosecuted for having tried to publish a book without the authorization of his military superiors, had been subjected to various actions amounting to prior censorship, and while the case was pending had made statements to the media that were critical of the actions of the military criminal justice system in his case. Based on this, he was subsequently prosecuted for the offense of *desacato*. According to the Inter-American Court, in this case “by pressing a charge of contempt, criminal prosecution was used in a manner that is disproportionate and unnecessary in a democratic society, which led to the deprivation of Mr. Palamara-Iribarne’s right to freedom of thought and expression with regard to the negative opinion he had of matters that had a direct bearing on him and were closely related to the manner in which military justice authorities carried out their public duties during the proceedings instituted against him. The Court believes that the contempt laws applied to Palamara-Iribarne established sanctions that were disproportionate to the criticism leveled at government institutions and their members, thus suppressing debate, which is essential for the functioning of a truly democratic system, and unnecessarily restricting the right to freedom of thought and expression.”

#### **E. The prohibition against censorship and indirect restrictions to freedom of expression**

##### **1. The prohibition against direct prior censorship**

121. Article 13-2 of the American Convention on Human Rights provides expressly that “[t]he exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: (a) respect for the rights or reputations of others; or (b) the protection of national security, public order, or public health or morals.” The only exception to this prohibition against censorship is found in article 13-4 of the Convention, pursuant to which, “[n]otwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.”

122. Interpreting these Convention standards, the Declaration of Principles on Freedom of Expression of the Inter-American Commission provides in Principle 5 that “prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression”; and Principle 7 establishes that “[p]rior conditioning of expressions, such as truthfulness, timeliness or impartiality is incompatible with the right to freedom of expression recognized in international instruments.”

123. Prior censorship is the prototype of extreme and radical violation of freedom of expression, as it entails the suppression of such freedom. It takes place when means are established through public authority to impede *in advance* the free circulation of information, ideas, opinions or

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<sup>141</sup> I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135.

news, by any means that subjects the expression or dissemination of information to State control—for example, through the prohibition or seizure of publications, or any other procedure with the same aim.<sup>142</sup> According to the Inter-American Commission, prior censorship “implies restricting or preventing expression before it has been circulated, so preventing not only the individual whose expression has been censored, but also all of society, from exercising their right to the information. In other words, prior censorship produces ‘a radical suspension of freedom of expression through preventing the free circulation of information, ideas, opinions, or news.’ As has been stated previously,” this constitutes a radical violation not only of the right of each person to express himself, but also of the right of every person to be well informed, and therefore constitutes one of the basic conditions of a democratic society.”<sup>143</sup> Cases of prior censorship result in the radical violation of each person’s right of expression, as well as the right of all people to be well-informed and to receive and know the expressions of others; as such, one of the basic conditions of a democratic society is adversely affected.<sup>144</sup>

124. According to the Inter-American Court, “Article 13(4) of the Convention establishes an exception to prior censorship, since it allows it in the case of public entertainment, but only in order to regulate access for the moral protection of children and adolescents. In all other cases, any preventive measure implies the impairment of freedom of thought and expression.”<sup>145</sup> This feature distinguishes this treaty from other international human rights conventions, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms or the International Covenant on Civil and Political Rights. In the opinion of the Inter-American Commission on Human Rights, “the fact that no other exception to this provision is provided is indicative of the importance that the authors of the Convention attached to the need to express and receive any kind of information, thoughts, opinions and ideas.”<sup>146</sup>

125. The following, among others, are examples of prior censorship according to the case law of the inter-American system: the seizure of books, printed materials and electronic copies of documents; the judicial prohibition against publishing or circulating a book;<sup>147</sup> the prohibition of a public official from making critical comments with regard to a specific case or institution;<sup>148</sup> an order to include or remove specific links, or the imposition of specific content in Internet publications; the prohibition against showing a film;<sup>149</sup> or the existence of a constitutional provision that establishes

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<sup>142</sup> I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135. Para. 68.

<sup>143</sup> IACHR, Report on the Merits No. 90/05. Case No. 12.142. *Alejandra Matus Acuña*. Chile. October 24, 2005. Para. 35.

<sup>144</sup> I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135. Para. 68. I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 54. IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*, cited in the Judgment of July 2, 2004, Series C No. 107. Para. 101.5).

<sup>145</sup> I/A Court H.R., *“The Last Temptation of Christ” Case (Olmedo Bustos et al.)*. Judgment of February 5, 2001. Series C No. 73. Para. 70.

<sup>146</sup> IACHR, Report No. 11/96. Case No. 11.230. *Francisco Martorell*. Chile. May 3, 1996. Para. 56.

<sup>147</sup> I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135. Case No. 10.325. Steve Clark et al. Grenada. March 1, 1996. IACHR, Report No. 11/96. Case No. 11.230. Francisco Martorell. Chile. May 3, 1996. IACHR, Report on the Merits No. 90/05. Case No. 12.142. *Alejandra Matus Acuña*. Chile. October 24, 2005.

<sup>148</sup> I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135.

<sup>149</sup> I/A Court H.R., *“The Last Temptation of Christ” Case (Olmedo Bustos et al.)*. Judgment of February 5, 2001. Series C No. 73.

prior censorship in film production;<sup>150</sup> government confiscation or banning of books; the judicial prohibition of a book's entry into, circulation or distribution in a country; or the judicial prohibition of the republishing of a book.

126. In one of its first judgments dealing with freedom of expression, the Inter-American Court addressed the issue of prior censorship, in this case, of movies. Indeed, in the case of *Olmedo Bustos and others v. Chile*<sup>151</sup> the Court examined a prohibition imposed by the Chilean judicial authorities over the exhibition of the film "The Last Temptation of Christ", at the request of a group of citizens who had filed a claim in that sense, invoking the protection of the image of Jesus Christ, of the Catholic Church, and of their own rights. The Inter-American Court, highlighting some of the salient features of freedom of expression –namely, its double dimension as an individual and collective right, and its critical democratic function-, and recalling that this right covers both information that is favorable, indifferent or harmless as well as that which is shocking, disturbing or offensive for the State or for society, concluded that the Chilean authorities had incurred in an act of prior censorship that was incompatible with Article 13 of the American Convention on Human Rights. It held in this regard that the violation of the Convention had been produced not only by the judicial decisions which had been called into question, but by the existence of an article in the Chilean constitution which established a system of prior censorship for cinematographic production, thus conditioning the acts of all three branches of public power; it therefore ordered Chile to adapt its internal legal system to the Convention's provisions.

127. Another illustrative case in which the Inter-American Court issued a ruling on acts of censorship was *Palamara Iribarne v. Chile*.<sup>152</sup> As previously mentioned, Mr. H. A. Palamara Iribarne, a retired military officer who was working as a civilian employee of the Navy, wrote a book entitled *Ethics and Intelligence Services*, which dealt in general terms with some aspects of military intelligence and the need for it to be governed by ethical parameters. Nevertheless, when the book was in the process of being printed and prepared for commercial distribution, it was subject to several restrictive measures, to wit: (i) Mr. Palamara's military superiors forbade him from publishing the book; (ii) said military superiors verbally ordered Mr. Palamara to withdraw all of the records of the publication from the publishing house; (iii) by order of a Prosecutor, all of the writings, documents and publications relating to the book were seized from the publishing house, and the copies that had already been printed were seized from the publishing house and from Mr. Palamara's house, as were the leftover pages and the publication's electrostatic plates; (iv) the court also ordered Mr. Palamara to erase the digital version of the book from his personal computer, and ordered the elimination of the electronic version of the text from a diskette and the publishing house's computer; (v) legal proceedings were conducted to recover the copies of the book that were already in various people's possession; and (vi) Mr. Palamara was legally prohibited from making critical remarks concerning the criminal cases pending against him, or the image of the Chilean Navy.

128. In the opinion of the Inter-American Court, all of these acts controlling the exercise of Mr. Palamara's right to disseminate information and ideas—when the book had already been printed and was in the process of being publicized and sold—prevented the book from being disseminated effectively through distribution in the marketplace, and prevented the public from having access to its content. To the Court, such measures of control "constituted acts of prior

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<sup>150</sup> I/A Court H.R., "*The Last Temptation of Christ*" Case (*Olmedo Bustos et al.*). Judgment of February 5, 2001. Series C No. 73.

<sup>151</sup> I/A Court H.R., "*The Last Temptation of Christ*" Case (*Olmedo Bustos et al.*). Judgment of February 5, 2001. Series C No. 73.

<sup>152</sup> I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135.

censorship that are incompatible with the parameters set by the Convention inasmuch as there was no element that, pursuant to said treaty, would call for the restriction of the right to freely publish his work, which is protected by Article 13 of the Convention.” Consequently, the Court ordered reparations including the payment of compensation for damages to Mr. Palamara; it further ordered that he be permitted to publish the book, that the seized materials be returned to him, that the electronic version of the text be reconstructed, and that the judgments issued in the criminal cases be set aside.

## **2. The prohibition against indirect restrictions to freedom of expression by the authorities**

129. There are different ways of unlawfully affecting freedom of expression, ranging from the extreme of radical suppression through acts of prior censorship to other forms that are less evident (more subtle) but equally contrary to the Convention by virtue of failing to meet the requirements of article 13<sup>153</sup>. Aside from extreme violations consisting of the suppression of freedom of expression through prior censorship, “any governmental action that involves a restriction of the right to seek, receive and impart information and ideas to a greater extent or by means other than those authorized by the Convention”<sup>154</sup> is also a violation of the American Convention, regardless of whether such restrictions are to the government’s advantage.

130. It is in this sense that article 13-3 of the Convention provides that: “[t]he right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.”

131. Interpreting this provision of the Convention, the Declaration of Principles on Freedom of Expression of the Inter-American Commission provides, in Principle 5, that “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression”; and Principle 13 establishes that “[t]he exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

132. The case law of the inter-American system has, in different decisions, condemned the adoption of state measures that amount to indirect means to restrict freedom of expression.

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<sup>153</sup> I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135. Para. 68. I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 54.

<sup>154</sup> 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.

Thus, for example, it has condemned a legal requirement of compulsory membership in associations for the practice of journalism<sup>155</sup>, or the arbitrary use of the State's regulatory powers when they have been used to initiate acts of intimidation against the directorship of a communications medium, or to revoke the nationality of the director of a medium as the result of the editorial line of the programs it transmits.<sup>156</sup>

133. Similarly, the Inter-American Commission has also explained that a single State act may constitute simultaneously a limitation to freedom of expression contrary to the requirements of article 13-2 of the Convention and an indirect or subtle means of restricting freedom of expression. For example, the imposition of criminal penalties for certain expressions contrary to the interests of the Government constitutes a direct limitation to this right in contravention of article 13 by virtue of being unnecessary and disproportionate; however, it is also an indirect limitation of this right because it may silence or discourage future expressions, thus inhibiting the circulation of information and causing the same result as direct censorship.<sup>157</sup> Along this same line of reasoning, the Commission has stated that the prosecution of individuals, including journalists and communications professionals, for the mere act of investigating, writing about and publishing information that is of interest to the public, violates freedom of expression by discouraging public debate on matters of concern to society, since the mere threat of being prosecuted criminally for critical statements concerning matters of public interest may result in self-censorship, given its intimidating effect.<sup>158</sup>

134. The Special Rapporteurs from the UN, the OAS and the OSCE have also addressed the issue of indirect restrictions to freedom of expression by the authorities. For example, in their Joint Declaration of 2002 they affirmed that "[g]overnments and public bodies should never abuse their custody over public finances to try to influence the content of media reporting; the placement of public advertising should be based on market considerations."

135. To date, the issue of regulation of the communications media and the requirements that must be met in order to prevent the violation of freedom of expression has not been ruled on expressly by the bodies of the inter-American system. However, the UN, OAS and OSCE Special Rapporteurs on Freedom of Expression addressed this issue directly in their Joint Declaration of 2003. After preliminarily "[c]ondemning attempts by some governments to limit freedom of expression and to control the media and/or journalists through regulatory mechanisms which lack independence or otherwise pose a threat to freedom of expression", and "[n]oting the importance of protecting broadcasters, both public and private, from interference of a political or commercial nature", they made statements on the political and economic independence of regulatory bodies, differences among various media subject to regulation, systems for registering communications media, and restrictions on content. With respect to (i) the political and economic independence of

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<sup>155</sup> 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.

<sup>156</sup> I/A Court H.R., *Case of Ivcher Bronstein v. Peru*, Judgment of February 6, 2001, Series C No. 74. Pars. 158 to 163.

<sup>157</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*, cited in the Judgment of July 2, 2004, Series C No. 107. Para. 102.3.a) y 102.3.e). IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in the Judgment of August 31, 2004, Series C No. 111. Para. 72.i).

<sup>158</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Palamara Iribarne v. Chile*, cited in the Judgment of November 22, 2005, Series C No. 135. Para. 64.e). IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*, cited in the Judgment of July 2, 2004, Series C No. 107. Para. 101.2).

regulatory entities, the Special Rapporteurs declared that “[a]ll public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by an appointments process for members which is transparent, allows for public input and is not controlled by any particular political party.” As for (ii) the differences among various communications media, they asserted that “[r]egulatory systems should take into account the fundamental differences between the print and broadcast sectors, as well as the Internet”, that “[b]roadcasters should not be required to register in addition to obtaining a broadcasting license”, that “[t]he allocation of broadcast frequencies should be based on democratic criteria and should ensure equitable opportunity of access”, and that “[a]ny regulation of the Internet should take into account the very special features of this communications medium.” With regard to (iii) systems for the registration of the communications media, the Rapporteurs declared that “[i]mposing special registration requirements on the print media is unnecessary and may be abused and should be avoided”, and that “[r]egistration systems which allow for discretion to refuse registration, which impose substantive conditions on the print media or which are overseen by bodies which are not independent of government are particularly problematical.” Finally, in terms of (iv) restrictions on content, they stated that “[c]ontent restrictions are problematical”, that “[m]edia-specific laws should not duplicate content restrictions already provided for in law as this is unnecessary and may lead to abuse”, and that “[c]ontent rules for the print media that provide for quasi-criminal penalties, such as fines or suspension, are particularly problematical.”

### **3. The prohibition against indirect restrictions to freedom of expression by causes other than the abuse of State restrictions**

136. Freedom of expression can also be adversely affected without the direct intervention of the State; for example, when as a consequence of the existence of monopolies or oligopolies in the ownership of the communications media, “means tending to impede the communication and circulation of ideas and opinions” are established in practice.<sup>159</sup> The Inter-American Court has understood that article 13-3 prohibits not only government restrictions but also private controls that produce the same result. Read in conjunction with article 1.1 of the Convention, this means -in the Court’s opinion- that the American Convention is violated not only when the State imposes indirect restrictions on the circulation of ideas or opinions through its agents but also when it has failed to ensure that the establishment of private controls does not result in the violation of freedom of expression<sup>160</sup>.

137. Along these lines, the Declaration of Principles on Freedom of Expression issued by the Inter-American Commission on Human Rights sets forth, in Principle 12, that “[m]onopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people’s right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”

138. The UN, OAS and OSCE Special Rapporteurs on Freedom of Expression have addressed in their various Joint Statements the issue of indirect restrictions to freedom of

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<sup>159</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights), Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 56.

<sup>160</sup> 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.

expression derived from economic and commercial factors. Thus, in the Joint Declaration of 2001, they stated that “[e]ffective measures should be adopted to prevent undue concentration of media ownership”, and that “[m]edia owners and media professionals should be encouraged to conclude agreements to guarantee editorial independence; commercial considerations should not unduly influence media content”. Likewise, in the Joint Declaration of 2002 they declared themselves “[c]ognizant of the threat posed by increasing concentration of ownership of the media and the means of communication, in particular to diversity and editorial independence”; and they affirmed that “[m]edia owners have a responsibility to respect the right to freedom of expression and, in particular, editorial independence.”

139. The UN, OAS and OSCE Special Rapporteurs have also spoken to the specific issue of the promotion of diversity in the media and in the allocation of frequencies. In their various Joint Declarations, they have highlighted the importance of this issue for the full exercise of freedom of expression. For example, in the Joint Declaration of 2001 they adopted a section on “Broadcasting”, in which it was affirmed (i) that “[p]romoting diversity should be a primary goal of broadcast regulation; diversity implies gender equity within broadcasting, as well as equal opportunity for all sections of society to access the airwaves”; (ii) that “[b]roadcast regulators and governing bodies should be so constituted as to protect them against political and commercial interference”; and (iii) that “[e]ffective measures should be adopted to prevent undue concentration of media ownership.”

#### **F. The right of access to information<sup>161</sup>**

##### **1. Content and scope of the right of access to information protected by article 13 of the Convention**

140. The right of access to information is a specific manifestation of the freedom of expression protected by article 13 of the American Convention. It is a manifestation of this freedom that is particularly important for the consolidation, functioning and preservation of democratic systems of government; as such, it has received significant attention in international case law and doctrine.

141. In general terms, freedom of expression includes the right and the freedom to seek, receive and impart information and ideas of all kinds; that is, it encompasses freedom of information, a right enshrined in the American Convention on Human Rights as well as in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. According to the case law, freedom of information is a right in and of itself, and not just a manifestation of the right of freedom of expression of which it is a part. Article 13-1 of the American Convention provides in this respect that “[e]veryone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's Choice”; in turn, the IACHR Declaration of Principles on Freedom of Expression establishes, in Principle 2, that “[e]very person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights”, and that “[a]ll people should be afforded equal opportunities to receive, seek and impart information.”

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<sup>161</sup> The right of access to information has been one of the recurring themes in the Special Rapporteurship's annual reports, since its creation. This chapter is therefore an updated version of the annual reports, especially of the 2005 Annual Report of the Special Rapporteurship for Freedom of Expression, and of the Special Study on the Right of Access to Information carried out by the Special Rapporteurship in 2007.



142. The right of access to information falls within the general framework of freedom of expression. According to the interpretations of the Inter-American Commission, article 13 of the American Convention comprises the positive obligation of the State to provide its citizens with access to the information in its possession, and the corresponding right of individuals to access the information held by the State.<sup>162</sup> On this point, the Commission's Declaration of Principles on Freedom of Expression provides, in Principle 3, that "[e]very person has the right to access to information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it"; and in Principle 4, that "[a]ccess to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies."

## **2. Importance and function**

143. The importance of the right to access to information is prominent in three specific areas.

144. The right of access to information is *a critical tool for democratic participation, oversight of the State and public administration, and the monitoring of corruption*. In democratic systems, in which the State's conduct is governed by publicity and transparency, the right of access to information in the State's possession is a fundamental requirement for ensuring democratic participation, good and transparent conduct of public affairs, and the oversight of government and its authorities by public opinion, as it enables civil society to scrutinize the actions of the authorities. Free access to information is a means for the citizens in a participatory and representative democracy to exercise their political rights. Indeed, the full exercise of the right to access to information is necessary to prevent abuses by public officials, promote accountability and transparency in government, and enable solid and informed public debate that ensures effective recourse against government abuse and prevents corruption. Only through access to information of public interest that is held by the State can citizens question, investigate and consider whether public duties are being performed properly.<sup>163</sup>

145. The importance of access to public information in guaranteeing the transparency, integrity and responsibility of the conduct of public affairs, respect for social rights, freedom of expression and freedom of the press, as well as the necessity of protecting the right to such access, have been the subject of regional consensus in the OAS, set forth in various resolutions of the General Assembly and in the Inter-American Democratic Charter. Likewise, it has been underscored in several multilateral treaties and other international instruments in the European arena and at the United Nations. In their Joint Declaration of 1999, the UN, OSCE and OAS Special Rapporteurs on Freedom of Expression declared that "[i]mplicit in freedom of expression is the public's right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people's participation in government would remain fragmented"; and in their Joint Declaration of 2004, they recognized "[t]he fundamental importance of access to information to democratic participation, to holding governments accountable and to controlling corruption, as well as to personal dignity and business efficiency."

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<sup>162</sup> I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Judgment of September 19, 2006, Series C No. 151. Para. 77. IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Claude Reyes et al. v. Chile*, cited in the Judgment of September 19, 2006, Series C No. 151. Para. 58.a) and b).

<sup>163</sup> I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Judgment of September 19, 2006, Series C No. 151. Paras. 86 and 87.

146. On the other hand, the right of access to information makes individual and collective self-determination possible, particularly democratic self-determination, because it tends to guarantee that collective decisions are adopted in a conscious and informed manner.

147. Finally, the right of access to information is a key instrument for the exercise of other human rights, particularly by the most vulnerable individuals.

### **3. Entitlement to the right of access to information**

148. The right of access to information belongs to everyone. In principle, every person has the right to request access to information held by the State. Article 13 of the Convention establishes expressly the rights to seek and receive information as components of freedom of expression.

149. The Inter-American Court has specified on this point that it is not necessary to prove a direct interest or a personal implication in order to obtain information in the State's possession, except in cases where there is a legitimate restriction permitted by the Convention, under the terms explained further below.<sup>164</sup>

150. In addition, any person who accesses information under the control of the State has, in turn, the right to disclose that information so that it circulates publicly and the public can know about it, access it and evaluate it. The right of access to information thus shares the individual and social dimensions of freedom of expression, and the State must guarantee both simultaneously.<sup>165</sup>

151. In this sense, the Inter-American Commission has explained that, by virtue of article 13 of the Convention, the right of access to information must be governed by the principle of maximum disclosure.<sup>166</sup> The scope of this principle was explained by the UN, OAS and OSCE Special Rapporteurs on Freedom of Expression in their Joint Declaration of 2004, which specifies that "[t]he right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation (...) based on the principle of maximum disclosure, establishing a presumption that all information is accessible subject only to a narrow system of exceptions." In the application of that principle, this same document states that, "[t]he access to information law should, to the extent of any inconsistency, prevail over other legislation." This principle was also set forth by the Inter-American Juridical Committee in Resolution CJI/RES.147 (LXXIII-O/08) on "Principles on the Right of Access to Information", in number 1, in the following terms: "In principle, all information is accessible. Access to information is a fundamental human right which establishes that everyone can access information from public bodies, subject only to a limited regime of exceptions in keeping with a democratic society and proportionate to the interest that justifies them. States should ensure full respect for the right to access to information through adopting appropriate legislation and putting in place the necessary implementation measures."

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<sup>164</sup> I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Judgment of September 19, 2006, Series C No. 151. Para. 77.

<sup>165</sup> I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Judgment of September 19, 2006, Series C No. 151. Para. 77.

<sup>166</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Claude Reyes et al. v. Chile*, cited in the Judgment of September 19, 2006, Series C No. 151. Para. 58.c).

#### **4. Parties bound by the duties inherent to the right of access to information**

152. The right of access to information gives rise to obligations, mainly for the State, for those who replace it in the fulfillment of its functions, or for those who administer public resources. Likewise, in accordance with the Statement of Principles on Freedom of Expression, individuals have the right to access to personal information or information about their assets contained in private databases and registries.

153. In terms of access to information held by the State, it should be noted that the State's duty to provide the information requested (or to respond clearly when the information falls under some exception) binds all of the bodies and authorities that make up the different branches of government, not just those of the Executive Branch. As such, reiterating the existing case-law, the Resolution of the Inter-American Juridical Committee on "Principles on the Right of Access to Information"<sup>167</sup> states, in Principle 2, that "[t]he right of access to information applies to all public bodies, including the executive, legislative and judicial branches at all levels of government, constitutional and statutory bodies, bodies which are owned or controlled by government, and organizations which operate with public funds or which perform public functions."

#### **5. Object of the right**

154. The exercise of the right of access to information pertains to different types of information that is, or should be, in the possession of the authorities or private citizens. According to the Inter-American Juridical Committee, in the aforementioned Resolution on "Principles on the Right of Access to Information", "[t]he right to access to information applies to all significant information, defined broadly to include everything which is held or recorded in any format or medium."

155. The types of information that this right pertains to include the following in particular: information that is in the custody, administration or possession of the State; information that the State produces, or information that it is required to produce; information in the possession of persons who manage public services and utilities or public resources; information that the State receives, or is required to collect in the course of conducting its duties; and information concerning one's own personal data (*habeas data*) or assets, in the possession of those who administer private registries or databases and are legally required to provide it.

#### **6. Obligations imposed upon the State by the right of access to information**

156. The right of access to information held by the State generates several obligations under the American Convention for the authorities of the various branches of government.

157. First, the State is under the obligation to respond substantially to requests for information within a reasonable period of time, determining whether there is a right to access and, if so, providing the information requested. Indeed, by protecting the right of individuals to access information held by the State, article 13 of the American Convention establishes a positive obligation for the State to provide such information, in such a manner that the person is able to obtain and know this information, or be informed through a well-founded response of the legitimate

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<sup>167</sup> Inter-American Juridical Committee. Resolution 147, of the 73<sup>rd</sup> Ordinary Period of Sessions: Principles on the Right of Access to Information. August 7, 2008. Para. 2.

reasons that prevent such access in accordance with the Convention.<sup>168</sup> On this point, the Inter-American Commission has also held that the law must guarantee broad and effective access to public information, and that any exceptions may not confer an excessive degree of discretion upon the public officials who decide whether or not to disclose the information<sup>169</sup>, that is to say, exceptions “must have been established by law to ensure that they are not at the discretion of public authorities”<sup>170</sup>.

158. In other words, States have the obligation to provide individuals with an administrative procedure for accessing information. Such procedure must be established by law. It must provide reasonable time periods within which the authorities shall decide, in a reasoned manner, whether there is a right to access to the information, whether the authority to which the request for access was made is authorized to provide said information, and if not, it must indicate the proper agency. This duty to establish an administrative procedure for access to information is the necessary consequence of the inclusion of the right to access to information as a human right protected by the Convention and covered by all of the guarantees provided therein. Likewise, as is further explained in detail, States must establish the right to judicial review of the administrative decision through a simple, effective, rapid, and unburdensome recourse that allows the contravention of the decisions of those public officials who deny the right of access to some specific information, or who simply fail to provide a response to the request.<sup>171</sup>

159. As stated by the UN, OAS and OSCE Special Rapporteurs on Freedom of Expression in their Joint Declaration of 2004, “[a]ccess to information is a citizens’ right. As a result, the procedures for accessing information should be simple, rapid and free or low-cost.” In the words of the Inter-American Juridical Committee, in its “Principles on the Right of Access to Information”, “[c]lear, fair, non-discriminatory and simple rules should be put in place regarding the processing of requests for information. These should include clear and reasonable timelines, provision for assistance to be given to those requesting information, free or low-cost access, and does not exceed the cost of copying and sending the information, and a requirement that where access is refused reasons, including specific grounds for the refusal, be provided in a timely fashion.”

160. This obligation includes the duty to refrain from interfering with the right of access to information of all kinds, which extends to the circulation of information that may or may not have the personal approval of those persons who represent State authority at a given time.

161. The second State obligation in this field, is the duty to provide the public with the maximum quantity of information proactively, at least in terms of (i) the structure of the State; and (ii) the information required for the exercise of other rights—for example, information concerning requirements and procedures in the areas of pensions, health, essential state services, and so on. In this respect, the UN, OAS and OSCE Special Rapporteurs on Freedom of Expression specified in their Joint Declaration of 2004 that “[p]ublic authorities should be required to publish pro-actively, even in the absence of a request, a range of information of public interest”; and that “[s]ystems should be put in place to increase, over time, the amount of information subject to such routine

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<sup>168</sup> I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Judgment of September 19, 2006, Series C No. 151. Para. 77. IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Claude Reyes et al. v. Chile*, cited in the Judgment of September 19, 2006, Series C No. 151. Para. 58. a) y b).

<sup>169</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Claude Reyes et al. v. Chile*, cited in the Judgment of September 19, 2006, Series C No. 151. Para. 58 d).

<sup>170</sup> I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Judgment of September 19, 2006, Series C No. 151. Para. 89.

<sup>171</sup> I/A Court H.R., *Case of Claude-Reyes et al.* Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 15, par. 137.

disclosure.” The scope of this obligation is also defined in the resolution of the Inter-American Juridical Committee on “Principles on the Right of Access to Information”, which establishes that “[p]ublic bodies should disseminate information about their functions and activities – including, but not limited to, their policies, opportunities for consultation, activities which affect members of the public, their budget, 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.” In the same sense mentioned above, this obligation includes the duty to refrain from interfering with the right of access to information of all kinds, which extends to the circulation of information that may or may not have the personal approval of those persons who represent State authority at a given time.

162. In the third place, the State has the obligation to produce or obtain the information it needs to fulfill its duties, pursuant to international, constitutional, or legal norms. In this respect, for example, the IACHR has already mentioned the obligation of the State to produce statistical information that is categorized by vulnerable groups. To this effect, in its report on Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights,<sup>172</sup> the IACHR noted that “[t]he obligation of the State to adopt positive means to protect the exercise of social rights has important effects, for example, in regards to the type of statistical information that the State must produce. The production of information that is properly categorized so to determine what sectors are disadvantaged or relegated in the exercise of their rights, from this perspective, is not only a way to guarantee the effectiveness of a public policy, but rather an indispensable obligation that allows the State to fulfill its duty to provide such sectors with special and prioritized attention. As an example, the desegregation of data by sex, race, or ethnicity is an indispensable tool for illustrating problems of inequality”<sup>173</sup>. In this same report, the IACHR reiterates that “the Committee on Economic, Social, and Cultural Rights has determined that it is an obligation of the State to produce information databases from which it would be possible to validate indicators [of progress] and, in general, the access to many of the guarantees covered by each social right. This obligation is, thus, fundamental for the enforceability of these rights”<sup>174</sup>. Finally, the IACHR<sup>175</sup> pointed out that in international legislation, clear and explicit obligations exist regarding the production of information related to the exercise of the rights of sectors that are excluded or historically discriminated against<sup>176</sup>.

163. The fourth State obligation in this matter, is that of bringing its domestic laws into conformity with international standards in terms of access to information, by (i) removing legal or administrative obstacles that impede access to information; (ii) promoting the right of access within all of the State’s entities and authorities, through the adoption and enforcement of rules and procedures and through the training of public officials on the custody, administration, filing and provision of information; and (iii) in general terms, adopting public policy that is favorable to the full

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<sup>172</sup> OEA/Ser.L/V/II.132, Doc. 14, July 19, 2008

<sup>173</sup> IACHR, *Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights*, OEA/Ser.L/V/II.132, Doc. 14, July 19, 2008, Par. 58

<sup>174</sup> IACHR, *Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights*, OEA/Ser.L/V/II.132, Doc. 14, July 19, 2008, para. 78.

<sup>175</sup> IACHR, *Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights*, OEA/Ser.L/V/II.132, Doc. 14, July 19, 2008, Par. 81.

<sup>176</sup> The *Inter-American Convention in the Prevention, Punishment, and Eradication of Violence Against Women* (Belém do Pará) establishes the State’s obligation “to ensure research and the gathering of statistics and other relevant information relating to the causes, consequences and frequency of violence against women, in order to assess the effectiveness of measures to prevent, punish and eradicate violence against women and to formulate and implement the necessary changes”, article 8. h). This provision deals with an obligation to produce clear information that is enforceable as a right.

exercise of this right. Indeed, as the Inter-American Court has explained, States must have an adequate legal framework for the protection of the right of access to information, and must guarantee the effectiveness of an adequate administrative procedure for the processing and adjudication of requests for information, with clear timelines for the issuance of decisions and the release of information under the control of public officials duly trained on the subject.<sup>177</sup>

164. Fifth, the State is bound by the obligation to disseminate among the public in general the existence and methods of exercising the right of access to information. In this respect, the Inter-American Juridical Committee affirmed in its Resolution on “Principles on the Right of Access to Information” that “[m]easures should be taken to promote, to implement and to enforce the right to access to information, including creating and maintaining public archives in a serious and professional manner, training public officials, implementing public awareness-raising programs, improving systems of information management, and reporting by public bodies on the measures they have taken to implement the right of access, including in relation to their processing of requests for information.”<sup>178</sup>

165. Finally, the State has the duty to adequately preserve the information to which individuals have the right of access, through an appropriate file management system. The UN, OAS and OSCE Special Rapporteurs on Freedom of Expression addressed this point in their Joint Declaration of 2004, in which they asserted that “[p]ublic authorities should be required to meet minimum record management standards”, and that “[s]ystems should be put in place to promote higher standards over time.”

## **7. Limitations to the right of access to information**

166. *Admissibility and conditions of the limitations.* As an element of freedom of expression protected by the American Convention, the right of access to information is not an absolute right. It may be subject to limitations that remove certain types of information from public access. Nevertheless, such limitations must be in strict accordance with the requirements derived from article 13-2 of the Convention—that is, the conditions of exceptional nature, legal establishment, legitimate objectives, and necessity and proportionality. In this precise sense, Principle 4 of the IACHR Statement of Principles on Freedom of Expression states that “[a]ccess to information 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.” Furthermore, according to the case law of the inter-American system, simple, effective, expeditious and non-onerous judicial and administrative recourse must be provided for purposes of contesting the decisions of authorities that deny access to information in specific cases.<sup>179</sup>

167. It is incumbent upon the state to demonstrate, when it restricts access to information under its control, that it has complied with the requirements set forth in the Convention. The Inter-American Juridical Committee addressed this point in its Resolution on the “Principles on the Right of Access to Information”, stating that “[t]he burden of proof in justifying any denial of access to information lies with the body from which the information was requested.” The Inter-

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<sup>177</sup> I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Judgment of September 19, 2006, Series C No. 151. Para. 163.

<sup>178</sup> Inter-American Juridical Committee. Resolution 147, of the 73<sup>rd</sup> Ordinary Period of Sessions: Principles on the Right of Access to Information. August 7, 2008. Principle. 10

<sup>179</sup> I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Judgment of September 19, 2006, Series C No. 151. Para. 137.

American Court has held that the establishment of restrictions to the right of access to information held by the State through the practice of the authorities and without meeting the requirements of the American Convention, (a) creates fertile ground for the discretionary and arbitrary action of the State in the classification of information as secret, reserved or confidential; (b) gives rise to legal uncertainty with respect to the exercise of such right; and (c) gives rise to legal uncertainty as to the scope of the State's powers to restrict the right.<sup>180</sup>

168. *Exceptional nature of the limitations.* Bearing in mind the principle of maximum disclosure, the law must guarantee the effective and broadest possible access to public information, and any exceptions must not become the general rule in practice.

169. *Legal establishment of the exceptions.* First, limitations to the right to seek, receive and impart information must be established by law expressly and in advance, to ensure that they are not set at the government's discretion. Their establishment must be sufficiently clear and specific so as to not grant an excessive degree of discretion to the public officials who decide whether or not to disclose the information.<sup>181</sup> In the opinion of the Inter-American Court, such laws must have been enacted "for reasons of general interest" in accordance with the common good as an element of public order in a democratic State. The definition of the Inter-American Court in Advisory Opinion 6/86 is applicable in this respect, according to which the term "laws" does not just refer to any legal norm, but rather to general normative acts that are enacted by the democratically elected legislative body provided for in the constitution, according to the procedures established in the constitution, and tied to the general welfare.<sup>182</sup> Also relevant here is Principle 6 of the Resolution of the Inter-American Juridical Committee regarding the "Principles on the Right of Access to Information", which states that "[e]xceptions to the right to access should be established by law, be clear and narrow."

170. *Legitimate purpose under the American Convention.* The laws that set limitations on the right of access to information under the State's control must correspond expressly to an objective that is permissible under article 13.2 of the American Convention, that is: to ensure respect for the rights or reputations of others, to protect national security, public order, or public health or morals.<sup>183</sup>

171. *Necessity and proportionality of the limitations.* The limitations imposed upon the right of access to information must be necessary in a democratic society to satisfy a compelling public interest. Among several options for accomplishing this objective, the one least restrictive to the right must be chosen, and the restriction must: (i) be conducive to the attainment of the objective; (ii) be proportionate to the interest that justifies it; and (iii) interfere to the least extent possible with the effective exercise of the right. With specific regard to the requirement of proportionality, the Inter-American Commission has asserted that any restriction to access to information held by the State, in order to be compatible with the Convention, must overcome a three-part proportionality test: (a) it must be related to a legitimate aims that justifies it; (b) it must be demonstrated that the disclosure of the information effectively threatens to cause substantial

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<sup>180</sup> I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Judgment of September 19, 2006, Series C No. 151. Para. 98.

<sup>181</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Claude Reyes et al. v. Chile*, cited in the Judgment of September 19, 2006, Series C No. 151. Para. 58.f).

<sup>182</sup> I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Judgment of September 19, 2006, Series C No. 151. Para. 89.

<sup>183</sup> I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Judgment of September 19, 2006, Series C No. 151. Para. 90.



harm to this legitimate aim; and (c) it must be demonstrated that the harm to the objective is greater than the public's interest in having the information.

172. *Duty to justify clearly the denial of requests for access to information held by the State.* When there is in fact a reason allowed by the Convention for the State to limit access to information in its possession, the person who requests the access must receive a reasoned response that provides the specific reasons for which access is denied.<sup>184</sup> According to the Inter-American Commission, if the State denies access to information, it must provide sufficient explanation of the legal standards and the reasons supporting such decision, demonstrating that the decision was not discretionary or arbitrary, so that individuals may determine whether the denial meets the requirements set forth in the Convention.<sup>185</sup> Similarly, the Inter-American Court has specified that the unfounded failure to provide access to public information, without a clear explanation of the reasons and rules on which the denial is based, also constitutes a violation of the right to due process protected by article 8.1 of the Convention, in that decisions adopted by the authorities that may affect human rights must be duly justified; otherwise, they would be arbitrary decisions.<sup>186</sup>

173. *Duty to provide legal recourse for contesting the denial of requests for access to information.* Whenever the administrative procedures for obtaining access to information are unsuccessful, individuals must have legal recourse that enables them to appeal the case to a court authorized to decide on their legal claim to the information they request in their specific case. Indeed, according to the Inter-American Court, the State must guarantee, in cases where access to State-held information is denied, that there be a simple, quick and effective means of appeal to (a) decide on the merits of the controversy to determine whether the right to access was violated; and (b) if such right was violated, order the appropriate entity to turn over the information. In these cases, the appeals must be simple and expedited; the speedy release of information is indispensable. If no such means of judicial appeal exist, the States must create it; otherwise, there is an additional violation of article 25 of the Convention (right to judicial protection). Moreover, the court decisions that rule on such appeals must be adequately justified. If a person resorts to judicial protection to access information held by the State and the pertinent court decision is not well-founded, articles 25 and 8 of the Convention are also violated, in addition to article 13.<sup>187</sup> The Inter-American Juridical Committee spoke to this issue in its "Principles on the Right of Access to Information", in which it provided that [i]ndividuals should have the right to appeal against any refusal or obstruction to provide access to information to an administrative jurisdiction. There should also be a right to bring an appeal to the courts against the decisions of this administrative body."

174. In their Joint Declaration of 2004, the UN, OAS and OSCE Special Rapporteurs summarized the requirements that limits to the right to access to information must meet, and addressed in greater depth some issues concerning "restricted" or "secret" information and the laws establishing those classifications, as well as the public officials legally required to maintain its confidentiality. The Special Rapporteurs established, in general terms: (i) that "[t]he right of access should be subject to a narrow, carefully tailored system of exceptions to protect overriding public and private interests, including privacy", that "[e]xceptions should apply only where there is a risk

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<sup>184</sup> I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Judgment of September 19, 2006, Series C No. 151. Para. 77.

<sup>185</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Claude Reyes et al. v. Chile*, cited in the Judgment of September 19, 2006, Series C No. 151. Para. 58 c) and d).

<sup>186</sup> I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Judgment of September 19, 2006, Series C No. 151. Para. 120.

<sup>187</sup> I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Judgment of September 19, 2006, Series C No. 151. Para. 137.

of substantial harm to the protected interest and where that harm is greater than the overall public interest in having access to the information”, and that “[t]he burden should be on the public authority seeking to deny access to show that the information falls within the scope of the system of exceptions”; (ii) that “those requesting information should have the possibility to appeal any refusals to disclose to an independent body with full powers to investigate and resolve such complaints”; and (iii) that “[n]ational authorities should take active steps to address the culture of secrecy that still prevails in many countries within the public sector”, which “should include provision for sanctions for those who willfully obstruct access to information”, and that “[s]teps should also be taken to promote broad public awareness of the access to information law.” In this same Joint Declaration of 2004, they examined in greater detail the issue of confidential or restricted information and laws regulating secrecy, declaring: (iv) that “[u]rgent steps should be taken to review and, as necessary, repeal or amend, legislation restricting access to information to bring it into line with international standards in this area, including as reflected in this Joint Declaration”; (v) that “[p]ublic authorities and their staff bear sole responsibility for protecting the confidentiality of legitimately secret information under their control”, that “[o]ther individuals, including journalists and civil society representatives, should never be subject to liability for publishing or further disseminating this information, regardless of whether or not it has been leaked to them, unless they committed fraud or another crime to obtain the information”, and that “[c]riminal law provisions that don’t restrict liability for the dissemination of State secrets to those who are officially entitled to handle those secrets should be repealed or amended”; (vi) that “[c]ertain information may legitimately be secret on grounds of national security or protection of other overriding interests”, but that “secrecy laws should define national security precisely and indicate clearly the criteria which should be used in determining whether or not information can be declared secret, so as to prevent abuse of the label ‘secret’ for purposes of preventing disclosure of information which is in the public interest”, for which “[s]ecrecy laws should set out clearly which officials are entitled to classify documents as secret and should also set overall limits on the length of time documents may remain secret”, likewise that “[s]uch laws should be subject to public debate”; and (vii) finally, that “[w]histleblowers’ are individuals releasing confidential or secret information although they are under an official or other obligation to maintain confidentiality or secrecy,” with regard to whom it was declared that “[w]histleblowers’ releasing information on violations of the law, on wrongdoing by public bodies, on a serious threat to health, safety or the environment, or on a breach of human rights or humanitarian law should be protected against legal, administrative or employment-related sanctions if they act in ‘good faith’.”

175. In this same fashion, in the Joint Declaration of 2006, the Special Rapporteurs affirm that “[j]ournalists should not be held liable for publishing classified or confidential information where they have not themselves committed a wrong in obtaining it. It is up to public authorities to protect the legitimately confidential information they hold.”

176. The Inter-American Court of Human Rights ruled specifically on the issue of “secret” or “confidential” information in another area concerning public access to information, namely, the provision of information on grave human rights violations to the judicial and administrative authorities in charge of investigating such cases and administering justice on behalf of the victims. In the *Case of Myrna Mack Chang v. Guatemala*,<sup>188</sup> it was proven before the Court that the Ministry of National Defense had refused to provide some documents relating to the operation and the structure of the Presidential General Staff after repeated requests from the Attorney General’s Office and federal judges in the investigations of an extrajudicial execution. The refusal invoked state secrecy pursuant to article 30 of the Guatemalan constitution. In the opinion of the Inter-American Court, “in cases of human rights violations, the State authorities cannot resort to

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<sup>188</sup> I/A Court H.R. *Case of Myrna Mack Chang v. Guatemala*. Judgment of November 25, 2003, Series C No. 101, pars. 180 to 182.

mechanisms such as official secret or confidentiality of the information, or reasons of public interest or national security, to refuse to supply the information required by the judicial or administrative authorities in charge of the ongoing investigation or proceeding". In this respect, the Court adopted the considerations of the Inter-American Commission on Human Rights, which had argued before the Court that "[i]n the framework of a criminal proceeding, especially when it involves the investigation and prosecution of illegal actions attributable to the security forces of the State, there 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. [...] Public authorities cannot shield themselves behind the protective cloak of official secret to avoid or obstruct the investigation of illegal acts ascribed to the members of its own bodies. In cases of human rights violations, when the judicial bodies are attempting to elucidate the facts and to try and to punish those responsible for said violations, resorting to official secret with respect to submission of the information required by the judiciary may be considered an attempt to privilege the "clandestinity of the Executive branch" and to perpetuate impunity. Likewise, when a punishable fact is being investigated, the decision to define the information as secret and to refuse to submit it can never depend exclusively on a State body whose members are deemed responsible for committing the illegal act. (...) Thus, what is incompatible with the Rule of Law and effective judicial protection "is not that there are secrets, but rather that these secrets are outside legal control, that is to say, that the authority has areas in which it is not responsible because they are not juridically regulated and are therefore outside any control system...". In this context, the Inter-American Court considered that the refusal of the Ministry of National Defense to provide the documents requested by the judges and the Attorney General's Office, alleging state secrecy, amounted to the obstruction of justice.

#### **G. journalists and the social communications media**

##### **1. Importance of journalism and the media for democracy; characterization of journalism under the American Convention**

177. Journalism, in the context of a democratic society, is one of the most important manifestations of freedom of expression and information. The work of journalists and the activities of the press are fundamental elements for the functioning of democracies, as journalists and the communications media keep society informed of events and their varied interpretations—a necessary condition for public debate to be robust, informed and vigorous.<sup>189</sup> It is also clear that an independent and critical press is a fundamental element for the effectiveness of other freedoms in a democratic system.<sup>190</sup>

178. Indeed, the case law of the inter-American system has been consistent in reaffirming that, as a cornerstone of democratic society, freedom of expression is an essential condition for society to be sufficiently informed;<sup>191</sup> that the greatest amount possible of information is required for the general welfare and that the full exercise of freedom of information is precisely what guarantees this maximum circulation;<sup>192</sup> and that the free circulation of ideas and news is

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<sup>189</sup> I/A Court H.R., *Case of Herrera Ulloa*. Judgment of July 2, 2004. Series C No. 107. Paras. 117 and 118.

<sup>190</sup> IACHR, Report No. 50/99. Case No. 11.739. *Héctor Félix Miranda*. México. April 13, 1999. Para. 42. IACHR, Report No. 130/99. Case No. 11.740. Para. 42. *Víctor Manuel Oropeza*. México. November 19, 1999. Para. 46.

<sup>191</sup> I/A Court H.R., *"The Last Temptation of Christ" Case (Olmedo Bustos et al.)*. Judgment of February 5, 2001. Series C No. 73. Para. 68.

<sup>192</sup> 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. Par 77.

inconceivable without a plurality of sources of information and respect for the communications media.<sup>193</sup>

179. The importance of the press and the status of journalists are explained in part by the indivisibility of the expression and dissemination of thoughts and information, and by the fact that a restriction to the possibilities for dissemination is, directly and to the same extent, a limit to freedom of expression in both its individual and collective aspects.<sup>194</sup> It follows that, in the opinion of the Inter-American Court, government restrictions to the circulation of information must be minimized considering the importance of freedom of expression in a democratic society and the responsibility that such importance places upon journalists and communications professionals.<sup>195</sup>

180. Its direct nexus to freedom of expression distinguishes journalism from other professions. In the opinion of the Inter-American Court, the practice of journalism means that a person is involved in activities defined or consisting of the freedom of expression that the American Convention protects specifically. Such activities are guaranteed specifically through a right that coincides in its definition with journalistic activity. Thus, the professional practice of journalism cannot be differentiated from the exercise of freedom of expression, for example, by the criterion of remuneration. They are “obviously interwoven” activities, and the professional journalist is simply a person who exercises his freedom of expression continuously, steadily and for pay<sup>196</sup>. Because of its close overlap with freedom of expression, journalism cannot be thought simply as the provision of a professional service to the public through the application of knowledge acquired at a university or by those persons who are registered with a particular professional association (as can occur with other professions); journalism is linked to the freedom of expression inherent in every human being. According to the Court, journalists are engaged professionally in the exercise of the freedom of expression defined expressly in the Convention, through social communications.

181. Therefore, in the case law of the inter-American system, the reasons of public order that justify the compulsory membership in associations that exists for other professions cannot be invoked validly in the case of journalism, because it leads to the permanent limitation, to the detriment of those who are not association members, of the right to make full use of the faculties that article 13 recognizes with respect to every person; “[h]ence, it would violate the basic principles of a democratic public order on which the Convention itself is based.”<sup>197</sup> Thus, Principle 6 of the Statement of Principles on Freedom of expression issued by the Inter-American Commission states that “[c]ompulsory membership or the requirements of a university degree for the practice of journalism constitute unlawful restrictions of freedom of expression.”

182. Similarly, the UN, OAS and OSCE Special Rapporteurs on Freedom of Expression recalled in their Joint Declaration of 2003 that “the right to freedom of expression guarantees

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<sup>193</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 78.

<sup>194</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 31.

<sup>195</sup> I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177. Para. 57.

<sup>196</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 74.

<sup>197</sup> 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.

everyone the freedom to seek, receive and impart information through any medium and that, as a result, attempts to limit access to the practice of journalism are illegitimate”, and they declared (i) that “[i]ndividual journalists should not be required to be licensed or to register”; (ii) that “[t]here should be no legal restrictions on who may practice journalism”; (iii) that “[a]ccreditation schemes for journalists are appropriate only where necessary to provide them with privileged access to certain places and/or events; such schemes should be overseen by an independent body and accreditation decisions should be taken pursuant to a fair and transparent process, based on clear and non discriminatory criteria published in advance”; and (iv) that “[a]ccreditation should never be subject to withdrawal based only on the content of an individual journalist’s work.”

183. As for the communications media, the case law of the inter-American system has stressed that they play an essential role as vehicles or instruments for the exercise of freedom of expression and information—in their individual and collective aspects—in a democratic society.<sup>198</sup> Freedom of expression is particularly important in its application to the press; it is the job of the media to transmit information and ideas on matters of public interest, and the public has the right to receive them.<sup>199</sup> As such, the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe [OSCE] Representative on Freedom of the Media and the OAS Special Rapporteur for Freedom of Expression affirmed in their Joint Declaration of 1999 that “[a]n independent and pluralistic media is essential to a free and open society and accountable government.”

## **2. Responsibility inherent in the practice of journalism**

184. In view of its social and political importance, the practice of journalism entails implicit duties and is subject to the responsibilities discussed above. It is important to bear in mind with reference to journalists that the requirements of article 13.2 of the Convention must be met—particularly the requirement concerning the necessity of limitations—and that the very nature of this professional practice is linked directly to the exercise of a right defined and protected by the American Convention.<sup>200</sup> On this same point, Principle 6 of the IACHR Declaration of Principles on Freedom of Expression stipulates that “[j]ournalistic activities must be guided by ethical conduct, which should in no case be imposed by the State.”

## **3. Rights of journalists and State duties to protect the safety and independence of journalists**

185. Throughout their case law, the Inter-American Commission and the Inter-American Court have recognized a series of rights to which journalists and the communications media are entitled, and which give rise to corresponding obligations for the authorities.

186. First, it has been recognized that freedom of expression grants the directorship of the media, as well as the journalists who work for those media, the right to investigate and disseminate events of public interest,<sup>201</sup> and that in a democratic society, the press has the right to inform freely on the activities of the State and to criticize the government, since the public has a

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<sup>198</sup> I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C No. 107. Para. 117. I/A Court H.R., *Case of Ivcher Bronstein v. Peru*, Judgment of February 6, 2001, Series C No. 74. Para. 149.

<sup>199</sup> I/A Court H.R., *Case of Ivcher Bronstein v. Peru*, Judgment of February 6, 2001, Series C No. 74. Para. 153.

<sup>200</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 80.

<sup>201</sup> I/A Court H.R., *Case of Ivcher Bronstein v. Peru*, Judgment of February 6, 2001, Series C No. 74. Para. 157.

corresponding right to be informed of what goes on in the community.<sup>202</sup> It has also been recognized that journalists have the right to impart information on matters of legitimate public interest that are available in the foreign press.<sup>203</sup> As such, it has been established that the restriction of the right of journalists and the communications media to circulate news, ideas and opinions also affects the public's right to receive information, limiting its freedom to exercise political options and to engage fully in a democratic society.<sup>204</sup> In addition, it has been held that the punishment of a journalist for aiding in the dissemination of statements made by another or available in the foreign press is a serious threat to the contribution of the press to the discussion of matters of public interest.<sup>205</sup>

187. The UN, OAS and OSCE Special Rapporteurs addressed this issue in their Joint Declaration of 2003, in which they stated that they were “[a]ware of the important watchdog role of the media and of the importance to democracy and society as a whole of vibrant, active investigative journalism,” and affirmed consequently (i) that “[m]edia workers who investigate corruption or wrongdoing should not be targeted for legal or other harassment in retaliation for their work”, and (ii) that “[m]edia owners should be encouraged to provide appropriate support to journalists engaged in investigative journalism.”

188. The case law of the inter-American system has also been emphatic on the point that those who practice journalism have the right to the conditions of freedom and independence required to perform fully their critical function of keeping society informed, and consequently, to be able to be responsible.<sup>206</sup> Ensuring the protection of the freedom and independence of journalists is one of the conditions that must be met in order for the communications media to be, in practice, true instruments of freedom of expression and not vehicles for its restriction.<sup>207</sup> According to the Inter-American Court, “the free circulation of ideas and news is possible only through a plurality of sources of information and respect for the communications media. But, viewed in this light, it is not enough to guarantee the right to establish and manage organs of mass media; it is also necessary that journalists and, in general, all those who dedicate themselves professionally to the mass media are able to work with sufficient protection for the freedom and independence that the occupation requires. It is a matter, then, of an argument based on a legitimate interest of journalists and the public at large, especially because of the possible and known manipulations of information relating to events by some governmental and private communications media.”<sup>208</sup> It follows that the freedom and independence of journalists is an asset that must be protected and guaranteed.<sup>209</sup> The

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<sup>202</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ivcher Bronstein v. Peru*, cited in the Judgment of February 6, 2001, Series C No. 74. Para. 143.g).

<sup>203</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*, cited in the Judgment of July 2, 2004, Series C No. 107. Para. 101.5).

<sup>204</sup> I/A Court H.R., *Case of Ivcher Bronstein v. Peru*, Judgment of February 6, 2001, Series C No. 74. Para. 163.

<sup>205</sup> I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004, Series C No. 107. Para. 134, citing *Eur. Court H.R., Case of Thoma v Luxemburgo*, Judgement of 29 March, 2001, Para. 62.

<sup>206</sup> I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004, Series C No. 107. Para. 119. I/A Court H.R., *Case of Ivcher Bronstein v. Peru*, Judgment of February 6, 2001, Series C No. 74. Para. 150.

<sup>207</sup> 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.

<sup>208</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 78.

<sup>209</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5. Para. 79.

communications media themselves are also entitled to the right to independence and to be free from pressure of any kind. In this regard, Principle 13 of the IACHR Declaration of Principles on Freedom of Expression affirms that “[t]he means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

189. Journalists also have an especially important right to be protected by the State in circumstances that may threaten their safety, their physical integrity or their lives. The Inter-American Commission has explained that the lack of protection for journalists implicates the State in the violation of article 13 of the American Convention, since the authorities have the duty to guarantee the protection of communicators so they can exercise fully their right to freedom of expression, and obviously to protect their fundamental right to life, personal safety and physical integrity and that of their families, which is equally guaranteed by the American Convention.

190. The situation of attacks against journalists and media workers is so serious that in their Joint Declaration de 2000, the UN, OSCE and OAS Special Rapporteurs included a segment entitled “Censorship by killing”, in which they affirmed that “[a]ttacks such as the murder, kidnapping, harassment of and/or threats to journalists and others exercising their right to freedom of expression, as well as the material destruction of communications facilities, pose a very significant threat to independent and investigative journalism, to freedom of expression and to the free flow of information to the public.” They also addressed this topic in the Joint Declaration of 2006, in which they again recalled that “attacks such as the murder, kidnapping, harassment of and/or threats to journalists and others exercising their right to freedom of expression, as well as the material destruction of communications facilities, pose a very significant threat to independent and investigative journalism, to freedom of expression and to the free flow of information to the public,” and they stated that acts involving the “[i]ntimidation of journalists, particularly murder and physical attacks, limit the freedom of expression not only of journalists but of all citizens, because they produce a chilling effect on the free flow of information, due to the fear they create of reporting on abuses of power, illegal activities and other wrongs against society. States have an obligation to take effective measures to prevent such illegal attempts to limit the right to freedom of expression.”

191. The Commission has also considered that in cases of attacks against journalists or media workers the State incurs international responsibility when it fails to investigate and administer justice, because freedom of expression must be protected in practice by effective judicial guarantees that enable the investigation, punishment and reparation of abuses and crimes against journalists.

192. Principle 9 of the IACHR Declaration of Principles on Freedom of Expression establishes in this sense that “the murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.” According to the Commission, in cases of crimes against journalists “the lack of an exhaustive investigation, that would lead to the punishment of all those responsible for the murder of the journalist, also constitutes a violation of the right to freedom of expression, due to the “chilling effect” of such impunity on every citizen.<sup>210</sup> (...) the resignation by a

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<sup>210</sup> IACHR. Report No. 130/99. Case No. 11.740. *Victor Manuel Oropeza*. México. November 19, 1999. Para. 47.



State of its duty to fully investigate the killing of a journalist is especially serious because of its impact on society.”<sup>211</sup>

193. Similarly, it has been recognized that attacks against journalists—because their purpose is to silence them—are also violations of society’s right to access information freely.<sup>212</sup> It follows that the international responsibility of the State also arises in these cases as a result of the intimidating and inhibiting effect of such lack of protection against aggressions. The murder of a journalist and the State’s failure to investigate and criminally punish the perpetrators has an impact not only on other journalists but also on the rest of society: “this sort of crime has a “chilling effect” on other journalists, but also on every citizen, as it generates a fear of denouncing abuses, harassment and all kinds of illegal actions. The Commission considers that such an effect can only be avoided by swift action by the respective State to punish all those that may be responsible, as is its duty under international law and domestic law.”<sup>213</sup> Therefore, the (...) State must send a strong message to society that there shall be no tolerance for those who engage in human rights violations of this nature. (...) the homicide of the journalist constitutes an aggression against all citizens inclined to denounce arbitrary acts and abuses to society, aggravated by the impunity of one or more intellectual perpetrators.”<sup>214</sup>

194. Likewise, in their Joint Declaration of 1999, the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur for Freedom of Expression affirmed that “[s]tates must ensure an effective, serious and impartial judicial process, based on the rule of law, in order to combat impunity of perpetrators of attacks against freedom of expression.” They also asserted in their Joint Declaration of 2000 that “[s]tates are under an obligation to take adequate measures to end the climate of impunity and such measures should include devoting sufficient resources and attention to preventing attacks on journalists and others exercising their right to freedom of expression, investigating such attacks when they do occur, bringing those responsible to justice and compensating victims.” They addressed this issue again in their Joint Declaration of 2006, declaring that “[s]tates should, in particular, vigorously condemn such attempts when they do occur, investigate them promptly and effectively in order to duly sanction those responsible, and provide compensation to the victims where appropriate. They should also inform the public on a regular basis about these proceedings.”

195. Finally, it has been recognized that journalists and media workers are entitled to the right to the confidentiality of sources. Principle 8 of the IACHR Declaration of Principles on Freedom of expression provides that “[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.”

#### **4. Journalists who cover armed conflict or emergency situations**

196. The status of journalists who report on armed conflict or emergency situations has warranted special attention. The Inter-American Commission has recognized that it is part of the field of journalistic activity covered by the right to freedom of expression to visit communities affected by armed conflict or disturbances to public order, document their living conditions, and take down statements and reports of human rights violations committed by the authorities. It has

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<sup>211</sup> IACHR. Report No. 50/99. Case No. 11.739. *Héctor Félix Miranda*. México. April 13, 1999. Para. 52. IACHR. Report No. 130/99. Case No. 11.740. *Víctor Manuel Oropeza*. México. November 19, 1999. Para. 58.

<sup>212</sup> IACHR, Report No. 50/99. Case No. 11.739. *Héctor Félix Miranda*. México. April 13, 1999. Para. 42. IACHR, Report No. 130/99. Case No. 11.740. *Víctor Manuel Oropeza*. México. November 19, 1999. Para. 46.

<sup>213</sup> IACHR, Report No. 130/99. Case No. 11.740. *Víctor Manuel Oropeza*. México. November 19, 1999. Para. 58.

<sup>214</sup> IACHR, Report No. 130/99. Case No. 11.740. *Víctor Manuel Oropeza*. México. November 19, 1999. Para. 61.

held that any attack or retaliation by the authorities as a consequence of the performance of these activities is a violation of the right to freedom of thought and expression.<sup>215</sup>

197. Along these lines, the Commission has specified that journalists covering armed conflicts, in spite of the fact that they expose themselves to the risks, cannot thereby lose their civilian status. They continue to be protected by the applicable guarantees under International Humanitarian Law and International Human Rights Law, particularly the guarantees derived from the principle of distinction.<sup>216</sup>

198. Similarly, it has been recognized that attacks against journalists covering armed conflicts violate both the individual and collective aspects of freedom of expression. In terms of the individual, the curtailment of the exercise of the right to seek, cover and impart information results in the harassment and intimidation of other journalists, and this affects the information transmitted. As for the collective aspect, society is deprived of the right to know about the information obtained by the journalists.<sup>217</sup> For this reason the Commission has recognized that, given the importance of the work of journalists in informing society by covering situations of armed conflict, the press that operates under such conditions must be entitled to special protections and benefits from the State, even if the conflict involves unlawful armed groups: "...[M]aking the work of the press possible in periods of armed conflict, even with irregular armed combatants, requires the greatest protection. It is journalists who are risking their lives to bring the public an independent and professional view of what is really happening in areas of conflict."<sup>218</sup> Consequently, when there is an armed conflict, and when it is known that certain individuals are journalists, the State must grant them the greatest possible protection and the highest degree of guarantees in order for them to perform their function of seeking and transmitting information on the subject.<sup>219</sup>

## **5. Conditions inherent in the functioning of the media**

199. Freedom of expression demands certain conditions with respect to the functioning of the communications media, so that "such media should, in practice, be true instruments of that freedom and not vehicles for its restriction,"<sup>220</sup> as it is the media that serve to put the exercise of this right into practice. "This means that the conditions of its use must conform to the requirements of this freedom."<sup>221</sup> These conditions include, among others: (a) the plurality of the media;<sup>222</sup> (b) the application of anti-monopoly legislation in this field, so as to prevent media concentration, in whatever form.<sup>223</sup> Principle 12 of the IACHR Declaration of Principles on Freedom of Expression establishes in this respect that "[m]onopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by

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<sup>215</sup> IACHR, Report No. 29/96. Case No. 11.303. *Carlos Ranferí Gómez López*. Guatemala. October 16, 1996. Para. 92.

<sup>216</sup> IACHR, Report No. 38/97. Case No. 10.548. *Hugo Bustíos Saavedra*. Peru. October 16, 1997. Para. 61.

<sup>217</sup> IACHR, Report No. 38/97. Case No. 10.548. *Hugo Bustíos Saavedra*. Peru. October 16, 1997. Paras 76 and 77.

<sup>218</sup> IACHR, Report No. 38/97. Case No. 10.548. *Hugo Bustíos Saavedra*. Peru. October 16, 1997. Para 73.

<sup>219</sup> IACHR, Report No. 38/97. Case No. 10.548. *Hugo Bustíos Saavedra*. Peru. October 16, 1997. Para 75.

<sup>220</sup> 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.

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

limiting the plurality and diversity which ensure the full exercise of people's right to information"; and (c) the guaranteed protection of the freedom and independence of the journalists who work for the media<sup>224</sup>. It has also been recognized that freedom of expression "requires, in principle, that the communication media are potentially open to all without discrimination or, more precisely, that there be no individuals or groups that are excluded from access to such media."<sup>225</sup>

200. Pluralism and diversity in the communications media are of particular importance in the full and universal exercise of the right to freedom of expression. These rules point to the State's obligation to guarantee the maximum pluralism and diversity in the shaping, function and content of public debate. According to the Inter-American Court, the maximum possibility of information is a requirement of general welfare, and it is the full exercise of freedom of information that ensures such maximum circulation.<sup>226</sup> Therefore, the State must foster informative pluralism to the greatest degree possible in order to achieve the balanced participation of diverse information in public debate, as well as to protect the human rights of those who confront the power of the media. According to the Court, "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. Consequently, equity must regulate the flow of information. Under these terms is to be explained the protection of the human rights of those who face the power of the media and the attempt to ensure the structural conditions which allow the equitable expression of ideas."<sup>227</sup>

#### **H. The exercise of freedom of expression by public officials**

201. Public officials, like all people, are entitled to the right to freedom of expression in its diverse manifestations. Nevertheless, the exercise of this fundamental freedom acquires certain connotations and specific characteristics that have been recognized under the case law of the inter-American system, particularly in the areas of (a) the special duties they acquire by virtue of their status as state officials; (b) the duty of confidentiality that may apply to certain types of information held by the State; (c) the right and duty of public officials to denounce human rights violations; and (d) the particular situation of members of the Armed Forces.

##### **1. General duties on the exercise of freedom of expression by public officials**

202. *Duty to make statements in certain cases, in the performance of their legal and constitutional duties, regarding matters of public interest.* As noted by the Inter-American Court, the important democratic function of freedom of expression demands that, in specific cases, public officials make statements on matters of public interest in the performance of their legal duties. In other words, under certain circumstances, the exercise of their freedom of expression is not just a right but a duty. According to the Court, "[t]he Court has repeatedly insisted on the importance of freedom of expression in any democratic society, particularly in connection with public-interest matters. (...) Accordingly, making a statement on public-interest matters is not only legitimate but, at times, it is also a duty of the state authorities."<sup>228</sup>

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<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> *Id. Para. 77.*

<sup>227</sup> I/A Court H.R., *Case of Eduardo Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177. Para. 57.

<sup>228</sup> I/A Court H.R., *Case of Apitz-Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Judgment of August 5, 2008. Series C No. 182. Para. 131.

203. *Special duty to reasonably verify the facts on which their statements are based.* When public officials exercise their freedom of expression, whether in compliance with a legal duty or as a simple exercise of their fundamental right to express themselves, “in making such statements the authorities are subject to certain restrictions such as having to verify in a reasonable manner, although not necessarily exhaustively, the truth of the facts on which their opinions are based, and this verification should be performed subject to a higher standard than that used by private parties, given the high level of credibility the authorities enjoy and with a view to keeping citizens from receiving a distorted version of the facts.”<sup>229</sup>

204. *Duty to ensure that their statements do not amount to human rights violations.* Given the State’s obligations to guarantee, respect and promote human rights, it is the duty of public officials to ensure that when they exercise their freedom of expression they are not causing fundamental rights to be ignored. To quote the Inter-American Court, “they should bear in mind that, as public officials, they are in a position of guarantors of the fundamental rights of the individual and, therefore, their statements cannot be such that they disregard said rights.”<sup>230</sup>

205. *Duty to ensure that their statements do not interfere in the independence and autonomy of judicial authorities.* Finally, public officials are bound by the duty to guarantee that, upon exercising their freedom of expression, they are not interfering with the appropriate functioning of other authorities to the detriment of the rights of individuals, particularly the autonomy and independence of the courts. In the Inter-American Court’s view, “public officials, particularly the top Government authorities, need to be especially careful so that their public statements do not amount to a form of interference with or pressure impairing judicial independence and do not induce or invite other authorities to engage in activities that may abridge the independence or affect the judge’s freedom of action,” given that this would affect the corresponding rights to such independence to which the citizens are entitled.<sup>231</sup>

## **2. The duty of confidentiality**

206. The Inter-American Court has accepted that, under certain circumstances and given the conditions that permit keeping certain State-held information from public knowledge, the employees or officials of an institution have a duty to maintain the confidentiality of certain information to which they have access in the performance of their duties, provided that the content of such information is covered by said duty. In any case, in order for a given information to be covered by a legal reserve, it is necessary to comply with the requirements examined in the foregoing section of this document, in relation to the right of access to information. The Court has also accepted in general terms that, in certain cases, failure to comply with the duty of confidentiality can give rise to administrative, civil or disciplinary liabilities for such officials.<sup>232</sup>

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<sup>229</sup> I/A Court H.R., *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Judgment of August 5, 2008. Series C No. 182. Para. 131.

<sup>230</sup> I/A Court H.R., *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Judgment of August 5, 2008. Series C No. 182. Para. 131.

<sup>231</sup> I/A Court H.R., *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Judgment of August 5, 2008. Series C No. 182. Para. 131.

<sup>232</sup> I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135. Para. 77.

207. Nevertheless, it has also specified that such duty of confidentiality does not cover information concerning the institution or its functions, when such information has already been made public.<sup>233</sup>

208. In their Joint Declaration of 2002, the UN, OAS and OSCE Special Rapporteurs affirmed that “[j]udges’ right to freedom of expression, and to comment on matters of public concern, should be subject only to such narrow and limited restrictions as are necessary to protect their independence and impartiality.”

### **3. The right and duty of public officials to denounce human rights violations**

209. Freedom of expression covers the right of public officials, including members of the Armed Forces and the Police, to report human rights violations of which they become aware—which is also the fulfillment of a legal and constitutional duty by which they are bound. The exercise of this manifestation of freedom of expression, which is vital to the preservation of the rule of law in the hemisphere’s democracies, cannot be obstructed by the authorities or be grounds for subsequent acts of retaliation against the public officials who make such reports. According to the Inter-American Commission, “the exercise of the right of freedom of thought and expression within a democratic society includes the right to not be prosecuted or harassed for one’s opinions or for one’s allegations about or criticisms of public officials. (...) This protection is broader, however, when the statements made by a person deal with alleged violations of human rights. In such a case, not only is a person’s individual right to transmit or disseminate information being violated, the right of the entire community to receive information is also being undermined.”<sup>234</sup>

### **4. The particular situation of members of the Armed Forces**

210. Members of the Armed Forces are also entitled to freedom of expression and are legitimately able to exercise this right, and the limits imposed upon them must be respectful of the conditions established in the American Convention. For example, in the *Case of Palamara Iribarne v. Chile*, the Inter-American Commission and the Inter-American Court considered it to be a legitimate exercise of freedom of expression when a retired Chilean Navy officer who was working as a Navy contractor wrote and tried to publish a book entitled *Ethics and Intelligence Services*, which dealt with matters related generally to military intelligence and the need for it to adhere to certain ethical parameters. The Inter-American Court decided that the prevention of this book’s publication (through various measures including the physical seizure of copies of the book and the printers’ material, the erasure of its electronic versions, and the prosecution of Mr. Palamara for having tried to publish the book and for having made public statements about the way in which the military criminal justice system had handled his case) amounted to a violation of the freedom of expression protected by article 13 of the Convention.

211. In light of the particular structure of the Armed Forces and its inherent vertical discipline, the case law has accepted in general terms that “reasonable limits can be placed on the freedom of expression of members of the Armed Services on active duty in a democratic society.”<sup>235</sup> Nevertheless, these limitations can be neither excessive nor unnecessary, and they must in every case meet the requirements set forth in article 13-2 of the Convention. Thus, for

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<sup>233</sup> I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135. Para. 77.

<sup>234</sup> IACHR, Report No. 20/99. Case No. 11.317. *Rodolfo Robles Espinoza and Sons*. Peru. February 23, 1999. Para. 148.

<sup>235</sup> IACHR, Report No. 20/99. Case No. 11.317. *Rodolfo Robles Espinoza and Sons*. Peru. February 23, 1999. Para. 148.

example, the Inter-American Commission has held with regard to members of the military that the improper use of criminally defined offenses such as the crime of “insulting the armed forces”, which may be legitimate under certain circumstances, results in the silencing of complaints of human rights violations, which itself violates freedom of expression in its individual and collective aspects within a democratic society: “[t]he Commission believes that undermining the Armed Forces or insulting a superior are appropriate terms when applied to the crimes for which they were created, in order to maintain a level of discipline suitable to the vertical command structure needed in a military environment, but that they are totally inappropriate when used to cover up allegations of crimes within the Armed Forces.”<sup>236</sup> (...) Moreover, the ambiguity and unclear limits of criminal definitions of this kind can undermine the juridical security of human rights (...). Among the members of the Armed Forces, the threat of such consequences fuels a permanent fear of facing an investigation or prosecution for revealing criminal acts committed by superiors.<sup>237</sup> (...) This situation is incompatible with the principles of a democratic society, where the information available about the activities of public officials should be as transparent as possible and accessible to all social groups. Allowing criminal definitions that can be used to curtail freedom of information and the free dissemination of ideas and opinions, particularly in cases involving human rights violations and, consequently, punishable acts, is unquestionably a serious violation of freedom of thought and expression and, above all, of society’s right to receive information and to control the exercise of public power.”<sup>238</sup>

#### **I. Freedom of expression in the electoral context**

212. The exercise of freedom of expression in both of its aspects, individual and collective, is especially important during political campaigns and elections. It is a fundamental element in the process of electing the officials who will govern a State because, as the Inter-American Court has explained: (i) it is an essential tool for shaping voter opinion and strengthening the political contest among the various participants and it provides instruments for the analysis of each candidate’s platform, thus enabling a greater degree of transparency and oversight of future authorities and their performance; and (ii) it fosters the shaping of the collective will manifested through voting.<sup>239</sup> In electoral contexts, freedom of expression is tied directly to political rights and their exercise, and both types of rights are mutually strengthened.<sup>240</sup> It is thus necessary to healthy democratic debate for there to be the greatest possible circulation of ideas, opinions and information regarding the candidates, their parties and their platforms during the period preceding elections, mainly through the communications media, the candidates and other individuals who wish to express themselves. It is necessary for everyone to be able to question and investigate the ability and suitability of candidates, and disagree with and challenge their platforms, ideas and opinions, so that voters can develop their voting criteria.<sup>241</sup> As the Inter-American Commission has emphasized, free speech and political debate are essential for the consolidation of democratic life in societies,

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<sup>236</sup> IACHR, Report No. 20/99. Case No. 11.317. *Rodolfo Robles Espinoza and Sons*. Peru. February 23, 1999. Para. 151.

<sup>237</sup> IACHR, Report No. 20/99. Case No. 11.317. *Rodolfo Robles Espinoza and Sons*. Peru. February 23, 1999. Para. 152.

<sup>238</sup> IACHR, Report No. 20/99. Case No. 11.317. *Rodolfo Robles Espinoza and Sons*. Peru. February 23, 1999. Para. 153.

<sup>239</sup> I/A Court H.R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004. Series C No. 111. Paras. 88 and 90.

<sup>240</sup> I/A Court H.R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004. Series C No. 111. Para. 90.

<sup>241</sup> I/A Court H.R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004. Series C No. 111. Para. 90.

and therefore represent a compelling social interest.<sup>242</sup> In this same context, the Court has highlighted that freedom of expression is also of special importance to political parties and their active members in carrying out their duties to represent voters and their interests.<sup>243</sup>

213. The Inter-American Court has also underscored the importance of the role of the communications media during elections. In general terms, it has insisted that the freedom of political controversy is an essential concept in democratic societies; it has categorized freedom of the press as one of the best means for the public to know about and judge the attitudes and ideas of political leaders; and it has held that in the context of an election, newspapers play an essential role as vehicles for the exercise of the social aspect of freedom of expression, as they gather and transmit the candidates' platforms to the voters, which helps voters to have sufficient information and different criteria to make a decision.

214. The special protection granted under the American Convention to speech concerning public officials and candidates to public office acquires a marked connotation during the course of electoral campaigns. As such, the Court has indicated that the limits to the criticism of politicians are broader than those concerning private individuals, since politicians have exposed themselves to the rigorous scrutiny of their words and actions by public opinion and journalists, and therefore must demonstrate a higher degree of tolerance. It has further held that the protection of politicians' right to their reputation, even when they are not acting as private citizens, is a legitimate aim, but that it must be considered in relation to the interest of open debate on public affairs.<sup>244</sup> Consequently, in the context of elections and political parties, limitations to freedom of expression must be subjected to particularly strict scrutiny.<sup>245</sup> According to the Inter-American Commission, in view of the compelling social interest that surrounds political debate in democratic societies—because it is a key mechanism for society to exercise checks and balances over those persons responsible for matters of public interest—the permissible reasons for the State to curtail freedom of expression in this sphere are much more strict and limited.<sup>246</sup>

215. The decision of the Inter-American Court in the *Case of Canese v. Paraguay*, handed down on August 31, 2004, is instructive in this respect. In this case, which was discussed in a previous chapter, the Court found that the criminal prosecution of a presidential candidate for the harsh statements he made about his opponent during the campaign was unnecessary and excessive. This was because it concerned speech that was subject to a higher level of protection, given the public's interest in knowing about the conduct of public officials or those who aspire to public office, and the essential role of freedom of expression in the consolidation of democracy.

## **J. Pluralism, diversity and freedom of expression**

216. States have the obligation to guarantee, protect, and promote the right to freedom of information, pursuant to conditions of equality and non-discrimination, and the right of society to

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<sup>242</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in the Judgment of August 31, 2004, Series C No. 111. Para. 72. B)

<sup>243</sup> I/A Court H.R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004. Series C No. 111. Para. 88-90.

<sup>244</sup> I/A Court H.R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004. Series C No. 111. Pars. 88-90.

<sup>245</sup> I/A Court H.R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004. Series C No. 111. Para. 103.

<sup>246</sup> IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in the Judgment of August 31, 2004, Series C No. 111. Para. 72.B).



access all types of information and ideas. Within the framework of this obligation, States must prevent the monopoly of ownership and the control over media outlets, and must promote different groups' access to radio and television frequencies and licenses, whichever the groups' technological means might be.

217. Accordingly, principle 12 of the Declaration of Principles states that:

"Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people's right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals".

218. The Inter-American Court has indicated that the monopoly of media outlets is prohibited, whether by ownership or administration, whichever form it may take. In this respect, it indicated in Advisory Opinion OC-5/8 that:

219. If freedom of expression requires, in principle, that the communication media are potentially open to all without discrimination or, more precisely, that there be no individuals or groups that are excluded from access to such media, it must be recognized also that such media should, in practice, be true instruments of that freedom and not vehicles for its restriction. It is the mass media that make the exercise of freedom of expression a reality. This means that the conditions of its use must conform to the requirements of this freedom, with the result that there must be, *inter alia*, a plurality of means of communication, the barring of all monopolies thereof, in whatever form, and guarantees for the protection of the freedom and independence of journalists.<sup>247</sup>

220. The Inter-American Court also mentioned that:

"[...] It is equally true that the right to impart information and ideas cannot be invoked to justify the establishment of private or public monopolies of the communications media designed to mold public opinion by giving expression to only one point of view".<sup>248</sup>

221. Furthermore, in the same Advisory Opinion, the Court added that:

"[...] given the broad scope of the language of the Convention, freedom of expression can also be affected without the direct intervention of the State. This might be the case, for example, when due to the existence of monopolies or oligopolies in the ownership of communications media, there are established in practice "means tending to impede the communication and circulation of ideas and opinions".<sup>249</sup>

222. Based on the cited jurisprudence from the Inter-American Court and on reports from the Special Rapporteurship, the IAHRRC reiterated the following:

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<sup>247</sup> 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. Par. 34.

<sup>248</sup> 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. Par. 33.

<sup>249</sup> 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. Par. 56.

223. In its Annual Report 2000, the Rapporteurship stated that one of the fundamental requirements for the right to freedom of expression is the need for a wide diversity of information. In modern societies, the mass media, such as television, radio and the press, have an unquestionable power in the instruction of the people in aspects such as culture, politics, religion, etc. If these media are controlled by a reduced number of individuals, or by only one individual, this situation would create a society in which a reduced number of individuals, or just one, would exert control over the information and, directly or indirectly, on the opinion received by the rest of the people. This lack of plurality in sources of information is a serious obstacle for the functioning of democracy. Democracy requires the confrontation of ideas, debate and discussion. When this debate does not exist, or is weakened by the lack of sources of information, the main pillar for the functioning of democracy is harmed.<sup>250</sup>

224. The cited Inter-American jurisprudence makes clear the need for requiring States to comply with the obligation to prevent monopolies or oligopolies, *de jure* or *de facto*, in the ownership and control of media outlets.<sup>251</sup>

225. In regards to community radio, the Special Rapporteurship, in the Chapter on “freedom of expression and poverty” of its 2002 Annual Report, pointed out that:

“[t]he growing need for expression felt by majorities and minorities that lack media access, and their claims on the right to communication, to the free expression of ideas, and to the dissemination of information makes it necessary to seek access to goods and services that will ensure basic conditions of dignity, security, subsistence, and development”.<sup>252</sup>

226. Likewise, the IAHRC’s Report on Justice and Social Inclusion indicated that:

“The Commission and its Office of the Special Rapporteur understand that community radios are positive because they foment the culture and history of the communities, as long as they do so within the legal framework. The Commission recalls that the awarding or renewal of radio licenses should be subject to a clear, fair, and objective procedure that takes into consideration the importance of the media for all sectors of Guatemalan society to participate in the democratic process in an informed manner. Community radios, in particular, are of great importance for the promotion of national culture, the development and the education of the different communities that compose Guatemalan society. Therefore, the auctions that contemplate only economic criteria or that award concessions without offering equal opportunity for all sectors, are incompatible with democracy and with the right to freedom of expression and information guaranteed in the American Convention on Human Rights and in the Declaration of Principles on Freedom of Expression”<sup>253</sup>.

227. In the 2007 Annual Report, the Special Rapporteurship stated that the norm on community broadcasting must recognize the special characteristics of this medium, and must contain, at a minimum, the following elements: (a) the existence of simple procedures for obtaining

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<sup>250</sup> IACHR. Justice and Social Inclusion: The Challenges of Democracy in Guatemala. *Chapter VII: The Situation of Freedom of Expression in Guatemala*. OAS/Ser.L/V/II.118, doc. 5 rev. 1, December 29, 2003, Para. 419. (Unofficial translation from original text in Spanish).

<sup>251</sup> IACHR, 2004 Annual Report. Volume III: Annual Report of the Special Rapporteur on Freedom of Expression. Chapter V: *Indirect Violations Of Freedom Of Expression: The Impact Of The Concentration Of Media Ownership*.

<sup>252</sup> IACHR. 2002 Annual Report. Volume III: Annual Report of the Special Rapporteur on Freedom of Expression. Chapter V: *Freedom of Expression and Poverty*. Para. 41.

<sup>253</sup> IACHR. Justice and Social Inclusion: The Challenges of Democracy in Guatemala. *Chapter VII: The Situation of Freedom of Expression in Guatemala*. OAS/Ser.L/V/II.118, doc. 5 rev. 1, December 29, 2003, Para. 414. (Unofficial translation from original text in Spanish).

licenses; (b) no demand of severe technological requirements that would prevent them, in practice, from even being able to file a request for space with the state; and (c) the possibility of using advertising to finance their operations. All of these elements are included in the Joint Declaration on Diversity in Broadcasting, signed on December 2007 by the rapporteurs on freedom of expression of the OAS, United Nations, Africa, and Europe. The Special Rapporteurship also added that: “[a]long the same lines, there is a need for legislation that appropriately defines the concept of community radio and that includes its social purpose, its nature as comprised of non-profit entities, and its operational and financial independence.”<sup>254</sup>

228. Likewise, in this same report, the Special Rapporteurship recommended that States “[l]egislate in the area of community broadcasting to assign part of the spectrum to community radio stations, and to ensure that democratic criteria be taken into account in assigning these frequencies that guarantee equal opportunity for all individuals in accessing them[.]”<sup>255</sup>

229. These obligations are founded upon the general principles pursuant to which States must guarantee the recognition and enjoyment of human rights in conditions of equality and non-discrimination. According to the Inter-American Court, applying the principle of equality and non-discrimination allows to affirm that the State has at least two types of obligations, which the jurisprudence describes as follows:

In compliance with this obligation, States must abstain from carrying out any action that, in any way, directly or indirectly, is aimed at creating situations of *de jure* or *de facto* discrimination. This translates, for example, into the prohibition to enact laws, in the broadest sense, formulate civil, administrative or any other measures, or encourage acts or practices of their officials, in implementation or interpretation of the law that discriminate against a specific group of persons because of their race, gender, color or other reasons.

In addition, States are obliged to take affirmative action to reverse or change discriminatory situations that exist in their societies to the detriment of a specific group of persons. This implies the special obligation to protect that the State must exercise with regard to acts and practices of third parties who, with its tolerance or acquiescence, create, maintain or promote discriminatory situations.<sup>256</sup>

230. In sum, States must abstain from engaging in actions or favoring practices that may in any way be aimed, directly or indirectly, at creating situations in which certain groups or persons are discriminated against or arbitrarily excluded, *de iure* or *de facto*, from enjoying or exercising the right to freedom of expression. Likewise, States must adopt affirmative measures (legislative, administrative, or in any other nature), in a condition of equality and non-discrimination, to reverse or change existing discriminatory situations that may compromise certain groups’ effective enjoyment and exercise of the right to freedom of expression. Naturally, such obligations must be carried out within the full respect towards the right of everybody to exercise freedom of expression, pursuant to the terms that have already been clearly defined by Inter-American jurisprudence.

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<sup>254</sup> IAHR. 2007 Annual Report. Volume III: Annual Report of the Special Rapporteur on Freedom of Expression. *Chapter III: Conclusions and Recommendations*. Para. 5.

<sup>255</sup> IAHR. 2007 Annual Report. Volume III: Annual Report of the Special Rapporteur on Freedom of Expression. *Chapter III: Conclusions and Recommendations*. Para. 6.

<sup>256</sup> I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18 of September 17, 2003. Series A No. 18. Paras. 103-104.

## CHAPTER IV

### A HEMISPHERIC AGENDA FOR THE DEFENSE OF FREEDOM OF EXPRESSION

#### A. Introduction

1. During the final decades of the 20th Century, there was a true democratic rebirth in the Americas. This new era was characterized by the end of the military dictatorships, the decline of the Cold War culture, and the emergence of new constitutional hopes. Nevertheless, in certain areas the legal and cultural legacy of the authoritarian regimes still persisted and its influence had managed to make its way into some of the systems where democratic forms of government had been maintained. This influence was particularly notable in some areas, and such was the case of the right to freedom of expression.

2. At the beginning of the nineties, it was not unusual to have laws that established the prior state censorship of books, films and works of art, as a manner of protecting *social morals, public order and good behavior*. Journalists and critical media had few guarantees for exercising their right to express themselves freely when their thoughts or opinions might be offensive or shocking to those who held public office, to powerful sectors of society or to the majority of the population.

3. Little more than a decade ago, those who maintained that the offense of *desacato* was the only way to control *violence against the State* and maintain the majesty, dignity and legitimacy of its institutions were not minority voices. As such, the culture of secrecy prevailed, based on a pre-modern idea that the State's institutions, by virtue of simply being what they were, were worthy of the people's full trust and support. According to this view, government officials should be able to work *in peace* without the bothersome demands of transparency or requests for information, which *were time-consuming, required funds, and contributed little to the country's progress*.

4. There were also other disastrous legacies of the authoritarian doctrines, including dramatically restrictive press laws and arbitrary systems for the allocation of public goods and resources fundamental to the exercise of freedom of expression, such as the distribution of government advertising, television and radio frequencies or subsidies for culture and the arts.

5. Finally, one of the most serious attacks on freedom of expression took the form of absolute impunity for crimes that had been committed with the intention of silencing a dissident opinion, an inconvenient point of view, a different way of seeing and thinking about the State and society—systematic crimes that had been committed against young students, labor and peasant leaders, indigenous people, journalists, and anyone who dared to think differently or to react against the arbitrariness of the State. Ten years ago, these victims of the worst form of censorship did not occupy an important place on the political agenda.

6. The 20th Century came to a close with a democratically renewed region. Nevertheless, at least on the topic of freedom of expression, there was still much to be done. It was within this context, marked by an authoritarian cultural and legal heritage, but also by the hope engendered by the end of the Cold War and the new momentum of our constitutional democracies, that the Office of the Special Rapporteur for freedom of expression of the IACHR was created.

7. Currently, progress in the area of freedom of expression, although insufficient, is notable: freedom of expression is enshrined in nearly all of their Constitutions, and laws and government programs have incorporated and implemented different aspects of this right into their domestic systems. In the majority of States, mechanisms of direct censorship are virtually non-

existent. Several States have repealed the offenses of *desacato* and criminal defamation (in its numerous manifestations);<sup>1</sup> others have added to or updated their laws with the objective of guaranteeing access to information.<sup>2</sup> In spite of the fact that impunity continues to be a serious problem, there have been important advances in that area.<sup>3</sup> During these years it has also become possible to see new aspects of the issue of freedom of expression in the region, such as forms of indirect censorship (the discriminatory placement of government advertising, the concentration of ownership of the communications media, among others) and self-censorship. Further, the inter-American system for the protection of human rights has become more accessible and effective: the last decade has seen the exponential growth of the number of individual cases handled by the IACHR and judgments handed down by the Inter-American Court of Human Rights on the issue of freedom of expression. In addition, a significant number of national courts have been incorporating the international standards about the right to freedom of expression into their decisions.<sup>4</sup>

8. These advances have arisen from the consolidation or deepening of our democracies and from the vigorous, active and central participation of civil society in the defense and promotion of the right to freedom of expression throughout the region. But these advances are also a result of the advocacy of the inter-American system for the protection of human rights with respect to the right of freedom of expression during the last decade.

9. The role of the IACHR and the Inter-American Court has been fundamental to reinforce the right to freedom of expression in the Latin American legal order. The case law of the system has made clear that all of the region's inhabitants have the right to think for themselves and to express their opinions or ideas by any means and without fear of being persecuted, sanctioned or stigmatized; to participate in public debate through the means that exist to promote and enrich it; to know about other opinions and views of the world and to discuss their own with those who hold different, or completely contrary positions; to access relevant information in detail in order to exercise the political checks and balances that make possible a true, deliberative democracy. As explained below, it is reasonable to assert that the practical achievements in the effective enjoyment of freedom of expression throughout the region have been obtained, at least in part, as a consequence of the consolidation of the regional international law on the issue.

10. The task of the Office of the Special Rapporteur in this process of consolidating regional law has been to advocate the international standards on the issue, promote their implementation within national systems, and strengthen the operating capacity of States and the civil society organizations charged with developing the exercise and scope of the right to freedom of expression. Nevertheless, there are still unresolved issues, as well as new and important challenges.

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<sup>1</sup> Argentina, Paraguay, Costa Rica, Peru, Panama, El Salvador, Honduras, Guatemala, among others, have repealed the offense of *desacato* from their laws. Mexico and Panama, among others, have repealed criminal defamation in cases of expressions about public officials.

<sup>2</sup> In recent years, Chile, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Peru, The Dominican Republic, Trinidad and Tobago, Uruguay, among others, have enacted laws on access to information.

<sup>3</sup> On this point, see: IACHR, *Special Study on the Status of Investigations into the Murder of Journalists during the 1995 – 2005 Period for Reasons that may be Related to Their Work in Journalism*, OEA/Ser. L/V/II.131 Doc. 35, March 8, 2008. Available at: <http://www.IACHR.oas.org/relatoria/section/Asesinato%20de%20Periodistas.pdf>. See also: reports from the Impunity Project, available at: <http://www.impunidad.com/>.

<sup>4</sup> On this issue, please refer to the Annual Reports of the Office of the Special Rapporteur, which discuss important comparative case law on the domestic implementation of international standards. Available at: <http://www.IACHR.oas.org/Relatoria/docListCat.asp?catID=24&IID=2>.

11. The section following this chapter provides a summary of the progress made, and describes briefly the main difficulties and challenges currently facing the right to freedom of expression in the region.

**B. Achieved Goals: Content and scope of the right to freedom of expression in the regional case law.<sup>5</sup>**

12. As previously mentioned, the advances in the effective enjoyment of the right to freedom of expression that have taken place in the Americas during the course of the last decade have triggered the very significant parallel development of the inter-American legal standards relative to this right. The following paragraphs provide a summary of the most important decisions on the international obligations of States with respect to the scope, content, areas of implementation, forms of exercise and limits to this fundamental freedom.

13. A quantitative look at the development of the case law of the IACHR and the Inter-American Court is illustrative in this respect. By 1998, the inter-American system had a short catalog of decisions that substantially addressed the issue of freedom of expression. The IACHR had referred to the topic in the country reports and had published a limited number of reports on the merits<sup>6</sup> and one thematic report<sup>7</sup> on issues relating to this right, while the Inter-American Court has issued two advisory opinions.<sup>8</sup> The legal value of these important decisions cannot be underestimated—indeed, they laid the foundation for the subsequent development of the case law of the inter-American system in the field, particularly Advisory Opinion OC-5/85 of the Inter-American Court on the compulsory membership of journalists in a professional association, and the IACHR *Report on the Compatibility of “desacato” Laws with the American Convention on Human Rights*. Nevertheless, it can be said that in spite of the efforts made, in 1998 there were large gaps in the regional international law of the Americas with regard to the fundamental aspects of freedom of expression. Ten years later, the legal landscape has changed. The Inter-American Court issued, over the course of this decade, seven landmark judgments<sup>9</sup> that made—each one in its specific area—substantive advances in defining the scope of freedom of expression, while the IACHR, aside from the original impetus given to the seven cases decided by the Inter-American Court, adopted the

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<sup>5</sup> These standards are explained in detail in this report’s Chapter III.

<sup>6</sup> Among them are the reports contained in: IACHR, Report No. 2/96. Case No. 10.325, *Steve Clark et al.* Grenada. March 1, 1996; IACHR, Report No. 11/96. Case No. 11.230. *Francisco Martorell*. Chile. May 3, 1996; IACHR, Report No. 29/96. Case No. 11.303. *Carlos Ranferí Gómez López*. Guatemala. October 16, 1996; IACHR, Report No. 38/97. Case No. 10.548. *Hugo Bustíos Saavedra*. Peru. October 16, 1997.

<sup>7</sup> IACHR, 1994 Annual Report, Chapter V: *Report on the Compatibility of “desacato” Laws with the American Convention on Human Rights*. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995. Adopted during the 88<sup>th</sup> regular session.

<sup>8</sup> These are: 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. I/A Court H.R., *Enforceability of the Right to Reply or Correction (arts. 14.1, 1.1 and 2 American Convention on Human Rights)*. Advisory Opinion OC-7/86 of August 29, 1986. Series A No. 7.

<sup>9</sup> I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.)*. Judgment of February 5, 2001. Series C No. 73; I/A Court H.R., *Case of Ivcher Bronstein*. Judgment of February 6, 2001. Series C No. 74; I/A Court H.R., *Case of Herrera Ulloa*. Judgment of July 2, 2004. Series C No. 107. I/A Court H.R., *Case of Ricardo Canese*. Judgment of August 31, 2004. Series C No. 111; I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135; I/A Court H.R., *Case of Claude Reyes et al.* Judgment of September 19, 2006. Series C No. 151; I/A Court H.R., *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008. Series C No. 177. There are other cases in which the Inter-American Court has rendered important decisions on the scope of the right to freedom of thought and expression, even though the main legal issues in such cases concerned the infringement of rights other than the right enshrined in Article 13 of the American Convention: I/A Court H.R., *Case of López Álvarez*. Judgment of February 1, 2006. Series C No. 141; I/A Court H.R., *Case of Myrna Mack Chang*. Judgment of November 25, 2003. Series C No. 101; I/A Court H.R., *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Judgment of August 5, 2008. Series C No. 182.

Declaration of Principles on Freedom of Expression<sup>10</sup> and has published important reports on the merits that have not only put the American continent in tune with the legal developments that have been taking place worldwide, but have in many cases impelled such developments. In the remaining part of this section we present a brief summary of the most important decisions rendered on the issue.

14. The legal development of the right to freedom of expression has always started with the basic idea that it is a complicated and wide-ranging right. Indeed, the legal framework provided by the inter-American system for the protection of human rights has been established among the various regional systems as the one most favorable to the rights of the individual. Article 13 of the American Convention on Human Rights places an extremely high value on freedom of expression.<sup>11</sup> The same is true of the American Declaration on the Rights and Duties of Man (Article IV)<sup>12</sup> and the Inter-American Democratic Charter (Article 4).<sup>13</sup> This section will provide a summary of the most important developments in the jurisprudence on the issue: (i) the individual and collective aspects of the right to freedom of expression; (ii) the different functions this right has in democratic societies and its corresponding value (or relative weight) when resolving tensions with competing rights; (iii) the forms and speech protected and *specially* protected by the right to free expression, as well as speech that is not protected; (iv) the requirements that must be demonstrated to justify a limitation to this right and the types of limitations permitted; (v) the scope of the right to access to information; and (vi) other specific developments and characteristics of the right to freedom of expression. A brief review of these distinguishing features of freedom of expression, as interpreted by the case law of the inter-American system, provides an overview of the contribution of the IACHR and the Inter-American Court to the consolidation of this right as one of the structural columns of the system for the protection of human rights in the region.

## 1. The dual nature of freedom of expression

15. The case law of the inter-American system has characterized freedom of expression as a right with two aspects: an individual aspect, consisting of the right of each person to express his own thoughts, ideas and information, and a collective or social aspect, consisting of society's right to obtain and receive any information (*information and ideas of any kind*), to know the

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<sup>10</sup> The Declaration of Principles on Freedom of Expression was adopted by the IACHR in October of 2000 during its 108<sup>th</sup> regular session.

<sup>11</sup> This article state that: "American Convention on Human Rights. Article 13: "Freedom of Thought and Expression. 1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice. // 2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: (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. 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."

<sup>12</sup> "Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever." American Declaration on the Rights and Duties of Man. Article IV.

<sup>13</sup> "Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy. // The constitutional subordination of all state institutions to the legally constituted civilian authority and respect for the rule of law on the part of all institutions and sectors of society are equally essential to democracy." Inter-American Democratic Charter, Article 4.



thoughts, ideas and information of others, and to be well-informed.<sup>14</sup> Bearing in mind its dual aspect, it has been explained that freedom of expression is a *means for the exchange* of information and ideas between people and for mass communication among individuals.<sup>15</sup> It has been held that for the average citizen, knowledge of the opinions or information held by others is just as important as his right to impart his own beliefs or information.<sup>16</sup> It has also been emphasized that a specific act of expression involves both aspects simultaneously, and that a limitation to the right to freedom of expression therefore affects at the same time both the right of the person who wishes to impart information or ideas and the right of members of society to know such information or ideas.<sup>17</sup> In addition, the right to information and to receive the greatest quantity of diverse information and opinions requires that a special effort be made to provide access to public debate under equal conditions and without any type of discrimination. This assumes special conditions of inclusion to allow all sectors of society to exercise this right effectively.

## 2. The functions of freedom of expression

16. The dual aspects of freedom of expression (individual and collective) underscore the different functions that this right has in a democratic society. In this sense, it can be said that freedom of expression has a threefold function.

17. First, the right to freedom of expression has the function of protecting each person's ability to exercise freely his most prized faculty: the right to share with other people one's own thoughts and the thoughts of others. It does not seem necessary to elaborate on the relevance of this first function to freedom of expression, as an autonomous right. It is enough to indicate, for example, that all of the creative potential in art, science, technology, politics—in short, all individual and collective creative ability—depends, fundamentally, on the respect for and promotion of the right to freedom of expression.

18. Second, the IACHR and the Inter-American Court have underscored in their case law that the importance of freedom of expression within the catalog of human rights is derived also from its structural relationship to democracy.<sup>18</sup> Indeed, the full exercise of the right to express one's

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<sup>14</sup> Cfr. *Case of Kimel v. Argentina*, supra note 9, para. 53; *Case of Claude Reyes et al.* supra note 9, para. 76; *Case of López Álvarez*, supra note 9, para. 163; *Case of Herrera Ulloa*, supra note 9, paras. 109-111; *Case of Ivcher Bronstein* supra note 9, para. 146; *Case of Ricardo Canese*, supra note 9, paras. 77-80; *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.)*, supra note 9, paras. 64-67; Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (arts. 13 and 29 American Convention on Human Rights) supra note 8, pp. 30-33. See also: 1994 Annual Report, Chapter V: *Report on the Compatibility of "desacato" Laws with the American Convention on Human Rights*. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995. Adopted during the 88<sup>th</sup> regular session. IACHR. Report No. 130/99. Case No. 11.740. *Víctor Manuel Oropeza*. Mexico. November 19, 1999. IACHR. Report No. 50/99. Case No. 11.739. *Héctor Félix Miranda*. Mexico. April 13, 1999. IACHR. Report No. 11/96, Case No. 11.230. *Francisco Martorell*. Chile. May 3, 1996.

<sup>15</sup> Cfr. *Case of Herrera Ulloa*, supra note 9, para. 110; *Case of Ivcher Bronstein*, supra note 9, para. 148; *Case of Ricardo Canese*, supra note 9, para. 79; *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.)*, supra note 9, para. 66; Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (arts. 13 and 29 American Convention on Human Rights), supra note 9, para. 32. See also: 1994 Annual Report, Chapter V: *Report on the Compatibility of "desacato" Laws with the American Convention on Human Rights*. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995. Adopted during the 88<sup>th</sup> regular session.

<sup>16</sup> Cfr. *Case of Ivcher Bronstein*, supra note 9, para. 148; *Case of Ricardo Canese*, supra note 9, para. 79; *Case of "The Last Temptation of Christ" (Olmedo Bustos y otros)*, supra note 9, para. 66; Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (arts. 13 and 29 American Convention on Human Rights), supra note 9, para. 32.

<sup>17</sup> *Ibid.* See also: IACHR. Report No. 11/96. Case No. 11.230. *Francisco Martorell*. May 3, 1996. IACHR. Report on the Merits No. 90/05. Case No. 12.142. *Alejandra Matus Acuña*. Chile. October 24, 2005.

<sup>18</sup> Cfr. I/A Court H.R., *Case of Claude Reyes et al.*, supra note 9, para. 85; *Case of Herrera Ulloa*, supra note 9, paras. 112-113; *Case of Ricardo Canese*, supra note 9, paras. 82-82; *Case of Ivcher Bronstein*, supra note 9, para. 152;

own ideas and opinions and to circulate available information, and the ability to deliberate openly and without inhibitions on matters that concern all of us, is an indispensable condition for the consolidation, functioning and preservation of democratic systems. The development of a public opinion that is informed and conscious of its rights, citizen oversight over public administration, and the ability to demand the responsibility of government officials would not be possible if this right were not guaranteed. Along these lines, the case law has emphasized that the democratic function of freedom of expression makes it a necessary condition for preventing authoritarian systems from taking root, and for facilitating personal and collective self-determination.<sup>19</sup> In this respect, if the exercise of the right to freedom of expression favors not only the personal fulfillment of the individual who expresses an opinion but also the consolidation of truly democratic societies, the State has the obligation to create the conditions so that public debate satisfies both the legitimate needs of all people as consumers of specific information (entertainment, for example) and also as citizens. That is, there have to be sufficient conditions for public, plural and open deliberation to be able to occur with respect to the issues that concern all of us as citizens of a given State.<sup>20</sup>

19. Finally, the case law of the inter-American system has explained that freedom of expression has an important instrumental function, as it is an essential tool for the exercise of all other fundamental rights.<sup>21</sup> Indeed, freedom of expression is an essential mechanism for the exercise of the right to participation, to religious freedom, to education, to ethnic or cultural identity and, of course, to equality—understood not as the right to nondiscrimination, but rather as the right to enjoy certain basic social rights. Given the important instrumental role it plays, this right is located squarely in the center of the continent’s system for the protection of human rights.

### **3. Forms and speech that are protected and specially protected by the right to free expression, and speech that is not protected**

20. The case law of the IACHR and the Inter-American Court has recognized that the scope of protection of freedom of expression is nearly as broad as the possibilities for communications among people. The case law has explained that, consequently, this freedom covers a wide range of expression, in terms of both form and content. Thus, with regard to the form of protected expressions, it has been held that in principle all forms of expression are covered by Article IV of the American Declaration and Article 13 of the American Convention. Nevertheless, some specific modes of expression have received the explicit attention of the instruments and bodies of the inter-American system for the protection of human rights. While the following is not an exhaustive list, and does not purport to limit the expansive and fluid content of this freedom, the following types of expression can be identified as forms that are clearly protected by Article IV of the American Declaration and Article 13 of the American Convention: (a) oral expression in the language of one’s choice, (b) written or printed expression in the language of one’s choice, (c) symbolic or artistic expression in whatever form it is manifested, (d) the dissemination of ideas, thoughts, opinions, reports, information or other forms of expression, by any means of

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...continuation

*Case of “The Last Temptation of Christ” (Olmedo Bustos et al.)*, *supra* note 9, para. 69; Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (arts. 13 and 29 American Convention on Human Rights). *supra* note 9, para. 70.

<sup>19</sup> *Cfr. Case of Herrera Ulloa*, *supra* note 9, para. 116; *Case of Ricardo Canese*, *supra* note 9, paras. 86; See also: IACHR. Report No. 130/99. Case No. 11.740. *Case of Victor Manuel Oropeza*. November 19, 1999.

<sup>20</sup> IACHR, 1994 Annual Report, Chapter V, *Report on the Compatibility of “desacato” Laws with the American Convention on Human Rights*. February 17, 1995. Adopted during the 88<sup>th</sup> regular session.

<sup>21</sup> *Cfr. Case of Claude Reyes et al.* *supra* note 9, para. 75. See also: IACHR. Report No. 130/99. Case No. 11.740. *Victor Manuel Oropeza*. Mexico. November 19, 1999; IACHR. Report No. 38/97. Case No. 10.548. *Hugo Bustios Saavedra*. Peru. October 16, 1997.

communication of one's choice, (e) the search for, procurement of, and receipt of information, ideas, opinions, thoughts and other forms of expression, including those held by the State, and (f) the possession of information or material that is expressive, printed or in any other way susceptible to possession, as well as its transport and its distribution.

21. From another perspective, in relation to the content of the speech protected by the right to freedom of expression, the IACHR and the Inter-American Court have stated that, in principle, all speech is protected by freedom of expression, regardless of its content and the degree of State and social acceptance it may be met with. This general presumption of coverage is explained by the primary obligation of neutrality of the State with regard to content, and consequently, by the need to guarantee that, in principle, no individuals, groups, ideas or means of expression are excluded *a priori* from public debate. The general presumption of coverage protects not only the dissemination of ideas and information that are received favorably or considered inoffensive or indifferent but also those that are offensive, shocking, unsettling, unpleasant or disturbing to the State or to any sector of the population, as this is required by the principles of pluralism and tolerance inherent in a democracy.<sup>22</sup> Nevertheless, certain speech is not protected by freedom of expression, by virtue of having been expressly prohibited in international treaties. There are international instruments that reflect the desire of States to prohibit explicitly certain speech content that is particularly violent and that seriously violates human rights. To date, the only speech that falls into that category is speech advocating violence, war propaganda, the incitement of hatred for discriminatory reasons,<sup>23</sup> the direct and public incitement of genocide,<sup>24</sup> and child pornography.<sup>25</sup>

22. On the other hand, within the broad range of speech effectively guaranteed by freedom of expression, there are certain types of speech that, according to the IACHR and the Inter-American Court, enjoy a special level of protection because of their critical importance to the functioning of democracy or for the exercise of other fundamental rights. This includes political speech and speech concerning matters of public interest,<sup>26</sup> speech concerning public officials or candidates for public office,<sup>27</sup> and speech that constitutes a basic element of the personal identity or dignity of the individual<sup>28</sup> (such as religious speech). The presumption of coverage is even stronger with this type of speech, and the requirements that must be met in order to justify its restriction are particularly strict.

23. On this point, Principle 11 of the Declaration of Principles states: "11. Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at

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<sup>22</sup> Cfr. *Case of Herrera Ulloa*, *supra* note 9, para. 113; *Case of Ivcher Bronstein* *supra* note 9, para. 152; I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.)*, *supra* note 9, para. 69. See also: IACHR, 1994 Annual Report, Chapter V: *Report on the Compatibility of "desacato" Laws with the American Convention on Human Rights*. Adopted during the 88<sup>th</sup> regular session.

<sup>23</sup> Article 13.5, American Convention on Human Rights.

<sup>24</sup> Article III-c) of the Convention on the Prevention and Punishment of the Crime of Genocide.

<sup>25</sup> Convention on the Rights of the Child, Article 34-c; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; ILO Convention No. 182 on the worst forms of child labor, Article 3-b; American Convention on Human Rights, Article 19.

<sup>26</sup> Cfr. *Case of Herrera Ulloa*, *supra* note 9, para. 127; *Case of Ivcher Bronstein* *supra* note 9, para. 155. See: IACHR, 1994 Annual Report, Chapter V: *Report on the Compatibility of "desacato" Laws with the American Convention on Human Rights*. February 17, 1995. Adopted during the 88<sup>th</sup> regular session.

<sup>27</sup> Cfr. *Case of Palamara Iribarne*, *supra* note 9, para. 82.

<sup>28</sup> Cfr. *Case of López Álvarez*, *supra* note 9, para. 171.

public officials, generally known as 'desacato' laws, restrict freedom of expression and the right to information."

#### **4. Requirements that must be met to justify a restriction to the right of freedom of expression**

24. The IACHR and the Inter-American Court have developed a clear line in their case law as to the requirements that must be met in the case of government limitations to freedom of expression, regardless of the authority that issues them or the form that they take, and on certain types of restrictions that are not admissible. To summarize, the IACHR and the Inter-American Court have established three requirements for a specific limitation to freedom of expression to be compatible with Article IV of the American Declaration and Article 13 of the American Convention: (a) it must be defined clearly and precisely in a law, with regard to both substance and procedure,<sup>29</sup> (b) it must pursue objectives authorized by the Convention,<sup>30</sup> and (c) it must be necessary in a democratic society to serve the compelling objectives pursued,<sup>31</sup> strictly proportionate to the objective pursued,<sup>32</sup> and must be appropriate to accomplish such objectives.<sup>33</sup> Further, it has been established that certain types of limitations are contrary to the American Convention. Thus, the limitations imposed must not amount to censorship,<sup>34</sup> and therefore must be established through the subsequent imposition of liability for the abusive exercise of the right;<sup>35</sup> they cannot be discriminatory or have discriminatory effects;<sup>36</sup> they cannot be imposed through indirect mechanisms of restriction;<sup>37</sup> and they must be exceptional.<sup>38</sup>

25. Verification of compliance with the aforementioned conditions is stricter when the limitations are placed upon specially protected speech, particularly speech concerning public

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<sup>29</sup> Cfr. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (arts. 13 and 29 American Convention on Human Rights) *supra* nota 8, para. 59; *Case of Kimel*. *supra* note 9, para. 63; *Case of Claude Reyes et al.* *supra* note 9, para. 89; *Case of Herrera Ulloa*, *supra* note 9, para. 121. See also: IACHR, 1994 Annual Report, Chapter V: *Report on the Compatibility of "desacato" Laws with the American Convention on Human Rights*. February 17, 1995. 88<sup>th</sup> regular session; IACHR. Report No. 11/96. Case No. 11.230. *Francisco Martorell*. May 3, 1996..

<sup>30</sup> Cfr. *Case of Palamara Iribarne*, *supra* note 9, para. 85; *Case of Herrera Ulloa*, *supra* note 9, paras. 121-123; Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (arts. 13 and 29 American Convention on Human Rights) *supra* nota 8, para. 43.

<sup>31</sup> Cfr. *Case of Herrera Ulloa*, *supra* note 9, paras. 121-123; Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (arts. 13 and 29 American Convention on Human Rights) *supra* nota 8, para. 46; *Case of Kimel*. *supra* note 9, para. 83; *Case of Palamara Iribarne*, *supra* note 9, para.85.

<sup>32</sup> *Ibid.* See also, IACHR, 1994 Annual Report, Chapter V: *Report on the Compatibility of "desacato" Laws with the American Convention on Human Rights*. February 17, 1995. 88<sup>th</sup> regular session.

<sup>33</sup> Cfr. *Case of Kimel*. *supra* note 9, para. 83.

<sup>34</sup> Cfr. *Case of Kimel*. *supra* note 9, para. 54; *Case of Palamara Iribarne*, *supra* note 9, para. 79; *Case of Herrera Ulloa*, *supra* note 9, para. 120. See also: IACHR. Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*. Reprinted in the Judgment of August 31, 2004, Series C No. 111.

<sup>35</sup> Cfr. *Case of Kimel*. *supra* note 9, para. 54; *Case of Palamara Iribarne*, *supra* note 9, para. 79. See also, IACHR. Report No. 11/96. Case No. 11.230. *Francisco Martorell*. May 3, 1996. IACHR, 1994 Annual Report, Chapter V: *Report on the Compatibility of "desacato" Laws with the American Convention on Human Rights*. February 17, 1995. Adopted during the 88<sup>th</sup> regular session.

<sup>36</sup> Cfr. *Case of López Álvarez*. *supra* note 9, para. 170.

<sup>37</sup> American Convention on Human Rights. Article 13.3. Cfr. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (arts. 13 and 29 American Convention on Human Rights) *supra* nota 8, para. 47.

<sup>38</sup> Cfr. *Case of Kimel*. *supra* note 9, para. 54.

officials, matters of public interest, candidates for public office, and the State and its institutions.<sup>39</sup> In particular, the Inter-American Court and the IACHR have coincided in affirming that any restriction must be the least costly one available, and that disproportionate measures may never be imposed.

26. On this point it is relevant to recall that Principles 6, 7, 10 and 11 of the Declaration of Principles on Freedom of Expression refer to these issues clearly and precisely. Thus, Principle 6 stipulates that *"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"*. In turn, Principle 7 states literally that, *"Prior conditioning of expressions, such as truthfulness, timeliness or impartiality is incompatible with the right to freedom of expression recognized in international instruments."* Principle 10 establishes that *"[p]rivacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news."* Lastly, Principle 11 indicates 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."*

27. Finally, the IACHR has maintained that the State incurs responsibility not only by placing arbitrary limitations on the right to freedom of expression but also by failing to remove any barriers to the free and nondiscriminatory exercise of this right. In this respect, Principle 12 of the Declaration of Principles provides that *"[m]onopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people's right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals."*

## **5. The right to access to information**

28. The IACHR and the Inter-American Court have ascribed particular importance to the right to access to information as a vital component of the freedom of expression protected by Article 13 of the American Convention. This Article encompasses the specific right of individuals to access such information, as well as information about themselves or their assets, contained in private databases. At the same time, it imposes the positive obligation upon the State to provide its citizens access to information.<sup>40</sup>

29. There are multiple reasons for the importance of the right to access to information, among which the case law of the inter-American system has underscored: (a) its nature as a critical tool for democratic participation, oversight of the functioning of the State and public administration,

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<sup>39</sup> Cfr. *Case of Herrera Ulloa*, *supra* note 9, para. 120; *Case of Kimel*, *supra* note 9, para. 54; *Case of Palamara Iribarne*, *supra* note 9, para. 79.

<sup>40</sup> Cfr. *Case of Claude Reyes et al.* *supra* note 9, para. 87. IACHR. See also, Arguments before the Inter-American Court of Human Rights in the *Case of Claude Reyes et al. v. Chile*. Reprinted in the Judgment of September 19, 2006. Series C No. 151. Para. 87. Declaration of Principles on Freedom of Expression of the IACHR, Principles 2, 3 and 4.

and the oversight of corruption by public opinion—without which citizen scrutiny of government activity and the prevention of government abuse through informed public debate would be impossible;<sup>41</sup> (b) its value as a means of individual and collective self-determination, especially democratic self-determination, given that it enables individuals and societies to make informed decisions on the direction of their lives; and (c) its nature as an instrument for the exercise of other human rights, especially by those who are in subordinate or vulnerable positions, as it is only through the specific knowledge of the content of human rights and their forms and means of exercise that they can be enjoyed fully and effectively.

30. As such, the case law of the inter-American system paid considerable attention to describing the different elements of the right to access to information, explaining that: (1) it is the right of every person; (2) in principle, it is not necessary to prove a personal interest or harm in order to obtain information held by the State, except where one of the exceptional restrictions permitted by the American Convention applies; (3) it enables people to access multiple types of information, including the information that the State keeps or manages, that it produces or is required to produce, that held by those who manage public services or public money, that the State collects or is required to collect, and personal information that it is private databases; (4) it is governed by the principle of maximum disclosure, by virtue of which all information is presumed public, except where there are exceptional restrictions provided by law; (5) it imposes various specific obligations upon the State, including the obligation to provide an administrative procedure for accessing information with reasonable deadlines for making a reasoned decision and disclosing effectively the information requested or, if any restriction is applicable, provide judicial recourse to appeal the denial; the obligation to provide information to the public unofficially; the obligation to bring its domestic legal system in line with the requirements of this right; and the obligation to disclose appropriate information to the public regarding the existence and mechanics of the legal instruments available to enforce this right. Finally, given that the right to access to information is a component of the right to freedom of expression, it must be understood that it is subject to a strict and exceptional set of limitations that must be provided for by law, restrictively and in advance, must be strictly necessary and proportionate, and subject to the possibility of legal challenge in specific cases where access to information is sought.<sup>42</sup>

## **6. Other specific developments and characteristics of the right to freedom of expression**

31. The case law of the inter-American system has paid special attention to certain manifestations of the protection of freedom of expression under the Convention. Among the specific content that has been underscored by the IACHR and the Inter-American Court, we can first note the strict interpretation of the prohibition against censorship in the American Convention on Human Rights. This has been applied to direct restrictions that amount to mechanisms for the prior control of expression, as well as to indirect restrictions to this right (by both government authorities and private individuals) which, in spite of the subtle nature of the mechanisms by which they are implemented, have the same effects of inhibition, repression or silencing of free expression.<sup>43</sup>

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<sup>41</sup> *Ibid.* See also, Arguments before the Inter-American Court of Human Rights in the *Case of Claude Reyes et al. v. Chile*. Reprinted in the Judgment of September 19, 2006. Series C No. 151. 1999 and 2004 Joint Declarations of the UN, OAS and OSCE Special Rapporteurs for Freedom of Expression.

<sup>42</sup> *Cfr.* I I/A Court H.R., *Case of Claude Reyes et al. supra* note 9. See also, Arguments before the Inter-American Court of Human Rights in the *Case of Claude Reyes et al. v. Chile*. Reprinted in the Judgment of September 19, 2006. Series C No. 151. Inter-American Juridical Committee. *Principles on the Right to Access to Information*. (CJI/Res. 147 – LXXIII-0/08, August 7, 2008). 1999, 2004 and 2006 Joint Declarations of the UN, OAS and OSCE Special Rapporteurs for Freedom of Expression.

<sup>43</sup> American Convention on Human Rights. Article 13.2. Declaration of Principles on Freedom of Expression of the IACHR. *Cfr.* Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (arts. 13 and 29

32. On this issue, Principle 5 of the Declaration of Principles establishes that: “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the creation of obstacles to the free flow of information violate the right to freedom of expression.” Principle 13 of the same Declaration establishes that “[t]he exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

33. The Inter-American Court and the IACHR have stated clearly that monopolies or oligopolies in the ownership and control of the communications media seriously violate the right to freedom of expression.<sup>44</sup> Consequently, it is the obligation of States to subject ownership and control of the media to general antitrust laws to prevent *de facto* or *de jure* concentration that restricts the plurality and diversity needed to ensure the full exercise of the citizens’ right to information. Likewise, the IACHR has indicated that the allocation of radio and television must consider democratic criteria that guarantee true equality of opportunity for all individuals in their access to them. In this sense, it has considered fundamental the recognition of so-called community radio and has indicated, for example, that auctions that take into account only economic factors or that grant concessions without equal opportunity for all sectors of society are incompatible with democracy and with the right to freedom of expression and information guaranteed in the American Convention on Human Rights and in the Declaration of Principles on Freedom of Expression.<sup>45</sup>

34. Likewise, the case law has emphasized the special *status* and the rights and duties of journalists under the American Convention,<sup>46</sup> highlighting in particular their right to receive

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American Convention on Human Rights) *supra* nota 8, para. 39. I/A Court H.R., *Case of Palamara Iribarne*. *Supra* note 9. Para. 79. See also, IACHR. Report on the Merits No. 90/05. Case No. 12.142. *Alejandra Matus Acuña*. Chile. October 24, 2005. IACHR. Arguments before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*. Reprinted in the Judgment of July 2, 2004. Series C No. 107. IACHR. Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*. Reprinted in the Judgment of August 31, 2004. Series C No. 111. IACHR. Arguments before the Inter-American Court of Human Rights in the *Case of Palamara Iribarne v. Chile*. Reprinted in the Judgment of November 22, 2005. Series C No. 135.

<sup>44</sup> Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (arts. 13 and 29 American Convention on Human Rights) *supra* nota 8, para. 34; IACHR, 2002 Annual Report, Vol. III: “Report of the Office of the Special Rapporteur for Freedom of Expression”. Chapter IV, paras. 37 and 38.

<sup>45</sup> IACHR, 2003 Annual Report, Volume III: Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter VII: The situation of freedom of expression in Guatemala, para. 414.

<sup>46</sup> *Cfr.* Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (arts. 13 and 29 American Convention on Human Rights) *supra* nota 8, para. 71, 72, and 74; *Case of Ivcher Bronstein* *supra* note 9, para. 85; *Case of Herrera Ulloa*, *supra* note 9, paras. 117-119.



protection from the authorities,<sup>47</sup> and the guarantee of their independence and autonomy as bastions of free expression in democratic societies.<sup>48</sup>

35. In this respect, Principle 8 of the Declaration of Principles indicates that “[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.” Principle 9 of the same Declaration states in turn that “[t]he murder, kidnapping, intimidation and/or threats to social communicators, as well as to 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. Finally, the Inter-American Court has stressed the particular connotations that the right to freedom of expression acquires when it is exercised by government officials, including members of the Armed Forces, and the duties that such exercise entails for those persons expressing their opinions.<sup>49</sup> It has also placed emphasis on the particular traits that freedom of expression takes on when exercised in the context of elections.<sup>50</sup>

37. In sum, the decisions of the IACHR and the Inter-American Court have provided an extremely useful legal frame of reference for the inhabitants of the Americas to exercise their freedom of expression with a significant degree of legal certainty with regard to the content protected by the right and the conditions required for any possible limitation to it. Notwithstanding the above, there are still multiple problems in the implementation of the existing standards and new areas or problems that necessitate the progressive development of this legal framework. The following section addresses those issues.

### **C. The agenda of the Office of the Special Rapporteur for freedom of expression: persistent problems and emerging challenges**

38. The Office of the Special Rapporteur has a mandate to advise the IACHR on the task of promoting, protecting and guaranteeing the right to freedom of thought and expression in the countries of the region. Bearing in mind the regional advances reviewed briefly in the previous section and the problems we face in the hemisphere, the Office of the Special Rapporteur drafted a three-year work plan that was submitted to and approved by the plenary of the IACHR in its 132<sup>nd</sup> Regular Session.<sup>51</sup>

39. The work plan of the Office of the Special Rapporteur will focus on the following five issues: (i) the protection of journalists and the fight against impunity for crimes committed against members of the media in the exercise of their profession; (ii) the *decriminalization* of speech

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<sup>47</sup> IACHR. Report No. 50/99. Case No. 11.739. *Héctor Félix Miranda*. Mexico. April 13, 1999. IACHR. Report No. 130/99. Case No. 11.740. *Victor Manuel Oropeza*. Mexico. November 19, 1999. IACHR. Report No. 38/97. Case No. 10.548. *Hugo Bustíos Saavedra*. Peru. October 16, 1997.

<sup>48</sup> *Cfr. Case of Herrera Ulloa*, *supra* note 9. ; *Case of Kimel*. *supra* note 9, para. 117.

<sup>49</sup> *Cfr. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. *Supra* note 9. Para.131. See also: IACHR. Report No. 20/99. Case No. 11.317. *Rodolfo Robles Espinoza e Hijos*. Peru. February 23, 1999.

<sup>50</sup> *Cfr. Case of Ricardo Canese*, *supra* note 9, paras 90.

<sup>51</sup> According to Article 11.6 of the Rules of Procedure of the IACHR, “[t]he Rapporteurs shall present their work plans to the plenary of the Commission for approval. They shall report in writing to the Commission, at least annually, on the work undertaken.” IACHR. Rules of Procedure of the IACHR. Adopted by the IACHR at its 109<sup>th</sup> extraordinary session, held from December 4 to 8, 2000 and amended at its 116<sup>th</sup> regular session, held from October 7 – 25, 2002, at its 118<sup>th</sup> regular session, held from October 6 – 24, 2003, at its 126<sup>th</sup> regular session, held from October 16 – 27, 2006 and at its 132<sup>nd</sup> regular session, held from July 17 – 25, 2008.

and proportionality in the subsequent imposition of sanctions; (iii) access to information and *habeas data*; (iv) direct and indirect censorship; (v) pluralism and diversity in public debate and in the communicative process. In each one of these areas, the Office of the Special Rapporteur will work transversely on the protection of subjects traditionally marginalized from public debate (like indigenous peoples, African-American communities, or women) or those who are in situations of particular vulnerability (children and adolescents, and persons living in extreme poverty).

40. To these ends, the Office of the Special Rapporteur must identify those existing standards within the inter-American system for the protection of human rights that require clarification or adjustment, and determine the areas in which there are no such standards, in order to bring individual cases that lend themselves to their clarification or definition. Likewise, it must promote the implementation of standards in domestic legal systems by advocating legal reforms, the adoption of public policies, programs, plans and implementation projects, and judicial decisions that incorporate them. Finally, the Office of the Special Rapporteur will continue the work of strengthening the operating capacity of the civil society organizations in charge of defending and promoting the right to freedom of expression in the region.

41. The following pages explain the five areas in which the Office of the Special Rapporteur will concentrate the greater part of its efforts during the next three years.

**1. The protection of journalists and the fight against impunity for crimes committed against members of the media in the exercise of their profession: “Keep quiet or you’ll be next”<sup>52</sup>**

42. It is clear from the origins of liberal criminal law that the preventive function of the criminal system is not achieved through cruel punishments but rather through infallible punishments. In other words, the deterring effect of criminal law originates the imposition of effective and proportionate sanctions against those who commit crimes that merit such sanctions. Nevertheless, at least in terms of crimes committed against journalists, this fundamental deterrence measure does not appear to be undertaken satisfactorily.

43. The Inter-American Court has indicated that impunity is understood as “the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of [human rights].”<sup>53</sup> It has also made clear that States incur responsibility not only by action—when one of their agents violates the rights protected in the American Convention—but also by omission, when it fails to promote, seriously and vigorously, all of the actions necessary to prevent the commission of crimes or to prevent the violations committed from being treated with impunity.<sup>54</sup>

44. The region has an alarming, lingering history of impunity with regard to crimes committed against journalists and other members of the media. An investigation published by the Office of the Special Rapporteur in 2008 on the murder of journalists and media workers between 1995 and 2005 identified 157 deaths in 19 countries in the region for reasons possibly related to the practice of journalism. Nevertheless, in spite of the fact that there have been some court decisions that identified and convicted the perpetrators, the Office of the Special Rapporteur observed that the investigations opened are, in their vast majority, excessively slow and plagued by

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<sup>52</sup> The quote is from an interview with a journalist from Ciudad Juárez who, upon leaving the funeral of a colleague murdered by drug traffickers in that city, received a call in which he was warned, with those few words, of his possible fate if he continued to report on the activities of organized crime.

<sup>53</sup> *Cfr.* I/A Court H.R., *Case of the “White Van” (Paniagua Morales et al.)*. Judgment of March 8, 1998. Series C No. 37, para. 173.

<sup>54</sup> *Cfr.* I/A Court H.R., *Case of Velásquez Rodríguez*. Judgment of July 29, 1988. Series C No. 4. Para. 172.

serious procedural deficiencies, to the point that they neither established the facts nor punished the guilty parties. Convictions (of any kind) were handed down in only 32 of the 157 cases examined. A significant number of the judgments issued do not identify the perpetrators, and impose sentences that are disproportionate or that have not been enforced.<sup>55</sup>

45. The concern of the Office of the Special Rapporteur with regard to this matter is not limited to the previously mentioned historical legacy. In spite of the advances reported in relation to the strengthening of the independence and technical capacity of the judicial branch in some States, it currently appears that there are no sufficient and appropriate measures to address decisively the debt of justice owed to the victims and to the societies adversely affected by the crimes committed to silence members of the media and journalists. In some countries, the murders and serious attacks against journalists continue to be particularly troublesome. Indeed, there is sufficient evidence of serious threats against freedom of expression from extremely violent organized crime groups that not only intimidate the public but even have the ability to terrorize and infiltrate the authorities themselves. Moreover, in those places where there are still internal armed conflicts, the aggressiveness and intolerance characteristic of the armed subjects continue to pose a grave threat to the lives and safety of journalists, critics and dissidents. Finally, in those places where there is exacerbated social tension, groups of civilians from all extremes have attacked and murdered journalists from media that do not share their point of view.<sup>56</sup>

46. It is true that the aforementioned problems do not affect the majority of the countries in the region. However, due to the seriousness of their effects and because of the potential of these types of practices to spread rapidly, the above-cited are probably some of the most serious problems relevant to freedom of expression on the continent. As the regional case law and the most important studies on the issue have maintained consistently, the murder, kidnapping, torture or disappearance of journalists is the most radical, violent and effective form of censorship.<sup>57</sup>

47. The IACHR has stated that the authorities have the duty to guarantee protection to journalists so they can exercise fully their right to freedom of expression,<sup>58</sup> and so they can protect their rights and their families' rights to life, safety and personal integrity. It has also maintained that

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<sup>55</sup> In respect to this matter, see also: IACHR. *Special Study on the Status of Investigations into the Murder of Journalists during the 1995-2005 Period for Reasons That May Be Related to Their Work in Journalism*. OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Original: Spanish. Available at: <http://www.cidh.org/relatoria/section/Asesinato%20de%20Periodistas%20INGLES.pdf>

<sup>56</sup> See Chapter II of this report for a discussion of each one of these topics.

<sup>57</sup> In this respect, important organizations engaged in the defense of the right to freedom of expression have been able to verify in practice what is easy to know by intuition in theory: that the death of a journalist sends the clear message to the entire community that there are topics that result very dangerous to discuss, and that the best way to save one's life is to stop investigating and remain silent. What has been demonstrated is that this message is certainly very effective and creates an environment of widespread silence and self-censorship that is very difficult to prevent and counteract. Further, it is clear that the treatment of these crimes with impunity provides the criminals with an incentive to continue committing them. Thirteen international organizations that deal with freedom of the press and freedom of expression formed an International Mission that traveled to Mexico during 2008 to learn about and analyze the situation of journalists and the communications media in the country. After conducting important empirical research, the resulting document from the Mission indicates that: "[m]any of the journalists the Mission met with affirmed that the climate in Mexico is one of terror. Armed attacks and explosions at the facilities of local media, as well as the killings and disappearances of colleagues have had a profound impact on reporters. Most of the interviewees said that they felt unprotected and abandoned by both the authorities and the media, and that they used self-censorship as the only form of self-protection." The reference to fear and self-censorship is one of the central themes of the document. Article 19. *Libertad de Prensa en Mexico: La sombra de la impunidad y la violencia*. August 2008. Available at: <http://www.article19.org/pdfs/publications/mexico-la-sombra-de-la-impunidad-y-la-violencia.pdf>. See also: *Crímenes contra Periodistas*. Proyecto Impunidad at <http://www.impunidad.com>; and *Campaña Global contra la Impunidad* at <http://www.cpj.org/campaigns/impunity/>.

<sup>58</sup> IACHR, Report No. 5/99. Case 11.739. *Héctor Félix Miranda*. Mexico. April 13, 1999; IACHR, Report No. 130/99. Case 11.740. *Víctor Manuel Oropeza*. Mexico. November 19, 1999.

in cases of attacks against journalists or other members of the media, the State's failure to investigate and administer justice generates international responsibility. Freedom of expression must be supported in practice by effective judicial guarantees that allow for the investigation, punishment and reparation of the abuses and crimes committed against journalists due to the practice of their profession.<sup>59</sup>

48. In the same vein, in all of its annual reports, the Office of the Special Rapporteur has expressed its concern over the problems it has observed. It has urged States constantly to prevent violations of human rights resulting from the exercise of freedom of expression and, in all cases, to identify, prosecute and punish the perpetrators of such violations when they have been committed. Likewise, in their 1999 Joint Declaration, the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur for Freedom of Expression, affirmed that "States must ensure an effective, serious and impartial judicial process, based on the rule of law, in order to combat impunity of perpetrators of attacks against freedom of expression." The four rapporteurs similarly stated in their 2000 Joint Declaration that, "[s]tates are under an obligation to take adequate measures to end the climate of impunity and such measures should include devoting sufficient resources and attention to preventing attacks on journalists and others exercising their right to freedom of expression, investigating such attacks when they do occur, bringing those responsible to justice and compensating victims." This topic was again addressed in the 2006 Joint Declaration, which indicated that, in particular, "States have an obligation to take effective measures to prevent such attacks, including their condemnation and investigation, the sanctioning of those responsible wherever possible, and the provision of compensation to victims where appropriate. States must also inform the public regularly of these proceedings."

49. The Office of the Special Rapporteur will continue the work of monitoring, denouncing and raising awareness, but it must also make headway in other particularly sensitive areas. First, it is necessary to identify clearly the different factors that increase the risk and prevent the effective administration of justice in the area under examination. It may be a question of normative deficiencies, such as amnesty laws or disproportionate benefits for the criminal defendant. There may be institutional deficiencies, such as a lack of technical ability on the part of the investigating bodies, or a lack of independence and impartiality in the judicial branch. The complexity of the phenomenon means that other factors may be involved, such as a lack of political

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<sup>59</sup> One of the first cases on this subject was the case of journalist Hugo Bustíos Saavedra, murdered in 1988 by a Peruvian military patrol while investigating two homicides committed in the context of the internal conflict that was taking place in Peru at the time. In this case, the IACHR held that the State was responsible, *inter alia*, for the violation of Article 13 of the American Convention given that, knowing that there were journalists in the area of conflict, the State had omitted to grant them the necessary protection. Likewise, it found that the acts of violence that occurred had prevented the free exercise of the right to freedom of expression (i) of the murdered journalist, (ii) of the other media worker who was injured by the same patrol, (iii) of the community of media and journalists that were intimidated by this type violence, and (iv) of course, of society as a whole, which is deprived of knowledge of matters of great public importance relating to the armed conflict. According to the IACHR, journalists play a fundamental role in situations of armed conflict as they enable the public to receive independent information about what is happening, at great risk to themselves. As such, it held that the State must provide them with the greatest possible protection so they may continue to exercise their right to freedom of expression in such a way that society's right to be adequately informed is satisfied. Report No. 38/97. Case 10.548. *Hugo Bustíos Saavedra*. Peru. October 16, 1997. Available at: <http://www.IACHR.org/annualrep/97span/peru10.548.htm>. In later cases, such as the case of murdered journalist Héctor Félix Miranda, in Mexico, the IACHR was clear in indicating that the only way to prevent the consequences arising from the death of a journalist and the State's omission in failing to investigate these acts fully, such as the creation of incentives to continue committing these crimes (or chilling effect), is through the rapid action of the State in prosecuting and punishing the perpetrators. The IACHR maintained the same theory in the case of the murder of Víctor Manuel Oropeza. In that case, the IACHR did not find that the State was directly responsible for the journalist's death. Nevertheless, upon confirming that he had been the target of threats because of his publications, that there was no effort to protect him, and that the investigation of his death was deficient, the IACHR held that the victim's right to freedom of expression had been violated. IACHR. Report No. 5/99 Case 11.739. *Héctor Félix Miranda*. Mexico. April 13, 1999. Available at: <http://www.IACHR.org/annualrep/98eng/merits/mexico%2011739.htm>.

will in the investigations, or even the existence of a culture of intolerance toward criticism, or the tacit acceptance of the crimes committed. Finally, there are social factors of enormous relevance that cannot be discounted, relating to the existence of powerful criminal groups that in some places may seriously jeopardize the State's ability to defend, guarantee, and promote human rights.

50. Once we have identified the risk factors that allow for impunity, it is fundamental to push forward those cases before the inter-American system that would pave the way for the removal of some of those obstacles. It is essential to identify and discuss the practices for the protection of journalists and the fight against impunity, such as specialized protection programs,<sup>60</sup> the creation of investigative bodies and specialized judges,<sup>61</sup> the federalization of crimes committed against journalists,<sup>62</sup> the allocation of sufficient technical and financial resources to further investigations and cases, and the increased sentences or decreased benefits associated with these types of crimes.<sup>63</sup> In addition, there are practices that have been fundamental in awakening the solidarity of the media themselves, and through them, society; it is fundamental to disseminate them as well.<sup>64</sup>

51. These practices must also be discussed (and in some cases corrected or adapted) broadly and together with the civil society organizations that have vigorously and bravely worked for years on this issue. The aim of this work is to attain the institutional and legal adjustments necessary to confront the phenomenon at hand. Finally, greater effort must be made in the areas of training and raising awareness in order to counteract the cultural phenomena that favor impunity. A State that feeds intolerance or fails to prevent the corruption of its institutions, or a society that is indifferent to the crimes committed becomes, in reality, the most serious enemy of justice.

## **2. From critic to criminal. The need to eliminate laws that criminalize expression and to promote proportionality in the subsequent imposition of sanctions**

52. The ideal of the *model citizen* held by the authoritarian regimes corresponds to the idea of a subject who turns over his deliberative and decision-making faculties—at least insofar as they concern public affairs—to the State. This subject must be grateful for the benefits conferred by the State, as if they were gifts dispensed by the grace of the rulers. Under this model, political

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<sup>60</sup> Such as, for example, the Program to Protect Journalists created in Colombia through Decree 1592 of 2000 and those that amend and complement it, especially Decree 2816 of 2006. See also: Judgment T-1037 of 2008 of the Colombian Constitutional Court, in which the Court recognizes the importance of the program and orders the State to accommodate it to the particular needs of the profession of journalism and adapt it in accordance with the mandates of due process and other fundamental rights.

<sup>61</sup> For example, the creation of the Office of the Special Prosecutor for Crimes against Journalists (FEADP) within the Office of the Attorney General of the Republic in Mexico. Order A/031/06, PGR. February 15, 2006, which establishes its guidelines. In spite of the fact that its design as well as the practical implementation of this instrument has had difficulties, the creation of specialized bodies of this type is an important practice that should be recognized, disseminated and, of course, discussed and adapted.

<sup>62</sup> An example of the federalization of crimes committed in states against human rights, one of which is certainly freedom of expression, was constitutional reform 45 of December 8 in Brazil (constitutional amendment No. 45 – of December 8, 2004 - dou de 12/31/2004), according to which: “5º Nas hipóteses de grave violação de direitos humanos, o Procurador-Geral da República, com a finalidade de assegurar o cumprimento de obrigações decorrentes de tratados internacionais de direitos humanos dos quais o Brasil seja parte, poderá suscitar, perante o Superior Tribunal de Justiça, em qualquer fase do inquérito ou processo, incidente de deslocamento de competência para a Justiça Federal.”

<sup>63</sup> For example, the Criminal Code of Colombia establishes that it is a special aggravating factor for purposes of sentencing, when the crimes of homicide, homicide of a protected person, kidnapping or torture, are committed, *inter alia*, against a journalist. See: Criminal Code of Colombia (Law 599 of 2000 and those that amend or complement it) Articles 103, 104, 135, 170 and 179.

<sup>64</sup> For example, *Proyecto Manizales* in Colombia or the previously cited *Misión Internacional de Documentación sobre Ataques en Contra de Periodistas y Medios de Comunicación en México*.

criticism is not necessarily eliminated, but it is only tolerated if it is what the rulers themselves classify as *constructive*; that is, it does not question radically the form of decision-making, the decisions made, or the people in charge of implementing and enforcing them. The criticism that is accepted is that which is not disturbing, shocking or offensive to power. In such systems, the State will often use, at the first instance, its most powerful coercive authority—criminal law—to punish, repress and naturally inhibit the speech it considers inconvenient to the defense of the government's political project.

53. The ideal citizen under the democracies of the Americas and, certainly, the inter-American system for the protection of human rights, is completely different. A full citizen is a thinking subject *who has the courage to use his own intelligence*<sup>65</sup> and who is willing to discuss with others the reasons that enable him to support a theory or make a decision. He is a rational subject who values the communicative process as one of the best ways to make appropriate decisions, and who participates not only in making decisions that affect him but also in the oversight of government. This idea of citizenship is today at the center of all political institutions and is one of the criteria for evaluating their validity and legitimacy.

54. To take seriously the idea of a democratic and activist citizenry thus entails designing institutions that enable, rather than inhibit or make difficult, the deliberation of all issues and phenomena of public relevance. On this point, the very institutions of punitive law, and especially criminal law, are of particular relevance. The use of the corrective means of the State to impose a single view of the world or to discourage the open and vigorous deliberation of all matters of public relevance is incompatible with the guiding principles of democratic regimes and, in particular, with the right to freedom of expression enshrined in Article 13 of the American Convention. There are some issues that particularly concern the Office of the Special Rapporteur with regard to this matter, such as: (i) the existence of *desacato* and criminal defamation laws, particularly when they are used to criminally prosecute those who have made critical assessments of matters of public interest or of persons who have public relevance; (ii) the use of criminal laws to protect the "honor" or "reputation" of ideas or institutions; (iii) the attempts to apply criminal offenses such as "terrorism" or "treason" to those who have limited themselves to expressing or imparting ideas or opinions that are different—or even *radically* different—from those held by government authorities; and (iv) *the criminalization* of social protest. The following paragraphs provide a brief explanation of the reasons for which these phenomena hold particular relevance for the Office of the Special Rapporteur and the way in which they must be addressed bearing in mind the Office's mandate.

## *2.1. "Desacato" laws and criminal laws that protect privacy and honor*

55. One of the first and most important IACHR reports on the subject of freedom of expression was the Report on the Compatibility of "desacato" Laws with the American Convention on Human Rights<sup>66</sup> Four of the seven decisions of the Inter-American Court addressing freedom of expression have examined the criminal prosecution of persons who have expressed opinions critical of government officials or candidates for public office. In the four decisions, the Inter-American Court held that the measures imposed were disproportionate and found that the critical expressions of opinion concerning public officials or candidates for public office, even if they were offensive or shocking, were protected by Article 13 of the American Convention.<sup>67</sup> In all of their reports on the

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<sup>65</sup> The phrase is from Immanuel Kant's Answer to the Question: What is enlightenment? (1784).

<sup>66</sup> IACHR, 1994 Annual Report, Chapter V: *Report on the Compatibility of "desacato" Laws with the American Convention on Human Rights*, OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995. Adopted during the 88<sup>th</sup> regular session.

<sup>67</sup> These are the Judgments rendered in the following cases: *Case of Herrera Ulloa*, *supra* note 9, *Case of Ricardo Canese*, *supra* note 9, *Case of Palamara Iribarne*, *supra* note 9, *Case of Kimel*. *supra* note 9. In this sense, the Inter-American

issue, the IACHR and the Office of the Special Rapporteur have emphasized the need to *decriminalize* the exercise of this freedom and to establish criteria of proportionality for the establishment of any subsequent liability that could arise from its abusive exercise, in accordance with Principles 10 and 11 of the Declaration of Principles.

56. However, in spite of the important process of criminal law reform in this area, some States have not repealed their *desacato* laws, and others continue to enforce criminal laws for the protection of honor—traditionally ambiguous—as a privileged tool for prosecuting and punishing journalists or other members of the media who express ideas and information on matters of public interest, government employees, or candidates for public office.<sup>68</sup>

57. Chapter III of this report explained in greater detail the reasons that have led the IACHR and the Office of the Special Rapporteur to support the assertion that sanctions for the abusive use of freedom of expression must always be proportionate and, at least as far as information or opinions about public officials, public funds, or candidates for public office is concerned, can never be criminal in nature.<sup>69</sup> Suffice it to say here that some of the arguments supporting this assertion refer, fundamentally, to the importance of preventing the creation of legal frameworks that allow the State to make arbitrary or disproportionate decisions that have a general chilling effect. Added to this argument is the notion that public officials accept their positions voluntarily and in full knowledge that, because of the enormous power they administer, they will be subject to a much more intense level of scrutiny. This argument is further supported by the fact that government officials have a great capacity to influence public debate, not only because of the support of the citizenry and the credibility they usually enjoy, but because they tend to enjoy real and effective opportunities to participate in the process of mass communication which, generally, citizens that do not hold such positions do not have. As such, it has been held that criticism—even offensive, radical, or disturbing criticism—must be met with more, not less debate, and that it is the citizen and not the criticized authorities who must decide whether an idea or a piece of information is worthy of attention and respect, or whether it should simply be dismissed.

58. The Office of the Special Rapporteur must continue to insist, though all of its mechanisms, upon the necessity of compliance with the provisions of Principles 10 and 11 of the Declaration of Principles. In this process it seems relevant to reiterate that it is not a question of failing to protect rights such as honor or privacy, which are extremely valuable in any democracy;

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...continuation

Court has indicated that although the use of criminal law is not completely incompatible with the Convention, “[t]his possibility should be carefully analyzed, pondering the extreme seriousness of the conduct of the individual who expressed the opinion, his actual malice, the characteristics of the unfair damage caused, and other information which shows the absolute necessity to resort to criminal proceedings as an exception. At all stages the burden of proof must fall on the party who brings the criminal proceedings (...).” *Case of Kimel. supra* note 9, *para.* 78. The European Court of Human Rights issued a similar opinion in an important case on the issue in question. In that case it held: “115. Although sentencing is in principle a matter for the national courts, the Court considers that the imposition of a prison sentence for a press offence will be compatible with journalists’ freedom of expression as guaranteed by Article 10 of the Convention only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in the case of hate speech or incitement to violence (...). In this connection, the Court notes the recent legislative initiatives by the Romanian authorities, leading to the removal of the offence of insult from the Criminal Code and the abolition of prison sentences for defamation (...).” ECHR, *Case of Cumpăna and Mazare v. Romania* (Application No. 33348/96) of December 17, 2004.

<sup>68</sup> On this issue, see Chapter II of this report, in which information is provided on criminal cases brought against media professionals for the dissemination of opinions or information of public interest as well as the convictions (suspended and effective) handed down during 2008 alone with regard to this issue. See, in particular, the cases from Ecuador, Colombia and Peru. It is, however, important to note that in countries such as Uruguay, Jamaica and Colombia important draft laws have been introduced to decriminalize the defense of honor in cases concerning public officials or information of public relevance.

<sup>69</sup> These reasons are explained in the first section of this chapter.

rather, it is about ensuring that the protection of such interests do not end up jeopardizing one of the most important conditions that make democratic societies possible.

## 2.2. *Religious defamation and defamation of symbols or institutions*

59. It would seem that the issues of religious defamation or criminal penalties for the offensive use of national symbols are problems of other latitudes. Indeed, unlike other regions of the world, it is not common today in the Americas to use criminal laws on the protection of national symbols or on religious defamation to prevent the criticism of political or religious leaders or to suppress the views of minorities or dissidents.

60. Nevertheless, as noted in Chapter II of this report, the criminal offense of religious or “patriotic” defamation exists in some countries in our hemisphere. High-level government officials have used such laws to file criminal complaints (that is, they have considered that they must be prosecuted, convicted and incarcerated) against media directors, photographers, or journalists that have published, for example, the photograph of a woman with a naked torso that parodies a religious scene, or the artistic, advertising, or symbolic use of the national flag. In some cases the criminal cases are still pending.

61. It is true that ideas of all kinds and, especially, religious convictions, as well as national symbols, are particularly valuable to significant sectors of the population and that offenses against them could affect very deep feelings and convictions that are worthy of respect. Nevertheless, the exercise of full individual and collective autonomy depends, to a large extent, on the existence of an open debate on all social ideas and phenomena. As such, the right of all persons to express, in practice and by any means, their ideas on culture, religion, national symbols or any other belief or institution must be respected. Naturally, this excludes hate or discriminatory speech directed at generating acts of violence, pursuant to the terms of Article 13 of the American Convention itself.

62. With regard to so-called *religious defamation*, the 2008 Joint Declaration 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 African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information,<sup>70</sup> stated that the concept of “defamation of religions” and the criminal offenses based on that concept are incompatible with international standards on freedom of expression. For the same reasons, the insult or defamation of patriotic symbols, or the symbols of any other idea or institution, are also incompatible with those standards.

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<sup>70</sup> Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation issued 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 African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information. Athens. December 9, 2008. After emphasizing that there is a fundamental difference between the criticism of an idea and attacks against individual persons because of their adherence to such idea, and recognizing that the use of negative social stereotypes leads to discrimination and substantially limits the ability of persons subject to those stereotypes to be heard and to participate effectively in public debate, this Joint Declaration states that the successful promotion of equality in society is integrally linked to respect for freedom of expression and cannot be based on the repression of ideas or discussions about institutions or beliefs. This Declaration recognizes expressly that the best way to address social prejudices is through an open dialogue that exposes the harm caused by those prejudices and combats negative stereotypes. In this sense, it is acknowledged that freedom of expression includes the right of different communities to have access to the media, to express their points of view and perspectives, as well as to satisfy their information needs. Naturally, as recognized in Article 13.5 of the American Convention, restrictions to the exercise of freedom of expression are limited in scope to the advocacy of national, racial or religious hatred that constitutes incitement to violence.



63. Likewise, the Joint Declaration of 2008 recalls that the international standards that allow for the establishment of limits to free expression refer to the protection of the reputation of individual persons and not of beliefs or institutions that, in and of themselves, do not enjoy the right to reputation. For this reason, restrictions to freedom of expression must not be used to protect particular institutions or abstract notions, concepts or beliefs such as national symbols or cultural or religious ideas, unless the criticism in reality amounts to the advocacy of national, racial or religious hatred that incites violence.

64. The Office of the Special Rapporteur therefore must promote the abolition of these criminal offenses of religious, cultural or patriotic defamation, which do not conform to international standards. Likewise, with a view to promoting equality and the fight against cultural or religious intolerance, which adversely affects the ability of marginalized or stigmatized groups to participate adequately in public debate, it must promote the access of all social groups to the media, to express their own points of view and perspectives as well as to satisfy their information needs.

### *2.3. The use of the criminal offenses of "terrorism" or "treason"*

65. The use of the criminal offenses of "terrorism" or "treason", among others, to prosecute individuals who express or impart opinions in opposition to those of the government, or positions that are critical of government policies, patently violate the right to freedom of expression. While it is true that neither journalists nor individuals who have dissident opinions may act outside the law, it is also true that the criminalization of a mere dissident opinion is a serious limitation to the right to freedom of expression and is radically incompatible with the provisions of Article 13 of the American Convention. It is necessary to establish clearly the difference between the appropriate use of criminal law and its use as an element of censorship or punishment of legitimate dissidence.

66. In various Declarations, the four Special Rapporteurs for Freedom of Expression have indicated that "[t]he definition of terrorism, at least as it applies in the context of restrictions on freedom of expression, should be restricted to violent crimes that are designed to advance an ideological, religious, political or organized criminal cause and to influence public authorities by inflicting terror on the public."<sup>71</sup> Consequently, "[t]he 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)."<sup>72</sup> The same standard must be applied to cases that attempt to apply offenses such as treason or rebellion to the dissemination of ideas or information that government authorities find inconvenient.

67. On this point, it is the job of the Office of the Special Rapporteur to bring before the inter-American system for the protection of human rights those cases that make it possible to ensure that all States respect the difference between a dissident and a criminal, as well as to issue reports and promote training programs aimed at preventing the use of criminal law as a mechanism of censorship.

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<sup>71</sup> Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation issued 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 African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information. Athens. December 9, 2008. See also: 2002 Annual Report of the IACHR, Volume III: Annual Report of the Office of the Special Rapporteur for Freedom of Expression.

<sup>72</sup> *Ibid.*

## 2.4 Increase of criminal offenses aimed at criminalizing social protest

68. Social protest is one of the most effective forms of collective speech. Indeed, in some circumstances it is also the only way in which certain groups can be heard. Indeed, when faced with institutional frameworks that do not favor participation, or in the face of serious barriers to access to more traditional forms of mass communication, public protest appears to be the only medium that really allows sectors of society traditionally discriminated against or marginalized from public debate to have their point of view heard and appreciated. In different annual reports, the Office of the Special Rapporteur made reference to the need to design regulatory frameworks that respect the exercise of social protest and that limit it only to the extent necessary to protect other individual or social interests of equal relevance. Thus, for example, recalling what it had stated in the 2002 Annual Report, the 2005 Annual Report of the Office of the Special Rapporteur indicated that:

“The most impoverished sectors of our hemisphere face discriminatory policies and actions, their access to information on the planning and execution of measures that affect their daily lives is incipient, and the traditional channels of participation and public complaint are often cut off. As such, in many countries in the hemisphere, protest and social mobilization has become a tool with which to petition government authorities and also a channel for publicly denouncing abuses or violations of human rights.”<sup>73</sup>

69. Later on in the same report, it indicated that:

“The *per se* criminalization of public demonstrations is, in principle, inadmissible, provided they take place in accordance with the right of free expression and the right of assembly.<sup>74</sup> [...] It should be recalled that in such cases, criminalization could have an intimidating effect on this form of participatory expression among those sectors of society that lack access to other channels of complaint or petition, such as the traditional press or the right of petition [...].<sup>75</sup> Curtailing free speech by imprisoning those who make use of this means of expression would have a dissuading effect on those sectors of society that express their points of view or criticisms of the authorities as a way of influencing the processes whereby state decisions and policies that directly affect them are made.”<sup>76 77</sup>

70. Naturally, strikes, road blockages, the occupation of public space, and even the disturbances that might occur during social protests can cause annoyances or even harm that it is necessary to prevent and repair. Nevertheless, disproportionate restrictions to protest, in particular in cases of groups that have no other way to express themselves publicly, seriously jeopardize the right to freedom of expression. The Office of the Special Rapporteur is therefore concerned about the existence of criminal provisions that make criminal offenses out of the mere participation in a

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<sup>73</sup> IACHR, 2005 Annual Report. Vol. II: “Report of the Office of the Special Rapporteur for Freedom of Expression.” Chapter V. Para. 1.

<sup>74</sup> “The State classification of an act of protest as a criminal offense, when such classification is made in contravention of those principles of the punitive power of the State—for example, because the act of protest is protected by the legitimate exercise of a right—is presumed to be illegitimate criminalization...” CELS, *“El Estado frente a la protesta social- 1996-2002”* (Buenos Aires: Siglo XXI Editores Argentina 2003) p. 48.

<sup>75</sup> “In no way can the existence of other ways to channel a claim be a basis for the unlawfulness of an expressive act to the extent that, specifically, the choice regarding the timeliness or manner in which something is expressed is inherent in the voluntary nature of that activity—above all when, *ex ante*, the suitability of the alternative ways is at least questionable.” *Ibid*, p. 70.

<sup>76</sup> IACHR, 2002 Annual Report, Vol. III: “Report of the Office of the Special Rapporteur for Freedom of Expression.” Chapter IV. Para. 35.

<sup>77</sup> IACHR, 2005 Annual Report, Vol. II: “Report of the Office of the Special Rapporteur for Freedom of Expression.” Chapter V. Para. 96 and 97.

protest, road blockages (at any time and of any kind) or acts of disorder that in reality, in and of themselves, do not adversely affect legally protected interests such as the life or liberty of individuals.

71. In order to guarantee the legitimate exercise of public protest as a collective form of expression while simultaneously guaranteeing the rights of third parties that may be in jeopardy, it is necessary for there to be laws that weigh the rights in question and respect strictly the requirements established in Article 13 of the American Convention as a condition for the legitimacy of any restrictions imposed. In particular, regarding this matter, it is necessary to review existing criminal law and ensure that it is in strict accordance with the limits imposed by Article 13 of the American Convention.

72. In short, freedom of expression is not an absolute right. It is true that its exercise may be abusive and cause significant individual and collective harm. But it is also true that disproportionate restrictions end up having a chilling effect, giving rise to censorship and inhibition in public debate, which is incompatible with the principles of pluralism and tolerance inherent in democratic societies. It is not easy to participate without inhibition in an open and vigorous debate on public affairs when the consequence might be criminal prosecution, the loss of all one's property or social stigmatization. It is therefore essential to bring the institutions and the punitive practices of the State in line with the imperatives of the inter-American legal framework.

### **3. The thousand faces of censorship**

73. There is not a single argument in favor of censorship that has not been defeated by now in all of the fields of human wisdom. It is enough to read John Milton's beautiful *Areopagitica* to understand the enormous cost that humanity has had to pay *indexes and censors*. In this sense, the elimination of direct or indirect censorship has been an issue on which the Office of the Special Rapporteur has worked with particular intensity. On one hand, it has driven cases such as "The Last Temptation of Christ,"<sup>78</sup> which have laid the foundation for the full eradication of prior censorship in the region. Likewise, it has written various reports and opinions that have served to promote resolutely the rule established in Article 13-2 of the American Convention on Human Rights, according to which the exercise of the right to freedom of expression cannot be subject to prior censorship.<sup>79</sup>

74. Happily, the existence of administrative offices in charge of censoring speech is no longer common practice in the region. Nevertheless, in some countries judges or telecommunications regulatory agencies have the authority to prevent the circulation of specific information when they consider that it is the result of the abusive exercise of freedom of expression. In this area, the Office of the Special Rapporteur will continue its work to promote the repeal of legal provisions that authorize prior censorship which, regardless of the government body it comes from, is prohibited by Article 13-2 of the American Convention on Human Rights.

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<sup>78</sup> Case of "The Last Temptation of Christ" (*Olmedo Bustos et al.*). *supra* note 9.

<sup>79</sup> This, for example, in its 2002 Annual Report, the Office of the Special Rapporteur stated: "The prohibition of prior censorship, with the exception present in paragraph 4 of Article 13, is absolute and is unique to the American Convention, as neither the European Convention nor the Covenant on Civil and Political Rights contains similar provisions. The fact that no other exception to this provision is provided is indicative of the importance that the authors of the Convention attached to the need to express and receive any kind of information, thoughts, opinions and ideas." IACHR, 2002 Annual Report. Volume III: Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III. Para. 21.

75. As for so-called indirect censorship, the Office of the Special Rapporteur has warned in several reports of its existence and the different forms it can take. In this respect, in its 2003 Annual Report, it stated: *"Because such indirect violations are often obscure, quietly introduced obstructions, they do not compel investigation, nor do they receive the widespread censure that do other, more direct violations."*<sup>80</sup>

76. In this section only four of the possible forms of indirect censorship are mentioned: the arbitrary allocation of public resources such as government advertising, frequencies or subsidies; the arbitrary use of the mechanisms of regulation and oversight; the creation of an environment of intimidation that inhibits dissident speech; the explicit or tacit authorization of barriers imposed against individuals to impede the free flow of ideas, in particular, those that are bothersome or inconvenient to economic and political power.

77. As this Office has already indicated,<sup>81</sup> one form of indirect censorship is the use of state authority over public resource allocation (like subsidies, government advertising, and radio and television frequencies and licenses) to reward media that are complacent before the authorities and to punish those media that are independent or critical. Some public officials believe that the advertising that the State must buy in order to meet its obligations (for example, to announce an invitation for bids or a vaccination campaign) must also serve the purpose of ensuring the loyalty of the media. It is true that, to paraphrase the well-known words of a former president, leaders do not pay to be beaten up; but neither do they pay to be applauded. They pay in order to meet their legal obligations, regardless of the informative or editorial content of the medium they must hire for such purposes.<sup>82</sup> Thus, for example, in the case of a vaccination campaign directed at mothers belonging to marginalized social sectors, the State must use the communications media that reach those sectors most effectively, without taking into account the editorial content of the medium. The decision must be made, then, bearing in mind the objective and legitimate purpose that must be accomplished by the publication of the information and not the medium's affinity to the government which, at any time, has the power to ascribe to it.<sup>83</sup>

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<sup>80</sup> IACHR, 2003 Annual Report. Volume III: Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter V. Para. 1.

<sup>81</sup> IACHR, 2003 Annual Report. Volume III: Annual Report of the Office of the Special Rapporteur for Freedom of Expression.

<sup>82</sup> On the different types and functions of so-called government advertising, the Office of the Special Rapporteur stated: "There are two types of government publicity: unpaid and paid. 'Unpaid' publicity includes press releases, the texts of legislation or legislative body meetings, and information which carries government support but which may be paid for by a private party. There are often legal obligations for national media sources to release this publicity, as a condition of the media outlets' use of the state's available frequencies and airwaves. Such conditions are usually included in states' fundamental broadcasting and press laws. 'Paid' publicity includes paid advertising in the press, on radio and on television, government-produced or -sponsored software and video material, leaflet campaigns, material placed on the Internet, exhibitions, and more. Governments use paid publicity to inform the public about important issues (i.e. ads pertaining to health and safety concerns), to influence the social behavior of individuals and business (such as encouraging voter turnout in an upcoming election), and to generate revenue through various programs (oftentimes through state-owned industry). The use of the media to transmit information is an important and useful tool for states, and provides much-needed advertising profits for media outlets." IACHR 2003 Annual Report. Volume III: Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter V. Para. 3.

<sup>83</sup> On this point, the above-cited 2003 Annual Report states: "For such determinations to be in keeping with freedom of expression principles, they must be based on criteria 'substantially related' to the prescribed viewpoint-neutral purpose. For example, if a state's goal was to promote sales of monthly passes on its city-wide public transportation system, it could legally choose to advertise only in newspapers largely distributed within that city. Newspapers from other regions that may have a very small distribution within that city would not be unfairly discriminated against by the government's choice not to advertise with them. The [criterion] of being a paper with a majority of your distribution within the city is substantially related to the program's viewpoint-neutral purpose of promoting use of its public transportation system, and thus, non-discriminatory." IACHR, 2003 Annual Report. Volume III: Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter V. Para. 11.

78. To attain a non-discriminatory or arbitrary allocation of public resources, there have to be legal frameworks that require States to subject themselves to specific laws that prevent discretion in the exercise of this important function. In this respect, the Office of the Special Rapporteur has already indicated that “[i]nsufficiently precise laws and unacceptable discretionary powers constitute freedom of expression violations. It is indeed when laws pertaining to allocation of official publicity are unclear or leave decisions to the discretion of public officials that there exists a legal framework contrary to freedom of expression.”<sup>84</sup>

79. The discretionary allocation of radio and television frequencies or of the new digital dividend spectrum or the granting of subsidies for communications, the arts or culture, present the same problems as the allocation of government advertising. In most cases there are no laws that define the rules of the game transparently, clearly and precisely, using reasonable and appropriate criteria for such allocations.<sup>85</sup>

80. Unlike what used to occur some years ago, this issue has now been identified as a form of indirect censorship prohibited by Article 13-3 of the American Convention. In some States draft regulations have been introduced, and in others the judicial branch—within the limits imposed upon it by its nature—has played a particularly active role in putting an end to arbitrary decisions in this area. Nevertheless, it is essential to continue the work of examining this problem and working with civil society and with governments to advocate the creation of regulations that are clear, transparent, nondiscriminatory and equitable in the allocation of public goods or services on which a very important part of the communicative process now depends.

81. The second form of indirect censorship that has been identified deals with the use of regular State mechanisms to control direct or indirect aspects of freedom of expression, with the aim of intimidating dissidents and inhibiting their critical speech. It is true, as the Office of the Special Rapporteur has reiterated constantly, that no one—not even human rights defenders, not critics or dissidents, not journalists or the media—is above the law. However, when the law is used with the purpose of eliminating or pacifying criticism or dissidence, it amounts to persecution and not a legitimate attempt to reinforce the Rule of Law. Article 13-3 of the American Convention on Human Rights referred precisely to this issue in a truly visionary way when it prohibited the restriction of the right to expression by indirect means or channels, such as the abuse of government controls.

82. To address the above problem, it is necessary for States to pass laws that prevent any of their agents from being able to make arbitrary use of oversight or regulatory control in the future to silence dissident speech. As in the previous case, clear, pre-established, precise and reasonable laws are required. They must establish specifically the authorities’ powers of oversight and regulation, which must pursue a legitimate aim and be strictly necessary for the

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<sup>84</sup> IACHR, 2003 Annual Report. Volume III: Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter V. Para. 23.

<sup>85</sup> It is relevant to mention on this point that in the 2003 Annual Report, the Office of the Special Rapporteur recalled that there have been decisions on these issues in the European system. As such, it indicated: “Although the Court has not specifically addressed this issue in the context of government advertising, it has addressed the existence of unclear laws and overly wide discretionary powers as a violation of freedom of expression in the case of *Autronic A.G. v. Switzerland* (Eur. Ct. H.R., Case of *Autronic A.G. v. Switzerland*, May 22, 1990, Application No. 12726/87). In this case, the European Court questioned whether the broadcast license-granting laws of Switzerland were sufficiently precise since ‘they [did] not indicate exactly what criteria [were] to be used by the authorities in determining applications.’ The Court did not decide the issue in that case, dismissing it for other reasons, but warned that such license-granting laws that did not establish clear criteria could constitute a violation of freedom of expression.” IACHR, 2003 Annual Report. Volume III: Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter V. Para. 21.

accomplishment of the aim pursued. In particular, it is fundamental that the bodies with oversight or regulatory authority over the communications media be independent of the executive branch, be fully subject to due process and have strict judicial oversight.

83. The third form of indirect censorship involves systematic action meant to create an environment of intolerance and hostility toward critical or independent media and journalists so as to generate self-censorship. On this point, it is important to distinguish clearly between the legitimate response of a government that feels it has been subject to reckless or unfair distortion or judgment (which has the right to defend its position through public debate), and the systematic and disproportionate statements that tend to create a climate of hostility toward a specific medium or journalist because of his editorial position or coverage of information of public relevance. This type of conduct, when carried out systematically and within the context of high social tension, can lead, for example, to the closure of a medium due to the complete withdrawal of private advertising, the public's fear of accessing the published material, or even violence by non-State agents against journalists and the media. In this respect, as it indicated in its 2007 Annual Report, the Office of the Special Rapporteur recalls that: "[h]eads of State play a critical role in making room for tolerance and democratic coexistence; thus, they should exercise special care in terms of the impact their statements may have on freedom of expression and on other human rights, such as the right to life and to personal integrity."

84. In all of these cases it is necessary to promote standards that guide the actions of governments and that—without hindering in any way the task of defending and enforcing the law, through legitimate means, from attacks considered unfair— prevents them from using their power to block the free and uninhibited circulation of all speech and information.

85. Finally, another of the multiple forms of censorship is, as indicated in Article 13-3 of the American Convention, the failure to control abuses committed by private individuals who have the power to impede the free flow of ideas. Thus, the State is required to prevent the abuse of private power exercised, for example, through the control of newsprint, or equipment and supplies used in the dissemination of information, or through any other means meant to prevent communication and the circulation of ideas and opinions. In other words, the omissions of the State when they lead to the existence of monopolies or oligopolies or in the abusive exercise of other rights with the aim of blocking the free flow of ideas amount to a form of indirect restriction. In these cases, it is the State's obligation to intervene and prevent, for example, a paper supply or print media distribution monopoly from endangering freedom of expression.

#### **4. State Secrets: the right to access to information and habeas data**

86. The right to access to information has reached an important level of development in the region in recent years. From the perspective of international human rights law, the Judgment of the Inter-American Court in the *Case of Claude Reyes et al. v. Chile*<sup>86</sup> is the most important decision on the subject. Likewise, the General Assembly of the OAS has spoken on multiple occasions to the importance of this right, and it has entrusted the Office of the Special Rapporteur with the preparation of studies and conferences on the issue.<sup>87</sup> Likewise, the Inter-American Juridical

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<sup>86</sup> *Case of Claude Reyes et al. supra* note 9.

<sup>87</sup> On the subject of access to information, the General Assembly has issued several pronouncements supporting the work of the Office of the Special Rapporteur and urging the adoption of its recommendations. In its Resolution 1932 (XXXIII-O/03) of 2003, reiterated in 2004 in Resolution 2057 (XXXIV-O/04), and in 2005 in Resolution 2121 (XXXV-O/05), the General Assembly asked that the Office of the Special Rapporteur continue to prepare a report within its annual reports on the situation of access to public information in the region. In 2006, through Resolution 2252 (XXVI-O/06), it entrusted the Office of the Special Rapporteur to support the Member States who request its assistance in the drafting of laws and mechanisms on access to information. Likewise, the IACHR was asked to conduct a study on the different forms of

Committee adopted in its 73<sup>rd</sup> Regular Session a resolution on the right to access to information, which recognizes the inter-American standards on the subject and advances some important issues.<sup>88</sup> Finally, the Office of the Special Rapporteur, in its annual reports, has underscored the importance of the issue and the international obligations of States with regard to it.<sup>89</sup>

87. The scope of the right to access to information according to existing international standards was explained in detail in Chapter III of this report. Suffice it to say at this point that according to the *Case of Claude Reyes et al. v. Chile*, every person, without the need to prove a special interest, has the human right to access to information administered or produced by the State, or which should be administered or produced by the State. In this sense, the State has the international obligation to provide the public with information voluntarily and continuously, and to establish agile and efficient mechanisms for accessing the information requested.<sup>90</sup> Given that it is one of the protected forms of the right to freedom of expression, any restrictions to the right to access must respect the same criteria that are used to evaluate any other restriction to this right. Consequently, it is subject to a strict and exceptional system of limitations, which must be established previously and restrictively by law, pursue compelling objectives, be strictly necessary and proportionate with respect to the aims pursued, and be subject to the possibility of judicial review.

88. The Special Rapporteur faces diverse challenges on the subject of access to information. On one hand, it must continue promoting the enactment of access laws in States that do not already have such laws. On the other hand, it must also verify that the existing laws meet the applicable international standards. It is fundamental to establish whether the catalog of exceptions established by each one of these laws is consistent with the requirements of strict legality, legitimate purpose and necessity. Likewise, it is important to ascertain whether there is effective and appropriate recourse for requesting access, and whether there are effective and independent controls to prevent administrative arbitrariness on the issue.

89. Experience has shown that the existence of laws on access to information is insufficient to guarantee the right to access. Indeed, to satisfy this right adequately, it is necessary to adopt implementation measures on matters such as the custody, archiving and management of the information held by the State. Likewise, it is essential that policies and adequate training programs be implemented for government officials and the public in general, aimed in practice at banishing definitively the culture of secrecy. The Office of the Special Rapporteur must work toward

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guaranteeing all persons the freedom to seek, receive and impart public information based on the principle of freedom of expression. In 2007, the General Assembly adopted Resolution 2288 (XXXVII-O/07), which underscores the importance of the right to access to public information, takes note of the reports of the Office of the Special Rapporteur on the situation of access to information in the region, urges States to adapt their laws and entrusts the Office of the Special Rapporteur with providing advice on the issue. It also asks different organizations within the OAS, including the Office of the Special Rapporteur, to prepare a basic document on best practices and the development of common approaches or guidelines for increasing access to public information. This document was adopted in April of 2008 by the Committee on Juridical and Political Affairs.

<sup>88</sup> Inter-American Juridical Committee. *Principles on the Right to Access to Information*. (CJI/Res. 147 - LXXIII-O/08, August 7, 2008). Available at: [http://www.oas.org/cji/eng/CJI-RES\\_147\\_LXXIII-O-08\\_eng.pdf](http://www.oas.org/cji/eng/CJI-RES_147_LXXIII-O-08_eng.pdf).

<sup>89</sup> Annual Reports of the Office of the Special Rapporteur for Freedom of Expression available at: <http://www.IACHR.oas.org/relatoria/docListCat.asp?catID=24&IID=2>.

<sup>90</sup> *Cfr. Case of Claude Reyes et al. supra* note 9, para. 77. See also, Arguments before the Inter-American Court of Human Rights in the *Case of Claude Reyes et al. v. Chile*. Reprinted in the Judgment of September 19, 2006. Series C No. 151; Inter-American Juridical Committee. *Principles on the Right to Access to Information*. (CJI/Res. 147 - LXXIII-O/08, August 7, 2008). 1999, 2004 and 2006 Joint Declarations of the UN, OAS and OSCE Special Rapporteurs for Freedom of Expression.

the adoption of these implementation measures, and the selection and dissemination of best practices on the issue.

90. Furthermore, despite the previously cited standards, there are matters pending in this area that must be defined more clearly by the inter-American system of Human Rights. Thus, for example, it would be important to make progress through the individual case system in the clarification of matters such as the definition or characterization of information as *sensitive*, which must be kept secret; the right of citizens to access so-called *raw data* held by the State; and the scope of the State's positive obligation to produce or collect information in the performance of its duties.

91. Finally, it is particularly important to emphasize the right to access to information of vulnerable or marginalized groups or individuals, for whom this right is an essential condition of the meeting of their basic needs.<sup>91</sup> Thus, for example, States must make efforts to specially guarantee the right of access of the poorest sectors of the population to information on mechanisms of participation, social programs and other forms of satisfying their fundamental rights; ethnic and cultural groups have the right to have the State design policies aimed at adapting the right of access to their cultural needs, such as their language; women throughout the region have the right to have the State guarantee fully the right to access to information on their sexual and reproductive rights through its mass and specialized dissemination, for example, at all of the basic health care centers.

92. The right of *habeas data* has undergone a less prolific development in the case law of the inter-American system.

93. According to Principle 3 of the Declaration of Principles:

"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."

94. In its Report on Terrorism and Human Rights,<sup>92</sup> the IACHR indicated that, apart from the general right to access to information held by the State, "Every person has the right to access to information about himself or herself, whether this is in the possession of a government or private entity," and "this includes the right to modify, remove or correct such information due to its sensitive, erroneous, biased or discriminatory nature"<sup>93</sup>. (...) This right of access to and control over personal data represents a fundamental right in many aspects of life, since the lack of judicial mechanisms for the rectification, updating or removal of data would directly affect the right to privacy, honor, individual identity, property, and accountability in the collection of data."<sup>94</sup>

95. In particular, it is important to recall that the action of *habeas data* is the most important instrument for blocking the disclosure of erroneous or sensitive information that may adversely affect reputation, privacy or other extremely important human rights. Such is the case of

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<sup>91</sup> On this point, See: IACHR, 1999 Annual Report. Volume III: Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II(c) Women and Freedom of Expression. IACHR, 2002 Annual Report. Volume III: Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter IV: Freedom of Expression and Poverty.

<sup>92</sup> IACHR, Report on Terrorism and Human Rights. OEA/Ser.L/V/II.116. October 22, 2002. Available at: <http://www.IACHR.org/Terrorism/Span/indice.htm>

<sup>93</sup> IACHR, Report on Terrorism and Human Rights. Chapter III, E): Right to freedom of expression.

<sup>94</sup> IACHR, Report on Terrorism and Human Rights. Chapter III, E): Right to freedom of expression. OEA/Ser.L/V/II.116. October 22, 2002. Available at: <http://www.IACHR.org/Terrorism/Span/indice.htm>.



the right of victims of serious human rights violations to obtain information related to the government's conduct, and to determine and demand the appropriate responsibilities.<sup>95</sup>

96. Because it is a right protected by Article 13 of the American Convention, access to personal information (*habeas data*) must be guaranteed expressly and sufficiently under national laws. Additionally, any restriction to its exercise must meet the aforementioned requirements of strict legality, legitimate aim and necessity. In principle, the owner of the registered or published information does not have to prove the existence of any special requirement in order to access it and request its correction or removal when appropriate. Likewise, this right must be ensured by means of effective recourse that is easily used and accessible to all. The burden of proof in a dispute over access to personal information lies with the party that administers or publishes the information, and not with its owner. Finally, there must be prompt and suitable judicial recourse available to effectively prevent private or government arbitrariness in this area.

97. The work of the Office of the Special Rapporteur consists of advocating regulations that respect the above-cited standards, and to promote the policies and implementation practices that enable the real guarantee of access to information and to *habeas data* for all of the region's inhabitants.

## **5. Pluralism, diversity, and freedom of expression**

98. Few ideas generate greater consensus in the region than the idea that freedom of expression is essential to the proper functioning of a democratic system. This issue has been addressed by the Heads of State and Government of the Americas,<sup>96</sup> the General Assembly of the OAS,<sup>97</sup> the IACHR, the Inter-American Court and the Office of the Special Rapporteur on multiple occasions.

99. The reasoning behind the above assertion is simple: democracy is based, among other things, on the existence of a free process for the selection of collective preferences that assumes an uninhibited, robust and wide open public debate, to use the famous phrase of Justice Brennan<sup>98</sup>. It is in this deliberative process where individuals can make informed decisions on the

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<sup>95</sup> In this respect, the IACHR stated that: "The action of *habeas data* as a mechanism for ensuring the accountability of security and intelligence agencies within this context provides a means to verify that personal data has been gathered legally. The action of *habeas data* entitles the injured party, or his family members, to ascertain the purpose for which the data was collected and, if collected illegally, to determine whether the responsible parties are punishable. Public disclosure of illegal practices in the collection of personal data can have the effect of preventing such practices by these agencies in the future." It further stated: "[as the Commission indicated], recourse to the action of *habeas data* has become a fundamental instrument for investigation into human rights violations committed during past military dictatorships in the Hemisphere. Family members of disappeared persons have used *habeas data* actions to obtain information concerning government conduct, to learn the fate of disappeared persons, and to exact accountability. Thus, these actions constitute an important means to guarantee the "right to truth." IACHR, Report on Terrorism and Human Rights. Available at: <http://www.IACHR.org/Terrorism/Span/indice.htm>.

<sup>96</sup> Cfr. 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; 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. Plan of Action. Third Summit of the Americas, April 20-22, 2001, Québec, Canada. Available at: <http://www.summit-americas.org>.

<sup>97</sup> For example, Resolutions 1932 (XXXIII-O/03), 2057 (XXXIV-O/04), 2121 (XXXV-O/05), 2149 (XXXV-O/05), 2237 (XXXVI-O/06), 2287 (XXXVII-O/07), 2288 (XXXVII-O/07), 2434 (XXXVIII-O/08) and 2418 (XXXVIII-O/08) of the OAS General Assembly.

<sup>98</sup> "[...] debate on public issues should be uninhibited, robust, and wide-open, and [...] it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials. *New York Times Co. v. Sullivan*, 376 U.S. 254, 270-271 (1964).

future of the society to which they belong. This is the reason for which censorship is prohibited: no one may exclude from public debate the circulation of the ideas and opinions of others. Each member of society has the power to decide which of these ideas or pieces of information are worthy of attention and which should be dismissed. This is precisely the democratic scope of freedom of expression: for all to have the opportunity to express themselves and to be heard, and that each one of us may know what others have to say.

100. If the above is true, then there is a component of freedom of expression to which we are indebted. The individual members of the social groups that have been traditionally marginalized, discriminated against, or that are in a situation of helplessness, are for various reasons systematically excluded from public debate. These groups do not have institutional or private channels for the serious, robust and constant exercise of their right to express publicly their ideas and opinions or to be informed of the issues that affect them. This process of exclusion has also deprived society of knowledge of their interests, of the needs and proposals of those who have not had the opportunity to access democratic debate on an equal footing. The effect of this phenomenon of exclusion is similar to the effect of censorship: silence and ignorance.

101. People in this circumstance of invisibility include, for example, female heads of households who live in poverty (or extreme poverty), who do not have the means to express their needs or interests or to learn of alternatives that enable them to address the discrimination or violence they experience daily—women who in many of our countries must bear the effects of a sexist culture often nurtured by the powerful flow of information and opinions to which they do not have access; indigenous people who cannot communicate amongst themselves in their own language or know about the discussions, needs and proposals of different communities located beyond their borders; people of African descent who live in marginalized areas and must endure the consequences of deeply racist cultures without being able to decisively influence the debates that would help reverse processes of discrimination; rural or neighborhood communities organized around the purpose of overcoming outrageous conditions of social marginalization who cannot learn of successful alternatives for collective action or adequately inform society of their needs and proposals; young people willing to create freely but who do not have channels for the dissemination of their ideas and must give up their dreams early without having had the chance for others to know about their creative proposals. In short, millions of people whose freedom of expression is not sufficiently ensured, all of which leads to a fundamental flaw in the process of democratic deliberation.<sup>99</sup>

102. The Office of the Special Rapporteur has already expressed its view on this point in its Report on Freedom of Expression and Poverty:

“The freedom of individuals to debate openly and criticize policies and institutions guards against abuses of human rights. Openness of the media not only advances civil and political liberties—it often contributes to economic, social, and cultural rights. In some instances, the use of the mass media has helped drive public awareness and bring pressure to bear for the

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<sup>99</sup> On this same issue, see the 2007 Joint Declaration 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 African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information, which stressed the “fundamental importance of diversity in the media to the free flow of information and ideas in society, in terms both of giving voice to and satisfying the information needs and other interests of all, as protected by international guarantees of the right to freedom of expression.” The same Declaration also states that diversity has a complex nature, “which includes diversity of outlet (types of media) and source (ownership of the media), as well as diversity of content (media output).” Finally, the four Rapporteurs indicated that the “undue concentration of media ownership, direct or indirect, as well as government control over the media, pose a threat to diversity of the media, as well as other risks, such as concentrating political power in the hands of owners or governing elites.”

adoption of measures for improving the quality of life of the population's most vulnerable or marginalized sectors."

"However, the traditional mass media are not always accessible for disseminating the needs and claims of society's most impoverished or vulnerable sectors. Thus, community media outlets have for some time been insisting that strategies and programs that address their needs be included on national agendas."<sup>100</sup>

103. To address the deficient protection of the freedom of expression of marginalized groups and the insufficient information of societies, the Office of the Special Rapporteur must continue working in two different areas. First, it must insist upon the urgent necessity of enforcing antitrust laws to prevent the concentration of ownership and of control of the communications media. Second, it is necessary to ensure that the allocation of frequencies and licenses for all of the radio spectrum—especially the new digital dividend—respects the obligation of inclusion imposed upon the States by the inter-American legal framework, thereby decisively fostering pluralism and diversity in public debate.

104. In terms of combating monopolies, all of the bodies of the inter-American system for the protection of human rights have spoken out to recall the State's obligation to prevent public or private monopolies in the ownership or control of the communications media and thereby to guarantee the plurality of the media.<sup>101</sup> In this respect, Principle 12 of the Declaration of Principles on Freedom of Expression states that "[m]onopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people's right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals."

105. As indicated in Principle 12 of the Declaration of Principles, aside from the effective enforcement of antitrust laws, it is necessary to ensure that State-administered goods and services, which are vital to the full exercise of freedom of expression, be allocated in accordance with the values and principles underlying the entire inter-American legal framework, that is, in accordance with the principles of freedom, equality and nondiscrimination.<sup>102</sup>

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<sup>100</sup> IACHR, 2002 Annual Report, Vol. III: "Report of the Office of the Special Rapporteur for Freedom of Expression". Chapter IV. Paras. 37 and 38.

<sup>101</sup> The Inter-American Court addressed this point when it held that: "[i]t is the mass media that make the exercise of freedom of expression a reality. This means that the conditions of its use must conform to the requirements of this freedom, with the result that there must be, *inter alia*, a plurality of means of communication, the barring of all monopolies thereof, in whatever form, and guarantees for the protection of the freedom and independence of journalists [...] the right to impart information and ideas cannot be invoked to justify the establishment of private or public monopolies of the communications media designed to mold public opinion by giving expression to only one point of view. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (arts. 13 and 29 American Convention on Human Rights) *supra* nota 8, para. 34. The IACHR has also spoken to this point, among others, in Principle 12 of the Declaration of Principles de Freedom of expression. Likewise, the IACHR stated that: "one of the fundamental requirements of the right to freedom of expression is the need for a broad plurality of information. In today's society, mass media such as television, radio and the press have an undeniable power with regard to the education of all of its inhabitants on cultural, political, religious and other matters. If these media are controlled by a limited number of individuals, or by just one, a society is in fact being created in which a limited number of individuals, or by a single one, exercise control over information and—directly or indirectly—over the information that the rest of the people receive. This lack of plurality in information is a serious obstacle to the functioning of democracy. Democracy requires the confrontation of ideas; it requires debate and discussion. When this debate does not exist, or is weakened due to the fact that the sources of information are limited, the main pillar of democratic functioning comes under attack." IACHR 2003 Annual Report. Volume III: Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter VII: The situation of freedom of expression in Guatemala.

<sup>102</sup> About the obligation of inclusion imposed within the inter-American legal framework, the Inter-American Court has established that: "This general obligation to respect and guarantee human rights, without any discrimination and on an

106. It is necessary, among other things, for States to recognize and facilitate access under equal conditions, for the commercial, social and public uses of radio or television, not only the electromagnetic spectrum, but also the new digital dividend. It is indispensable to remove all disproportionate or discriminatory restrictions that prevent radio and television operators of all kinds to fully accomplish the commercial, social or public mission they undertake. It is fundamental that the allocation of frequencies processes be open, public and transparent, and that they be submitted to clear, pre-established rules and requirements that are strictly necessary, fair and equitable. It is necessary for this process to guarantee that disproportionate or unequal barriers to access to the media are not imposed, and that the arbitrary or discriminatory allocation, withdrawal, or non-renewal of frequencies or licenses is prevented. It is essential that all allocation and regulatory procedures be guided by a technical body that is independent of the government, enjoys autonomy in the face of political pressures and changes, is subject to all the guarantees of due process, and is subject to judicial review.

107. Rules such as the above allow for the protection of commercial channels and radio stations from abusive influences and provide them with the security that they will not be subject to arbitrary decisions, whatever their orientation may be. These types of rules also encourage the existence of state or public television channels and radio stations that are independent of governments and vitally promote the circulation of ideas and information not usually included in commercial programming (because of low profitability), and not generally given air time on social or community channels or radio stations (because of high production costs or because of the topics covered). Finally, regulations such as the ones proposed would enable the recognition and promotion of social communications media such as community channels and radio stations, which play an essential role in the democracies of our region.<sup>103</sup> These cases deal with a normative frame to promote the vitality of democracy if we bear in mind that the communicative process must

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...continuation

equal footing, has various consequences and effects that are defined in specific obligations. The Court will now refer to the effects derived from this obligation. // In compliance with this obligation, States must abstain from carrying out any action that, in any way, directly or indirectly, is aimed at creating situations of *de jure* or *de facto* discrimination. This translates, for example, into the prohibition to enact laws, in the broadest sense, formulate civil, administrative or any other measures, or encourage acts or practices of their officials, in implementation or interpretation of the law that discriminate against a specific group of persons because of their race, gender, color or other reasons. // In addition, States are obliged to take affirmative action to reverse or change discriminatory situations that exist in their societies to the detriment of a specific group of persons. This implies the special obligation to protect that the State must exercise with regard to acts and practices of third parties who, with its tolerance or acquiescence, create, maintain or promote discriminatory situations. // Because of the effects derived from this general obligation, States may only establish objective and reasonable distinctions when these are made with due respect for human rights and in accordance with the principle of applying the norm that grants protection to the individual. // Non-compliance with these obligations gives rise to the international responsibility of the State, and this is exacerbated insofar as non-compliance violates peremptory norms of international human rights law. Hence, the general obligation to respect and ensure human rights binds States, regardless of any circumstance or consideration, including a person's migratory status." I/A Court H.R., Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18 of September 17, 2003. Series A No. 18, paras. 102-106.

<sup>103</sup> Specifically on the protection of community radio, the Report on freedom of expression in Guatemala, adopted by the IACHR in 2003, stated: "The Commission and its Office of the Special Rapporteur maintain that community radio is positive because it promotes the culture and history of communities, provided that it is done within the legal framework. The Commission recalls that the issuance or renewal of broadcasting licenses must be subject to a clear, fair and objective procedure that takes into account the importance of the communications media in ensuring that all sectors of [...] society participate in an informed manner in the democratic process. In particular, community radio is of major importance in the promotion of national culture, development and education among [...] different communities [...]. Therefore, auctions that consider only financial criteria or that grant concessions without providing equal opportunities for all sectors are incompatible with democracy and with the right to freedom of expression guaranteed in the American Convention on Human Rights and in the Declaration of Principles on Freedom of Expression." IACHR 2003 Annual Report. Volume III: Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter VII: The situation of freedom of expression in Guatemala. Para. 414.

satisfy not only the consumer needs of society's inhabitants (legitimate entertainment needs, for example) but also their information needs.

108. In sum, it is incumbent upon the Office of the Special Rapporteur to make use of the instruments available to it to promote studies, cases or opinions that bring attention to the serious effects of the lack of pluralism and diversity in public debate, disseminate best practices with regard to the issue, and promote international standards and their incorporation into domestic legal systems. If we are to take seriously the notion that we are all equal in dignity and rights, we can do no less than to give voice to those who have been voiceless.

## CHAPTER V

### CONCLUSIONS AND RECOMMENDATIONS

1. As indicated in Chapter IV, these years have seen notable advances in the area of freedom of expression in the region. The majority of the States consecrate in their constitutions—or in legal norms with special status—freedom of expression as a fundamental right and endow it with a series of guarantees aimed at ensuring its full enjoyment. A considerable number of states have repealed contempt (*“desacato”*) laws and, some of them have modified their penal laws to avoid the criminalization of critical or dissenting expression. The process of incorporating access to information laws has been truly vigorous. Although impunity continues to be a serious problem, in some states legislative, administrative and judicial measures have been put forward to address this and systems of protection for journalists have been created that have demonstrated positive effects. Additionally, some initiatives have been advanced, although incipiently, aimed at revising broadcasting laws and the processes of assigning official publicity in communications media with the objective of preventing the use of these mechanisms as instruments of indirect censorship. An important process of recognition and implementation of the principles of pluralism and diversity in the distribution of public goods and resources has also begun, a requisite for the exercise of freedom of expression under conditions of equality.

2. Nevertheless, in its evaluation of the situation of freedom of expression in the region in 2008, the Office of the Special Rapporteur also warns of the existence of persistent challenges about which it formulates recommendations. The objective is to begin a fluid dialogue with the States that will enable the Americas to transform into an example for the rest of the world to follow in the area of respect, protection, and promotion of the right to freedom of expression.

3. One of the most problematic issues that requires energetic and immediate action is violence against journalists and communications media. At least nine social communicators were murdered in the region during 2008 for reasons that have been linked to the practice of the profession of journalism. Murder is the most brutal and violent means of violating the right to freedom of expression, and of preventing the dissemination of information and the free flow of ideas. In addition to these lamentable acts, there have been at least two hundred reports of attacks, threats, and acts of intimidation against journalists and communications media, presumably linked to the exercise of freedom of expression.

4. In relation to murders, displacements, and serious threats against the lives of social communicators, the information received by the Office of the Special Rapporteur leads to the conclusion that the increasing number of these is due to the activities of extremely violent organized crime groups. The Office of the Special Rapporteur knows the difficulty facing the states in which this phenomenon is occurring in the most aggressive manner and recognizes the challenge implied by the deactivation of these forms of crimes. States must understand that social communicators are essential so that the authorities themselves may become aware of issues that are crucial for the struggle against crime, acts of corruption, excessive use of police power, disproportionate measures by the state and even criminal dynamics that in some cases are first discovered by communications media. For this reason, it is essential to redouble efforts in the fight against impunity for crimes committed against journalists, and to adopt effective and adequate programs of protection so that they can continue with their communicative work.

5. According to the information received by the Office of the Special Rapporteur, the second cause of murders and attacks against social communicators and journalists today could be the action of organized and spontaneous groups (but not organized crime groups), that do not agree with the editorial stance of the communications media to which a reporter or social communicator belongs and decide to silence it with violence. Attacks committed in this context are particularly

serious, since independently of the position of the media or reporter, they show an alarming and extremely dangerous degree of social intolerance. In these cases, States have the fundamental responsibility to reestablish an atmosphere in which conflicts of ideas are resolved in the realm of the debate and not in that of physical violence. For this reason, it is essential to adopt in a rapid and effective manner all measures aimed at preventing, sanctioning, and publicly condemning each of the acts of violence against media and journalists, and to avoid any measure or manifestation that could in some way encourage or support them.

6. On the other hand, the Office of the Special Rapporteur values positively the notable advances in the area of access to information that have been registered in 2008. It is important to note that some difficulties persist with respect to the regulation of exceptions and the establishment of adequate measures for the implementation of this right.

7. It is certain that the majority of the States have repealed their "*desacato*" laws and even the penal laws on defamation when dealing with issues of public interest. It is also true that in some places where such norms persist, the courts have adopted restrictive criteria for the criminal prosecution of journalists and communicators for the broadcasting or publication of expressions or information of public interest. As Chapter II warns, in some states, criminal complaints against journalists or communicators for the publication of opinions or information related to cases of corruption or questions of public interest are commonplace, and the complainants are frequently public servants on duty. In the majority of the cases studied, the penal proceedings were dismissed, but the journalists were subjected to the pressures of being charged in a criminal proceeding, paying attorneys, and being subject to the other restrictive measures that may accompany such proceedings. In other cases, the judges convicted the journalists and, at least in three cases, the criminal sentences were partially or completely carried out. These instances demonstrate the existence of legal norms that are not in accordance with international standards with respect to protection of freedom of expression and that permit the imposition of disproportionate measures that could have a chilling effect that is incompatible with democratic societies.

8. Finally, it is necessary to initiate regional efforts for the regulation of the states' powers of regulation or assigning public goods and resources related directly or indirectly with the exercise of freedom of expression. On this point, the task is to adjust the institutional frameworks to two fundamental goals: to prevent the possibility that states' powers will be used to reward or punish media according to their editorial stance and, on the other hand, to foment pluralism and diversity in public debate.

9. In conclusion, despite the advances achieved, the problems and violations that caused concern for the Office of the Special Rapporteur in previous reports continue to occur in the region: the security of social communicators, the existence and application of restrictive laws, the necessity for more effective mechanisms to guarantee access to information, and the lack of clear regulations that prevent the existence of mechanisms of indirect censorship and promote pluralism and diversity. The recommendations set forth in this Annual Report refer to these themes.

10. The Office of the Special Rapporteur promotes the observance of its recommendations to continue advancing in the protection, guarantee, and promotion of the right to freedom of expression in the entire region. In this context, the Office of the Special Rapporteur reiterates the recommendations made in its previous annual reports, especially those related with the problems and challenges mentioned in Chapters II and IV of this Annual Report. Therefore, the Office of the Special Rapporteur recommends that the OAS Member States:

a. Carry out serious, impartial, and effective investigations of the murders, attacks, threats, and acts of intimidation committed against journalists and media workers. These crimes

must also be investigated when they are committed with the aim of silencing the exercise of the right to freedom of expression of human rights defenders or any other individual.

b. Try in impartial and independent tribunals all those responsible for the murders, attacks, threats, and acts of intimidation based on the exercise of freedom of expression, and adequately repair the victims and their family members.

c. Publicly condemn these acts to prevent actions that might encourage these crimes.

d. Adopt the measures necessary to guarantee the security of those who are attacked and threatened for the exercise of their right to freedom of expression, whether these acts are committed by state agents or by private individuals.

e. Adopt the necessary measures so that social communicators in situations of risk who have been displaced or exiled can return to their homes in conditions of safety. If these persons do not wish to 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.

f. Promote the repeal of laws that consecrate contempt ("*desacato*"), in whatever form these are presented, given that these norms are contrary to the American Convention on Human Rights and restrict public debate, an essential element of democratic functioning.

g. Promote the modification of laws on criminal defamation with the objective of eliminating the use of penal proceedings to protect honor and reputation when information is disseminated about issues of public interest, about public functionaries, or about candidates for public office.

h. Incorporate in their legal orders differentiated standards for evaluating subsequent liability for those who disseminate opinions or ideas about issues of general interest or political criticism, including the "actual malice" standard and strict proportionality and reasonability of sanctions, so that proceedings in relation to this cause do not generate a chilling effect that affects democratic debate.

i. Promote the modification of laws on insult to ideas or institutions with the aim of eliminating the use of penal proceedings to inhibit free democratic debate about all issues.

j. Eliminate any norm that enables prior censorship by any state organ, and also any qualification that may imply censorship of freedom of expression, such as prior qualifications of truthfulness, timeliness, or impartiality of information.

k. Abstain from using public power to punish or reward media and journalists in relation to their editorial stance or the coverage of certain information, whether through the discriminatory and arbitrary assignment of official publicity, administrative proceedings, pressures, or other indirect means aimed at impeding communication and the circulation of ideas and opinions.

l. Adopt legislation to ensure transparent, public, and equitable criteria for the assignment of radioelectric frequencies and the new digital dividend. This legislation must take into account the current situation of concentration of the ownership of communications media, and assign the administration of the radioelectric spectrum to an independent organ, subject to due process and judicial oversight.



## ANNEXES

### 1. Press Releases:

- A. Press Release 183/08: "OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION REQUEST EXHAUSTIVE INVESTIGATION INTO MURDER OF JOURNALIST IN BRAZIL".
- B. Press Release 184/08: "OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION AND GOVERNMENT OF CANADA SIGN AGREEMENT DESIGNED TO STRENGTHEN FREE EXPRESSION".
- C. Press Release 185/08: "OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION CONCLUDES VISIT TO HONDURAS AND MAKES RECOMMENDATIONS".
- D. Press Release 186/08: "SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION ANNOUNCES HE WILL NOT SEEK ANOTHER TERM".
- E. Press Release 187/08: "OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION URGES OAS MEMBERS STATES TO GIVE HIGHEST PRIORITY TO RESOLVING STATE TO IMPUNITY IN MURDERS OF JOURNALIST".
- F. Press Release 188/08: "OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION PRESENTS ITS 2007 ANNUAL REPORT".
- G. Press Release 189/08: "OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION DEPLORES MURDER OF JOURNALIST IN BOLIVIA AND DEMANDS INVESTIGATION".
- H. Press Release 190/08: "OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION DEPLORES MURDER OF TWO JOURNALIST FROM A COMMUNITY RADIO IN MÉXICO AND DEMANDS INVESTIGATION".
- I. Press Release 191/08: "OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION DEPLORES MURDER OF JOURNALIST IN GUATEMALA AND DEMANDS INVESTIGATION".
- J. Press Release 24/08: "OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION DEPLORES MURDER OF NEWSPAPER'S VICE PRESIDENT IN VENEZUELA AND DEMANDS INVESTIGATION".
- K. Press Release 37/08: "OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION DEPLORES MURDER OF CAMERAMAN IN DOMINICAN REPUBLIC AND DEMANDS INVESTIGATION".
- L. Press Release 44/08: "OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION DEPLORES MURDER OF NEWSPAPER DIRECTOR IN MÉXICO AND DEMANDS INVESTIGATION".
- M. Press Release 50/08: "OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION DEPLORES MURDER OF JOURNALIST IN MÉXICO AND DEMANDS INVESTIGATION".

2. Complete text of Article 13 of the American Convention on Human Rights.

3. Declaration of Principles on Freedom of Expression

4. Chapultepec Declaration

5. JOINT DECLARATION ON DEFAMATION OF RELIGIONS, AND ANTI-TERRORISM AND ANTI-EXTREMISM LEGISLATION 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.

6. Resolution 2418 (XXXVIII-O/08) adopted by the General Assembly of the OAS: Access to Public Information: Strengthening Democracy.

7. Resolution 2434 (XXXVIII-O/08) adopted by the General Assembly of the OAS: Right to Freedom of Thought and Expression and the Importance of the Media

## 1. Press Releases

**PREN 183/08**

### **A. OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION REQUESTS EXHAUSTIVE INVESTIGATION INTO MURDER OF JOURNALIST IN BRAZIL**

*Washington, D.C., January 11, 2008* - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the OAS requests an exhaustive investigation into the murder of Walter Lessa de Oliveira, a journalist who was working at the Alagoas State Legislature's TV Station. The Office of the Special Rapporteur urges the Brazilian authorities to investigate this crime swiftly and effectively so that the perpetrators may be duly punished and to determine whether the murder was related to journalistic activity.

According to reports received by the Office of the Special Rapporteur, Lessa de Oliveira was murdered on January 5, 2008, in the city Maceió, State of Alagoas. Oliveira, former director of the Alagoas Journalists Union, was shot four times in the head while he was waiting for a bus in the outskirts of Maceió. Police have told to local press that a suspect of the crime was a drug dealer, who might have been filmed recently by Oliveira, although they also consider the possibility of a robbery resulting in his murder.

The Special Rapporteur for Freedom of Expression, Ignacio J. Alvarez, said: "The Office of the Special Rapporteur calls on Brazilian authorities to act with the due diligence to investigate the murder and to prosecute those responsible".

Principle 9 of the Declaration of Principles on Freedom of Expression notes that: "[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation".

**B. OFFICE OF THE SPECIAL RAPPORTEUR AND GOVERNMENT OF CANADA SIGN AGREEMENT DESIGNED TO STRENGTHEN FREE EXPRESSION**

*Washington, D.C., January 25, 2008*—The Office of the Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights (IACHR) expresses its gratitude and appreciation to Foreign Affairs and International Trade Canada for contributing (CAN) \$194,928 from its Glyn Berry Program towards the “Freedom of Expression in the Americas Project”. The main purpose of the initiative is to support and strengthen the Office of the Special Rapporteur’s activities in promoting and defending the right to freedom of expression in the region.

Among other goals, the project seeks to strengthen support of freedom of expression issues within the IACHR individual case system; increase country visits by the Office of the Special Rapporteur; and facilitate the preparation of special studies on specific topics related to freedom of expression in the region.

The Office of the Special Rapporteur for Freedom of Expression appreciates the Canadian government’s important contribution and stresses its satisfaction over this demonstration of Canada’s financial and political support of its activities to promote freedom of expression in the Americas. This contribution, which coincides with the 10<sup>th</sup> anniversary of the creation of the Office of the Special Rapporteur, strengthens this institution significantly and allows it to ensure and consolidate its continued growth.

### **C. OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION CONCLUDES VISIT TO HONDURAS AND MAKES RECOMMENDATIONS**

*Tegucigalpa, February 14, 2008* – As it completes its working visit to the Republic of Honduras, the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the OAS reports that it has observed progress related to the elimination of the crime of *desacato* (“contempt”) and the authorization of the Transparency and Access to Information Law; it has also seen challenges that merit priority attention. The Special Rapporteur’s Office emphasizes the need to continue advancing towards the adoption of measures that support the right to freedom of expression and makes the following recommendations to the government:

1. Launch investigations into the murders of journalists that have taken place in the country in order to determine whether or not these murders were related to the exercise of their profession; bring those responsible to justice; and take measures to ensure that the crimes not remain in impunity.
2. Investigate cases of threats and attacks against journalists in the country and punish the responsible parties. At the same time, take the measures necessary to protect the lives and physical integrity of the threatened persons and to ensure that journalists who have had to leave the country because of threats to their lives can return in conditions of security that allow them to freely practice their profession.
3. Continue the process of making legislation compatible with international standards, and in this sense modify the Penal Code and related laws in order to eliminate criminal sanctions for actions considered an “offense to honor or reputation” when this is related to information that is disseminated on matters of public interest.
4. Consolidate the progress made with the passage of the Transparency and Access to Information Law through the establishment of its regulations and administrative procedures.
5. Eliminate from legislation the compulsory membership in professional associations for journalists.
6. Adopt legislation and administrative policies requiring objective and transparent criteria for government advertising.
7. Take proactive steps toward ensuring pluralism in the media.

During the visit to Honduras, which took place February 11 -14, 2008, the Special Rapporteur for the Freedom of Expression, Ignacio J. Álvarez; attorney Alejandra Gonza; and the Press and Communications Coordinator for the Rapporteur’s Office, Leticia Linn, met with representatives of the government and civil society.

Government representatives they met with include the President of Honduras, Manuel Zelaya; Minister of the Presidency, Enrique Flores Lanza; Vice-Minister of the Secretariat of Foreign Relations, Enrique Eduardo Reina; Magistrates of the Supreme Court of Justice, Lidia Estela Cardona and Nicolás García Zorto; President of the Institute for the Access to Public Information, Commissioner Elizabeth Chiu Sierra; Commissioners Gilma Argurcia Valencia and Arturo Etchenique Santos; and the National Commissioner for Human Rights, Ramón Custodio López.

The Special Rapporteur’s Office also met with former IACHR commissioner and Executive Director of *ACI Participa*, Leo Valladares; and with representatives of the Committee of Family Members of the Detained and Disappeared of Honduras (COFADEH); the Honduran Press Association; the Honduran School of Journalism; the Democracy without Borders Foundation; *C-Libre*; and the Media Association. Meetings were also held with a representative number of top journalists.

These meetings allowed the Office of the Special Rapporteur to complement and update the information it had gathered previously on the situation of the right to the freedom of expression in Honduras. Its specific observations are presented in the annex to this press release.

The Office of the Special Rapporteur would like to thank the government of Honduras for its invitation to visit the country, as well as other government agencies, journalists, media groups, and civil society organizations for their participation and for the information they supplied during this visit. The Special Rapporteur's Office reiterates, as a part of its mandate, its willingness to collaborate with and provide technical assistance to initiatives in the area of the freedom of expression that may arise in the country.

Finally, the Special Rapporteur's Office would like to express its gratitude to Foreign Affairs and International Trade of Canada for its economic support through the Glyn Berry Program which financed this visit. It would also like to thank the OAS Office in Honduras for its support for the activities of the Special Rapporteur in the country.

For more information about the Rapporteurship: <http://www.cidh.org/relatoria>

## **OBSERVATIONS AND RECOMMENDATIONS ON THE SITUATION OF FREEDOM OF EXPRESSION IN HONDURAS**

This document is an annex to the February 14 press release (185/08) of the Special Rapporteur's Office for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the OAS.

### **1. Investigations into the Murders of Journalists**

Since the last visit of the Special Rapporteurship to Honduras in 2003, there have been at least two murders of journalists that may have been related to the exercise of journalism.

On November 26, 2003, Germán Antonio Rivas, director and owner of the Television Station *Corporación Mayavisión*, was shot to death as he arrived at the station headquarters in Santa Rosa de Copán. The journalist may have received threats in weeks previous. According to information received at the time, the murder may have been related to the exercise of his profession of journalism because of some information of public interest that he disseminated in his news programs. On December 2003 an arrest warrant was issued for two people accused of being the material authors of this crime. Almost five years after Rivas's murder, these two people have yet to be apprehended. Nor has there been any progress in the investigation into the identity of the possible intellectual authors or into the motive for the crime.

In another case, on October 18, 2007, journalist and humorist Carlos Salgado was murdered as he was leaving *Radio Cadena Voces* where he worked. Salgado was often a critic on matters of public interest on his radio program. After the murder, other radio journalists reported that they had been receiving threats because of their journalistic work. The Police arrested one person suspected of being the material author of this crime.

Murder is the most brutal form of inhibition of the freedom of expression. According to the American Convention on Human Rights, the State has the responsibility to prevent, investigate, and sanction any violations of the rights enshrined in this instrument. Principle 9 of the IACHR Declaration of Principles on Freedom of Expression holds that: "The murder, kidnapping, and intimidation of journalists and threats made against them, as well as the material destruction of the media, violates the fundamental rights of people and severely restricts the freedom of expression."

Therefore, the Rapporteurship urges the Honduran government to launch investigations into the previously mentioned murders, so that it can be determined whether or not these murders were related to the exercise of journalism and so that the responsible parties—both the material and intellectual authors of these crimes—may be brought to justice. These crimes must not be allowed to remain in impunity, since this creates the conditions for new acts of violence to be committed against journalists and could result in additional limitations to the freedom of expression, such as the self-censorship of other journalists and members of the media.

### **2. Attacks and Threats**

The Special Rapporteur's Office is concerned about information it has received regarding numerous episodes of attacks and threats against members of the media in Honduras.

Among some of the many cases about which the Rapporteurship has received information, is that of journalist Dina Meza, for whom the IACHR has been providing precautionary measures since 2006. Meza received threats against her life and personal integrity after the murder in December that year of Dionisio Díaz García, a lawyer and adviser for the *Asociación para una Sociedad Más Justa*

(Association for a More Just Society) where she had been working. The precautionary measures authorized for Meza are still in effect.

Among the various cases from 2007 were those of journalists Geovanny García and Martín Omar Ramírez who were under precautionary measures issued by the Inter-American Commission on Human Rights. In September 2007, Geovanny García was shot by unidentified persons. He left the country shortly afterwards and has still not returned. During the same month, Martín Omar Ramírez received telephone death threats against himself and his family.

On November 1, 2007, the director of the *Radio Cadena Voces* station, Dagoberto Rodríguez, left the country after being informed by the police that a group of paid assassins were trying to kill him. He returned to Honduras several months later.

Journalists Renato Álvarez from Channel 63, Rossana Guevara from TN5 of Channel 5, and Sandra Maribel Sánchez, the news coordinator for *Radio Globo*, reported having received recent threats, all related to their journalistic activity.

Principle 9 of the Declaration of Principles on Freedom of Expression refers also to intimidation and threats against members of the media, indicating that: "It is the duty of the State to prevent and investigate these crimes, punish their authors, and assure adequate compensation to the victims."

Because of the information it has received and the concern it has generated, the Special Rapporteur's Office urges Honduran authorities to pursue an effective investigation of the cases involving threats and attacks against journalists in order to identify and punish those responsible. Investigating threats is one of the ways of protecting the people who have been victims of the threat and creating the necessary climate for the full guarantee of the freedom of expression. The Special Rapporteurship also urges the Honduran government to provide effective protection for the physical integrity of persons who have been threatened.

### **3. Legislation on Defamation, Libel, and Slander**

The 2005 Honduran Supreme Court decision to repeal the crime of "*desacato*" (contempt) was an important step forward for freedom of information in the country, and the Special Rapporteur's Office considers it equally necessary for Honduras to modify the articles of its Criminal Code related to the crimes of defamation, libel, and slander, and their related laws. This, taking into account that according to the standards of the Inter-American System of Human Rights, the criminal sanction of "offenses to honor and reputation" related to the dissemination of information on matters of public interest is not considered proportional in a democratic society. Allowing criminal procedures in cases of public interest information removes incentives for the investigation and discussion of matters relevant to society and inhibits criticism, thus impacting negatively on democracy.

Principle 10 of the Declaration of Principles on Freedom of Expression indicates: "[...] The protection of the reputation of a person should be guaranteed only through civil sanctions in the cases in which the offended party is a public official or a public or private citizen that has voluntarily engaged in matters of public interest. Furthermore, these cases must prove that in disseminating the news, the journalist intended to cause harm, or was fully aware that he or she was spreading false information or that he or she behaved in a negligent manner in confirming the veracity of the information."

The Office of the Special Rapporteur observed that in Honduras criminal complaints are used against journalists who report on matters of public interest. While it is known that most of these criminal proceedings against journalists do not result in their imprisonment, and that some of the charges have been dismissed, the simple act of initiating a criminal procedure ends up intimidating the journalist being charged as well as other journalists, who may censor themselves in order to avoid being subjected to a similar process. The Special Rapporteur's Office emphasizes that journalists



provide a service that is fundamental to democracy and that they have the right to do their job without concern that they may be subjected to criminal proceedings and threatened with prison sentences or other ancillary punishments.

Given these considerations, the Special Rapporteur's Office urges Honduras to modify the articles of the Criminal Code related to the crimes of defamation, libel, and slander, and related laws and rules, in order to eliminate criminal sanctions related to "offenses to honor or reputation" which arise from the dissemination of information on matters of public interest. The protection of honor and reputation in these cases should take place through the right to correction or response and through proportional civil sanctions issued in proceedings that take into account the parameters of Principle 10 of the Declaration of Principles on Freedom of Expression.

#### **4. Access to Information**

Access to information is a human right that is part of Article 13 of the American Convention on Human Rights, which guarantees freedom of thought and expression. In this respect, among the elements and guarantees that should be considered in the legal regime of access to information is the principle of maximum disclosure, which establishes the presumption that all information is accessible, except when it is subject to a legitimate system of restrictions based on limitations allowed by the American Convention (rights or reputation of others; national security; public order; and public health or morale). For a denial of information to be considered legitimate, the government should respond in writing to the party soliciting the information and specify the reasons and legal bases for which it is justifying the restriction.

The Special Rapporteur's Office recognizes the progress that was made in December 2006 when Honduras the Law on Transparency and Access to Information was authorized, and later with the creation of the Institute for the Access to Public Information. The current government promoted the passage of this law, and according to the information received, it is also actively promoting its instrumentation. During the visit, the Special Rapporteur's Office was informed of the creation of more than 70 positions for officials in charge of processing requests for information from different institutions of the government.

At the same time, according to the information provided, Articles 17 (on designating information as "classified" or "secret") and Article 39 (on information covered by law) could be susceptible to restrictive interpretations that would impede the effective exercise of the right to have access to information.

The Special Rapporteur's Office believes that the next step in this area consists of issuing the rules and regulations necessary for the implementation of the Transparency and Access to Information Law and in adopting administrative practices consistent with international standards on the matter in order to guarantee for all people the effective exercise of the right of access to information.

#### **5. Mandatory Association of Journalists**

It is of concern to the Special Rapporteur's Office that Honduran legislation still makes membership in a professional association or guild mandatory for journalists to exercise their profession. As the Inter-American Human Rights Court has indicated, mandatory association of journalists violates the freedom of expression guaranteed in Article 13 of the American Convention on Human Rights: "The exercise of professional journalism cannot be separated from the Freedom of Expression. On the contrary, both things are clearly intertwined, since the professional journalist is not, nor can he be, anything other than a person who has decided to exercise the freedom of expression in an ongoing, consistent, and remunerated way."

The Special Rapporteur's Office recalls that Principle 6 of the Declaration of Principles on Freedom of Expression states that: "All people have the right to communicate their opinions through any

means or form. The obligatory association or requirement of titles for the exercise of journalistic activity is an illegitimate restriction of the freedom of expression."

As a result, the Special Rapporteurship calls on Honduran authorities to repeal all laws that imply the mandatory association of journalists as a requirement for exercising their profession, in order to guarantee in this way the full exercise of the freedom of expression in the country.

## **6. Government Advertising**

Principle 13 of the Declaration of Principles on Freedom of Expression states that the arbitrary and discriminatory assignment of government advertising with the objective of punishing or awarding media outlets according to their editorial line is a violation of the freedom of expression and should be expressly prohibited by law.

The power that governments have to decide on where to place their advertising should be exercised based on objective and transparent criteria. Government advertising is an important source of income for some media outlets. Its improper use could negatively affect the free dissemination of information of public interest and the democratic control that a duly informed society could exercise over the administration of government.

The Special Rapporteur's Office urges the government to adopt legislation and administrative policies that require objective and transparent criteria for the placing of government advertising.

## **7. Spots for Government Programming ("*Cadenas*")**

In May 2007, the Special Rapporteur's Office learned that the President of the Republic had ordered all radio and television stations in the country to simultaneously air, on a particular schedule, government programming and interviews with public officials in order to "counteract the disinformation of the media" about the work of the government. The announcement generated widespread public debate in society, and various social organizations, media groups, and journalists rejected the idea of these "*cadenas*," or government programming spots.

The Special Rapporteur's Office emphasizes that, according to the information gathered during its visit to Honduras, this government programming was implemented for a few weeks, but was not continued as a result of the public debate mentioned previously.

## **8. Government-Media Relationship**

It is public knowledge that government officials and members of the media are criticizing each other on the issue of how best to fulfill their respective roles in society. The government claims that the media does not report on the good work of the government and that it uses its informational spaces to express opinions against the government.

The Special Rapporteur's office would like to emphasize that a broad tolerance for the criticism of all actors who are part of the public debate is important in a democratic society. Freedom of expression should be guaranteed not only in terms of the dissemination of information and ideas that are favorably received or considered inoffensive or neutral, but also when it comes to ideas that offend, are unwelcome, or that disturb the government or any sector of society, because these are the requirements of pluralism, tolerance, and the spirit of openness necessary for democracy.

High level officials of the government play an important role in building spaces of tolerance and democratic coexistence and should therefore be especially careful about the impact their statements may have on the freedom of expression and on other human rights such as life and personal integrity. The way the media carries out its work is also a subject of public discussion. Therefore, criticism and judgments made in this framework by public officials or by private citizens should be tolerated as long as they do not lead directly to violence.

## **9. Ethics in Journalism**

The Special Rapporteur's Office would like to say that, that just as it did in its 2003 visit, it has heard the concern of several sectors about unethical practices on the part of some journalists and members of the media who may be motivated by the defense of personal or economic interests or by the desire to disparage the honor of certain people, and that these unethical practices impact the information that forms public opinion. In meetings with the Special Rapporteur's Office, journalists expressed that one factor that may contribute to this situation is the precarious nature of the working conditions of journalists.

The Rapporteurship reiterates that the media should promote its ethical self regulation through deontological codes, style books, rules for writing, public ombudsmen, and information councils, among other possible mechanisms. But it should be clear that the government should not be imposing the rules of ethical conduct, which are essential in the work of journalists. In this sense, it is important to emphasize Principle 6 of the Declaration of Principles of Freedom of Expression which states that "journalistic activity should be governed by ethical conduct, and should in no case be imposed by governments."

## **10. Pluralism and the Assignment of Radio Frequencies**

Pluralism is a fundamental component of the freedom of expression and of democracy and requires the ability to express different opinions through various means of communication and the ability for these views to reach the largest audience possible. The States party to the American Convention on Human Rights should fulfill their international obligations in the area of the freedom of expression. This includes both abstaining from actions that negatively affect pluralism and taking proactive measures to ensure it. One of the situations that negatively affects pluralism is the concentration of the media and public or private monopolies of the ownership of the media.

The Special Rapporteur's Office believes that it is important for Honduras to take actions such as: enacting laws against monopolies in the ownership and control of media; passing legislation that establishes open, public, and transparent competition for assigning radio frequencies; and giving power to independent agencies to make decisions on these matters.

**Tegucigalpa, February 14, 2008**

**D. SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION ANNOUNCES HE WILL NOT SEEK ANOTHER TERM**

*Washington, D.C., March 10, 2008* - As he approached the end of his two-year term, which began in April 2006, the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the OAS, Ignacio J. Álvarez, announced his decision not to seek reelection to the post.

The Special Rapporteur said his decision, which has been communicated to the IACHR, was motivated by professional reasons related to other duties he will assume. The Special Rapporteur reiterated his gratitude to the IACHR for the trust they bestowed on him to carry out such high-level and delicate responsibilities.

**E. SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION URGES OAS MEMBER STATES TO GIVE HIGHEST PRIORITY TO RESOLVING STATE OF IMPUNITY IN MURDERS OF JOURNALISTS**

*Washington, D.C., March 27, 2008*— Between 1995 and 2005, 157 journalists were killed in 19 countries of the Americas for motives possibly connected to their jobs. As of the end of 2007, only 32 of these cases had produced some type of conviction, according to the Special Study on the Status of Investigations into the Murder of Journalists in the 1995-2000 Period for Reasons that May Be Related to their Work in Journalism. The study was published today by the Office of the Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights (IACHR).

The largest number of murders took place in Colombia, Brazil, and Mexico, according to the investigation undertaken for this study. In Colombia, 75 reporters were killed, and only 7 of those cases have led to some type of conviction. In Brazil, where 23 members of the media have been killed, convictions have been handed down in only 9 cases. Of the 20 murders of reporters in Mexico, only in 4 cases have there been convictions. None of the 9 cases in Guatemala has led to a conviction, while in Haiti, convictions have been handed down in only 2 of the 6 cases.

In the study, which was approved in March 2008 by the OAS Inter-American Commission on Human Rights, the Office of the Special Rapporteur emphasizes in general that investigations into these murders have proceeded at an excessively slow pace. Most of the investigations show serious deficiencies in the way they are conducted, face obstacles, and have not led to a clarification of the facts or to convictions. According to the study, of the 32 cases in which there has been some type of conviction, the sentence has not always been put into effect, nor have all those responsible for planning and carrying out the crime necessarily been punished.

In light of the situation described in the study on the murder of journalists, the Office of the Special Rapporteur strongly urges the member countries of the Organization of American States (OAS) to give the highest political priority to addressing and resolving the state of impunity surrounding the murder of journalists. It asks for impartial, serious, and diligent investigations that lead to a clarification of the facts, the identification of all perpetrators—those who physically commit the crime and the masterminds—as well as their arrest, trial, and effective punishment. The Office of the Rapporteur also suggests that the agencies in charge of investigating murders of members of the media be strengthened, that any obstacles that impede the normal development of the investigations be removed, and that the security of witnesses, victims' family members, prosecutors, judges, and attorneys be guaranteed. The Office of the Rapporteur also urges the States to adopt measures to protect reporters who receive threats in order to prevent attempts against their lives.

"The presence of more subtle forms of restricting freedom of expression that we see in the region—such as criminal cases brought against journalists, the placement of official advertising as reward or punishment for a media outlet's editorial stance, official pressure applied to the media, the decision to arbitrarily grant or revoke broadcast licenses, discrimination in access to official sources, and the effect on pluralism of monopolies or increasing consolidation in media ownership, either on the part of the State, individuals, or corporations—should not lead us to lose sight of the fact that in the Americas, journalists continue to be killed, and the vast majority of these murders go unpunished," the Special Rapporteur Ignacio J. Alvarez stated.

"That concern led to the idea of conducting a study that could serve as a wake-up call to increase awareness about this extremely serious problem," he added. "We are aware that many of the murders could be tied to drug trafficking, other forms of organized crime, paramilitary forces, and

dissident armed groups. However, it falls to the States to investigate and punish those cases through their courts and other competent entities. Impunity is the responsibility of the States.”

The murder of journalists and members of the media is the most violent way to violate the right to freedom of expression. It not only nullifies the victim’s right to life; it also infringes on the right of the victim’s family to mental and moral wholeness, and deprives society of a source of opinion and information, the new study argues. It notes that the lack of adequate investigations, and the impunity that results when journalists are murdered for reasons related to their work, can create conditions that make it easier for other reporters to be killed and can foster self-censorship, which restricts freedom of expression. The study also underscores the States’ positive obligation to investigate these murders effectively, determine their causes, and punish those responsible. The failure to comply with this obligation, and the resulting impunity, generate an international responsibility on the part of the States, both in the case of crimes committed by agents of the State and those committed by private individuals, according to the study.

The criterion used to register the murders included in this study was based on crimes “committed for motives that could be related to journalistic activity.” The Office of the Rapporteur prepared a preliminary table that included the name of the reporter or member of the media killed; the date and country in which the events took place; and a brief description of the events, based on the Office of the Special Rapporteur’s annual reports, its daily monitoring of the state of freedom of expression in the region, its quarterly communiqués, the information it receives from the States, and public information available provided by international and national nongovernmental organizations. This preliminary table was sent in 2006 to the States, nongovernmental organizations, and other institutions, with a request for information about the status of investigations into these crimes, based on a questionnaire. With the information gathered through this consultation, a draft final table was prepared and sent to the States again in January 2008 so they could make observations or provide updated information they considered pertinent. An analytical study was then made of the information that had been systematized in the final table.

The Office of the Special Rapporteur also notes that in 2006, 2007, and early 2008 new murders of journalists have taken place for reasons that may be related to their work in journalism, at what continues to be very high rate.

Accompanying this press release is a chart with information taken from the special study published today. The entire study, which is also attached, has been posted on the Office of the Rapporteur’s Web site:

<http://www.cidh.oas.org/relatoria/section/Asesinato%20de%20Periodistas%20INGLES.pdf>

**F. OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION PRESENTS ITS 2007 ANNUAL REPORT**

*Washington, D.C., April 4, 2008* – In its evaluation of the situation of freedom of expression in the Americas in 2007, the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the OAS drew attention to the murders of communicators and to the attacks and threats directed at journalists during the year. It also drew attention to a growing trend on the part of the government authorities to make recurrent use of more subtle methods for coercing the media that have a negative impact on the diversity of sources of information. On April 3, the IACHR presented its annual report to the Committee on Juridical and Political Affairs of the Organization of American States (OAS), Volume III of which contains the Report of the Special Rapporteur for Freedom of Expression.

The report of the Office of the Special Rapporteur records 16 murders in 2007 for reasons that could be connected with the exercise of freedom of expression. It also notes that violence against journalists has been a continuing fact in the region, made all the more complex insofar as some attacks are perpetrated by private persons, and all more serious due to impunity. The annual report also highlights the existence of a trend on the part of official authorities to use subtle methods for coercing the media, such as shutdowns of channels or embargos on programs that make the government uncomfortable, or proceedings to review concessions or the failure to renew licenses of media critical of the government by entities that are not independent, that are subject to political pressure, and that operate without the due process.

This annual report covers the activities carried out from January to December 2007, during which time the Office was under the responsibility and direction of then-Special Rapporteur for Freedom of Expression Ignacio J. Alvarez.

In addition to a detailed evaluation of the situation of the right to freedom of expression in the hemisphere, the report of the Office of the Special Rapporteur includes a specific analysis of the exercise of this right in each country in the region. The annual report includes general conclusions on the situation of freedom of expression in the region, on the basis of which it offers a number of recommendations to the member states of the OAS with a view to improving the conditions necessary for the full exercise of freedom of expression.

**G. OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION DEPLORES MURDER OF JOURNALIST IN BOLIVIA AND DEMANDS INVESTIGATION**

*Washington, D.C, April 9, 2008* - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the Organization of American States deplores the murder of Carlos Quispe Quispe, reporter of *Radio Municipal* in Pucarani, in Bolivia. The Office of the Special Rapporteur urges the authorities of Bolivia to investigate this crime promptly and effectively to duly punish those responsible, and to guarantee the safety of those working in journalism.

Quispe was beaten and left unconscious by a group of persons believed to be political opponents of Pucarani's mayor, Alejandro Mamami, on March 27, 2008. Quispe died two days after the attack in a La Paz hospital, according to the information released by Bolivian media and by reporters associations. The group had first attacked the mayor's office and then attacked the *Radio Municipal* where Quispe was working.

The Office of the Special Rapporteur for Freedom of Expression recalls that, under the American Convention on Human Rights, the States have the duty to prevent, investigate, and sanction any violation of the rights recognized therein. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that "the murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression."



**H. OFFICE OF THE SPECIAL RAPPOREUR FOR FREEDOM OF EXPRESSION DEPLORES MURDER OF TWO JOURNALISTS FROM A COMMUNITY RADIO IN MEXICO AND DEMANDS INVESTIGATION**

*Washington, D.C, April 18, 2008* - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the Organization of American States deplores the murder of Teresa Bautista Merino and Felicitas Martínez Sánchez, both hosts at community radio *La Voz que Rompe el Silencio* of the Triqui indigenous group, which broadcasts in Oaxaca, Mexico. The Office of the Special Rapporteur urges Mexican authorities to investigate this crime promptly and effectively, and to duly punish those responsible.

According to the information received by the Office of the Special Rapporteur, Bautista Merino and Martínez Sánchez were ambushed and killed on April 7, 2008, when unidentified individuals shot at their vehicle, in Oaxaca, Mexico. Another four persons were injured. According to the media and non-governmental organizations, both reporters were killed when they were coming back from a neighboring town where they interviewed people and talked about their community radio. The two women worked as hosts and reporters for community radio *La Voz que Rompe el Silencio* that broadcasts in the Triqui town of San Juan Copala. They used to report on the autonomous indigenous government of San Juan Copala and on news about health, education, and indigenous culture. The community radio began broadcasting in Spanish and the Triqui language on January 19, 2008.

Under the American Convention on Human Rights, States have the duty to prevent, investigate, and sanction any violation of the rights recognized therein. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that “the murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression.”

**I. OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION DEPLORES MURDER OF JOURNALIST IN GUATEMALA AND DEMANDS INVESTIGATION**

*Washington, D.C, May 16, 2008* - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the Organization of American States deplores the murder of Jorge Merida Perez, correspondent for newspaper *Prensa Libre* at Quetzaltenango, Guatemala. The Office of the Special Rapporteur urges Guatemalan authorities to investigate this crime promptly and effectively, and to duly punish those responsible.

On May 10, 2008, Merida Perez was writing an article at his home, when an unidentified individual came in and shot him four times in the head, according to the media and non governmental organizations. In the days prior to his death, Merida Perez had said to his relatives and friends that he was receiving threats, although he did not give them any detail. The journalist had been working on articles related to local drug trafficking and government corruption.

Under the American Convention on Human Rights, States have the duty to prevent, investigate, and sanction any violation of the rights recognized therein. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that “the murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression.”

**J. OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION DEPLORES MURDER OF NEWSPAPER'S VICE PRESIDENT IN VENEZUELA AND DEMANDS INVESTIGATION**

*Washington, D.C, June 5, 2008* - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the Organization of American States deplores the murder of Pierre Fould Gerges, Vice President of the daily *Reporte Diario de la Economía* in Caracas, Venezuela. The Office of the Special Rapporteur urges Venezuelan authorities to investigate this crime promptly and effectively, and to duly prosecute those responsible.

According to the local media, on June 2, 2008, around 5.30 pm, Pierre Gerges left the newspaper using the car of his brother, Tannous Gerges, president of *Reporte Diario de la Economía*. When he stopped at a gas station, two unidentified individuals on a motorcycle approached Pierre Gerges and shot him at least ten times. He was pronounced dead at the scene. His brother and several senior staff members had been receiving telephone and e-mail death threats linked to the editorial opinion of the newspaper which has been critical of government corruption. In one of the emails, Tannous Gerges' family was specifically threatened.

Under the American Convention on Human Rights, States have the duty to prevent, investigate, and sanction any violation of the rights recognized therein. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that "the murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression."

**K. OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION DEPLORES MURDER OF CAMERAMAN IN DOMINICAN REPUBLIC AND DEMANDS INVESTIGATION**

*Washington, D.C., August 14, 2008* - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the Organization of American States deplores the murder of Normando García, cameraman of a news show, in Santiago, Dominican Republic. The Office of the Special Rapporteur urges Dominican authorities to investigate this crime promptly and effectively, and to duly prosecute those responsible.

On August 7, 2009, during the afternoon, García, a cameraman for the daily news show “Detras de la Noticia” and producer of the music show “Pachanga Mix” on television station *Teleunión*, was dropping his car in a car-wash when unidentified persons shot him from a moving car, according to local press and non governmental organizations. García died in the place where the attack happened. A taxi driver, who was with him and was also shot, died a few hours later. García’s coworkers said that during the past months the cameraman, who used to cover police information, had received life threats related to his journalistic work, and that his car had been set on fire outside the channel offices.

Under the American Convention on Human Rights, States have the duty to prevent, investigate, and sanction any violation of the rights recognized therein. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that “the murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression.”

**L. OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION DEPLORES MURDER OF NEWSPAPER DIRECTOR IN MEXICO AND DEMANDS INVESTIGATION**

*Washington, D.C., October 23, 2008* - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the Organization of American States deplores the murder of Miguel Villagómez Valle, director of the daily *La Noticia* in Michoacán, Mexico. The Office of the Special Rapporteur urges Mexican authorities to investigate this crime promptly and effectively, and to duly prosecute those responsible.

On October 9, 2008, Villagómez Valle was kidnapped after leaving the newspaper, and later he was shot down. His body was found on October 10 in the neighboring Guerrero state. Villagómez Valle was the director and founder of the daily newspaper *La Noticia*, based on Lázaro Cardenas in Michoacán state. The newspaper covers crime and politics, along with sports and culture. According to the information released by the local press and non governmental organizations, Villagómez would have received a threatening call on his cell phone a month ago, that could have been related to a group of drug dealers.

Under the American Convention on Human Rights, States have the duty to prevent, investigate, and sanction any violation of the rights recognized therein. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that “the murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression.” The Office of the Special Rapporteur requests an investigation on this crime and to duly prosecute those responsible.

**M. OFFICE OF THE SPECIAL RAPPOREUR FOR FREEDOM OF EXPRESSION DEPLORES MURDER OF JOURNALIST IN MEXICO AND DEMANDS INVESTIGATION**

*Washington, D.C., November 14, 2008* - The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) of the Organization of American States deplores the murder of Armando Rodríguez Carreón, journalist of the daily *El Diario* at Ciudad Juárez in Chihuahua, Mexico. The Office of the Special Rapporteur urges Mexican authorities to investigate this crime promptly and effectively, and to duly prosecute those responsible.

On November 13 2008, early in the morning, Rodríguez Carreón was leaving his house in a car to drive his daughter to school, when unidentified persons approached him and shot him several times. The reporter died in the place. Rodríguez Carreón had been working for more than ten years covering police information for *El Diario*. According to local press and non governmental organizations, at the beginning of the year he received threats, so he left the city for a couple of months. During 2008, Ciudad Juárez has been the center of a wave of drug-related violence.

Under the American Convention on Human Rights, States have the duty to prevent, investigate, and sanction any violation of the rights recognized therein. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR states that “the murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression.” The Office of the Special Rapporteur requests an investigation on this crime and to duly prosecute those responsible.

## **2. Complete text of Article 13 of the American Convention on Human Rights**

### **Article 13. Freedom of Thought and Expression**

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

- 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.

### **3. 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 requirement 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.

#### **4. Chapultepec Declaration**

Adopted by the Hemisphere Conference on Free Speech Mexico City March 11, 1994

##### **Preamble**

On the threshold of a new millennium, the Americas envision a future rooted in democracy. A political opening has taken hold. Citizens have a heightened awareness of their rights. More than at any time in our history regular elections, governments, parliaments, political parties, labor unions, associations and social groups of every kind reflect the hopes of our people.

In this environment of democratization, several developments engender optimism but also suggest prudence. Institutional crises, inequalities, backwardness, unresolvable frustrations, the search for easy solutions, failure to grasp the nature of democracy and special interest groups constantly threaten the advancements made. They also represent potential hurdles to further progress.

That is why we who share this hemisphere, from Alaska to Tierra del Fuego, must consolidate the prevailing public freedoms and human rights.

Democratic rule must be embodied in modern institutions that represent and respect the citizenry; it must also guide daily life. Democracy and freedom, inseparably paired, will flourish with strength and stability only if they take root in the men and women of our continent.

Without democracy and freedom, the results are predictable: Individual and social life is stunted, group interaction is curtailed, material progress is distorted, the possibility of change is halted, justice is demeaned and human advancement becomes mere fiction.

Freedom must not be restricted in the quest for any other goal. It stands alone, yet has multiple expressions; it belongs to citizens, not to government.

Because we share this conviction, because we have faith in the creative force of our people and because we are convinced that our principles and goals must be freedom and democracy, we openly support their most forthright and robust manifestation: Freedom of expression and of the press, whatever the medium of communication. The exercise of democracy can neither exist nor be reproduced without these.

We, the signatories of this declaration, represent different backgrounds and dreams. We take pride in the plurality and diversity of our cultures, considering ourselves fortunate that they merge into the one element that nurtures their growth and creativity: Freedom of expression, the driving force and basis of mankind's fundamental rights.

A free society can thrive only through free expression and the exchange of ideas, the search for and the dissemination of information, the ability to investigate and question, to propound and react, to agree and disagree, to converse and confront, to publish and broadcast. Only by exercising these principles will it be possible to guarantee individuals and groups their right to receive impartial and timely information. Only through open discussion and unfettered information will it be possible to find answers to the great collective problems, to reach consensus, to have development benefit all sectors, to practice social justice and to advance the quest for equality. We therefore vehemently reject assertions which would define freedom and progress, freedom and order, freedom and stability, freedom and justice, freedom and the ability to govern as mutually exclusive values.

Without freedom there can be no true order, stability and justice. And without freedom of expression there can be no freedom. Freedom of expression and the seeking, dissemination and collection of information can be exercised only if freedom of the press exists.

We know that not every statement and item of information can find its way into the media. We know that the existence of press freedom does not automatically guarantee unrestricted freedom of expression. But we also know that a free press favors an environment that nurtures freedom of expression and thereby benefits all other public freedoms.

Without an independent media, assured of the guarantees to operate freely, to make decisions and to act on them fully, freedom of expression cannot be exercised. A free press is synonymous with free expression.

Wherever the media can function unhindered and determine their own direction and manner of serving the public, there is a blossoming of the ability to seek information, to disseminate it without restraints, to question it without fear and to promote the free exchange of ideas and opinions. But wherever freedom of the press is curtailed, for whatever reasons, the other freedoms vanish.

After a period when attempts were made to legitimize government control over news outlets, it is gratifying to be able to work together to defend freedom. Many men and women worldwide join us in this task. But opposition remains widespread. Our continents are no exception. There are still countries whose despotic governments abjure every freedom, particularly those freedoms related to expression. Criminals, terrorists and drug traffickers still threaten, attack and murder journalists.

But that is not the only way to harm a free press and free expression. The temptation to control and regulate has led to decisions that limit the independent action of the media, of journalists and of citizens who wish to seek and disseminate information and opinions.

Politicians who avow their faith in democracy are often intolerant of public criticism. Various social sectors assign to the press nonexistent flaws. Judges with limited vision order journalists to reveal sources that should remain in confidence. Overzealous officials deny citizens access to public information. Even the constitutions of some democratic countries contain elements of press restriction.

While defending a free press and rejecting outside interference, we also champion a press that is responsible and involved, a press aware of the obligations that the practice of freedom entails.

## **Principles**

A free press enables societies to resolve their conflicts, promote their well-being and protect their liberty. No law or act of government may limit freedom of expression or of the press, whatever the medium.

Because we are fully conscious of this reality and accept it with the deepest conviction, and because of our firm commitment to freedom, we sign this declaration, whose principles follow.

1. No people or society can be free without freedom of expression and of the press. The exercise of this freedom is not something authorities grant, it is an inalienable right of the people.

2. Every person has the right to seek and receive information, express opinions and disseminate them freely. No one may restrict or deny these rights.

3. The authorities must be compelled by law to make available in a timely and reasonable manner the information generated by the public sector. No journalist may be forced to reveal his or her sources of information.
4. Freedom of expression and of the press are severely limited by murder, terrorism, kidnapping, intimidation, the unjust imprisonment of journalists, the destruction of facilities, violence of any kind and impunity for perpetrators. Such acts must be investigated promptly and punished harshly.
5. Prior censorship, restrictions on the circulation of the media or dissemination of their reports, forced publication of information, the imposition of obstacles to the free flow of news, and restrictions on the activities and movements of journalists directly contradict freedom of the press.
6. The media and journalists should neither be discriminated against nor favored because of what they write or say.
7. 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.
8. The membership of journalists in guilds, their affiliation to professional and trade associations and the affiliation of the media with business groups must be strictly voluntary.
9. The credibility of the press is linked to its commitment to truth, to the pursuit of accuracy, fairness and objectivity and to the clear distinction between news and advertising. The attainment of these goals and the respect for ethical and professional values may not be imposed. These are the exclusive responsibility of journalists and the media. In a free society, it is public opinion that rewards or punishes.
10. No news medium nor journalist may be punished for publishing the truth or criticizing or denouncing the government.

The struggle for freedom of expression and of the press is not a one-day task; it is an ongoing commitment. It is fundamental to the survival of democracy and civilization in our hemisphere. Not only is this freedom a bulwark and an antidote against every abuse of authority, it is society's lifeblood. Defending it day upon day is honoring our history and controlling our destiny. To these principles we are committed.

## **5. JOINT DECLARATION ON DEFAMATION OF RELIGIONS, AND ANTI-TERRORISM AND ANTI-EXTREMISM LEGISLATION**

**The UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples' Rights) Special Rapporteur on Freedom of Expression and Access to Information,**

*Having met* in Athens on 9 December 2008, under the auspices of *ARTICLE 19, Global Campaign for Free Expression*;

*Recalling and reaffirming* our Joint Declarations of 26 November 1999, 30 November 2000, 20 November 2001, 10 December 2002, 18 December 2003, 6 December 2004, 21 December 2005, 19 December 2006 and 12 December 2007;

*Recognising* the importance to democracy, as well as to holding social institutions accountable, of open debate about all ideas and social phenomena in society and the right of all to be able to manifest their culture, religion and beliefs in practice;

*Emphasising* that there is an important difference between criticism of a religion, belief or school of thought and attacks on individuals because of their adherence to that religion or belief;

*Noting* that success in promoting equality in society is integrally linked to respect for freedom of expression, including the right of different communities to have access to the media both to articulate their views and perspectives, and to satisfy their information needs;

*Aware of* the fact that negative social stereotyping leads to discrimination and limits the ability of those subject to it to be heard and to participate in public debate;

*Stressing* that the primary means to address underlying social problems of prejudice is through open dialogue that exposes the harm prejudice causes and that combats negative stereotypes, although at the same time it is appropriate to prohibit incitement to hatred, discrimination or violence;

*Welcoming* the fact that a growing number of countries have abolished limitations on freedom of expression to protect religion (blasphemy laws) and noting that such laws are often used to prevent legitimate criticism of powerful religious leaders and to suppress the views of religious minorities, dissenting believers and non-believers, and are applied in a discriminatory fashion;

*Concerned* about the resolutions on "defamation of religions" adopted by the UN Commission on Human Rights and its successor, the Human Rights Council, since 1999, and the UN General Assembly since 2005 (see General Assembly Res. 60/150, 61/164, 62/154; Commission on Human Rights Res. 1999/82, 2000/84, 2001/4, 2002/9, 2003/4, 2004/6, 2005/3; Human Rights Council Res. 4/9, 7/19);

*Concerned also* about the proliferation of anti-terrorism and anti-extremism laws in the 21<sup>st</sup> Century, in particular following the atrocious attacks of September 2001, which unduly restrict freedom of expression and access to information;

*Cognisant* of the important contribution of respect for freedom of expression to combating terrorism, and of the need to find effective ways to counter terrorism which do not undermine democracy and human rights, the preservation of which is a key reason to fight terrorism in the first place;

*Aware* of the abuse of anti-terrorism and extremism legislation to suppress political and critical speech which has nothing to do with terrorism or security;

*Stressing* the importance of the role of the media in informing the public about all matters of public concern, including those relating to terrorism and efforts to combat it, as well as the right of the public to be informed about such matters;

*Adopt*, on 10 December 2008, the 60<sup>th</sup> anniversary of the *Universal Declaration of Human Rights*, the following Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation:

## Defamation of Religions

- The concept of 'defamation of religions' does not accord with international standards regarding defamation, which refer to the protection of reputation of individuals, while religions, like all beliefs, cannot be said to have a reputation of their own.
- Restrictions on freedom of expression should be limited in scope to the protection of overriding individual rights and social interests, and should never be used to protect particular institutions, or abstract notions, concepts or beliefs, including religious ones.
- Restrictions on freedom of expression to prevent intolerance should be limited in scope to advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.
- International organisations, including the United Nations General Assembly and Human Rights Council, should desist from the further adoption of statements supporting the idea of 'defamation of religions'.

## Anti-Terrorism Legislation

- The definition of terrorism, at least as it applies in the context of restrictions on freedom of expression, should be restricted to violent crimes that are designed to advance an ideological, religious, political or organised criminal cause and to influence public authorities by inflicting terror on the public.
- The criminalisation of speech relating to terrorism should be restricted to instances of intentional incitement to terrorism, understood as a direct call to engage in terrorism which is directly responsible for increasing the likelihood of a terrorist act occurring, or to actual participation in terrorist acts (for example by directing them). Vague notions such as providing communications support to terrorism or extremism, the 'glorification' or 'promotion' of terrorism or extremism, and the mere repetition of statements by terrorists, which does not itself constitute incitement, should not be criminalised.
- The role of the media as a key vehicle for realising freedom of expression and for informing the public should be respected in anti-terrorism and anti-extremism laws. The public has a right to know about the perpetration of acts of terrorism, or attempts thereat, and the media should not be penalised for providing such information.
- Normal rules on the protection of confidentiality of journalists' sources of information – including that this should be overridden only by court order on the basis that access to the source is necessary to protect an overriding public interest or private right that cannot be protected by other means – should apply in the context of anti-terrorist actions as at other times.

Frank LaRue  
UN Special Rapporteur on Freedom of Opinion and Expression

Miklos Haraszti  
OSCE Representative on Freedom of the Media

Catalina Botero  
OAS Special Rapporteur on Freedom of Expression

Faith Pansy Tlakula  
ACHPR Special Rapporteur on Freedom of Expression and Access to Information



**6. Resolution 2418 (XXXVIII-O/08) adopted by the General Assembly of the OAS: Access to Public Information: Strengthening Democracy.**

AG/RES. 2418 (XXXVIII-O/08)

**ACCESS TO PUBLIC INFORMATION: STRENGTHENING DEMOCRACY<sup>1</sup>**

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

HAVING SEEN the Annual Report of the Permanent Council to the General Assembly (.....) on the status of implementation of resolution AG/RES. 2288 (XXXVII-O/07), "Access to Public Information: Strengthening Democracy";

CONSIDERING that Article 13 of the American Convention on Human Rights provides that "[e]veryone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice";

CONSIDERING ALSO that Article 19 of the Universal Declaration of Human Rights includes the right "to seek, receive and impart information and ideas through any media and regardless of frontiers";

RECALLING that the Plan of Action of the Third Summit of the Americas (Quebec City, 2001) indicates that governments will ensure that national legislation is applied equitably to all, respecting freedom of expression and access to public information by all citizens;

EMPHASIZING that Article 4 of the Inter-American Democratic Charter states that transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy;

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<sup>1</sup> The Bolivarian Republic of Venezuela reaffirms the statement made in the footnote to resolution AG/RES. 2288 (XXXVII-O/07) as we consider that access to public information held by the state should be fully consistent with Article 13 of the American Convention on Human Rights, which establishes that "[e]veryone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice." Venezuela maintains that a democratic system for access to public information should allow all citizens, without exception, to seek, receive, and impart information. A citizen seeking information is consciously and fully exercising the right to access to information, and the state must promote the adoption of legal provisions guaranteeing the exercise thereof. Likewise, on the basis of the principle of equality before the law, the state must guarantee the same right to the poor, the underprivileged, and the socially disadvantaged. Accordingly, it is necessary "[t]o instruct the Inter-American Commission on Human Rights to conduct a study on how the state can guarantee all citizens the right to receive public information, on the basis of the principle of the transparency of information, when it is disseminated through the mass media, in the full exercise of the right to freedom of expression and as an effective means of participation." Along those lines, we underscore the important conclusions and reflections of the special meeting on the right to public information, held on April 28, 2006, within the framework of the OAS, in which it was recognized that the media were responsible for ensuring that citizens receive, without distortions of any type, information provided by the state. Venezuela regrets that a response to the message of the poor has once again been postponed. We share the view of those who claim that refusing to grant the poor and the disadvantaged access to information condemns them to continued social and economic ostracism. Venezuela therefore once again urges the Inter-American Commission on Human Rights to take the initiative and, under the powers granted to it in the Inter-American Convention on Human Rights, to conduct the aforementioned study and report on the results thereof to the General Assembly of the Organization of American States at its next regular session.

NOTING that, in the Declaration of Nuevo León, the Heads of State and Government affirmed that access to information held by the state, subject to constitutional and legal norms, including those on privacy and confidentiality, is an indispensable condition for citizen participation and promotes effective respect for human rights, and, in that connection, that they are committed to providing the legal and regulatory framework and the structures and conditions required to guarantee the right of access to public information;

CONSIDERING ALSO that the General Secretariat has been providing support to member state governments in dealing with the topic of access to public information;

NOTING the work accomplished by the Inter-American Juridical Committee (CJI) on this issue, in particular resolution CJI/RES. 123 (LXX-O/07), "Right to Information," attached to which is the report titled "Right to Information: Access to and Protection of Information and Personal Data in Electronic Format" (CJI/doc.25/00 rev. 2);

RECOGNIZING that the goal of achieving an informed citizenry must be rendered compatible with other societal aims, such as safeguarding national security, public order, and protection of personal privacy, pursuant to laws passed to that effect;

RECOGNIZING ALSO that democracy is strengthened through full respect for freedom of expression, access to public information, and the free dissemination of ideas, and that all sectors of society, including the media, through the public information they disseminate to citizens, may contribute to a climate of tolerance of all views, foster a culture of peace, and strengthen democratic governance;

TAKING INTO ACCOUNT the important role civil society can play in promoting broad access to public information;

TAKING NOTE of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights (IACHR); and of the Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE (Organization for Security and Co-operation in Europe) Representative on Freedom of the Media, the Special Rapporteur on Freedom of Expression of the Inter-American Commission on Human Rights, and the ACHPR (African Commission on Human and Peoples' Rights) Special Rapporteur on Freedom of Expression, adopted in 2006;

TAKING NOTE ALSO of the reports of the IACHR Special Rapporteur on Freedom of Expression on the situation of access to information in the Hemisphere for 2003, 2004, 2005, 2006, and 2007;

TAKING NOTE FURTHER of the report on the special meeting of the Committee on Juridical and Political Affairs to promote, impart, and exchange experiences and knowledge with respect to access to public information and its relationship with citizen participation, which received input from experts from the states and civil society representatives, held at OAS headquarters on April 28, 2006 (CP/CAJP-2320/06 add. 2); and of the report of the Special Meeting on Freedom of Thought and Expression, held on February 28 and 29, 2008, which highlighted recent inter-American jurisprudence on access to public information;

RECALLING initiatives taken by civil society regarding access to public information, in particular, the Declaration of Chapultepec, the Johannesburg Principles, the Lima Principles, and the Declaration of the SOCIUS Peru 2003: Access to Information, as well as the outcomes of the Regional Forum on Access to Public Information of January 2004; the Atlanta Declaration and Plan of Action for the Advancement of the Right of Access to Information sponsored by the Carter

Center, which address ways of promoting the fulfillment and exercise of the right of access to information; and of the International Seminar on Press, Litigation, and the Right to Public Information, held in Lima, Peru on November 28, 2007;

RECALLING ALSO that the media, the private sector, and political parties can likewise play an important role in facilitating access by citizens to information held by the State;

TAKING INTO ACCOUNT the Report on the Questionnaire regarding Legislation and Best Practices on Access to Public Information (document CP/CAJP-2608/08), which is a contribution to the study of best practices as regards access to public information in the Hemisphere; and

WELCOMING WITH INTEREST the Study of Recommendations on Access to Information, submitted to the Committee on Juridical and Political Affairs on April 24, 2008 (document CP/CAJP-2599/08), a study organized by the Department of International Law pursuant to resolution AG/RES. 2288 (XXXVII-O/07), "Access to Public Information: Strengthening Democracy,"

RESOLVES:

1. To reaffirm that everyone has the freedom to seek, receive, access, and impart information and that access to public information is a requisite for the very exercise of democracy.
2. To urge member states to respect and promote respect for everyone's access to public information and to promote the adoption of any necessary legislative or other types of provisions to ensure its recognition and effective application.
3. To encourage member states, in keeping with the commitment made in the Declaration of Nuevo León and with due respect for constitutional and legal provisions, to prepare and/or adjust their respective legal and regulatory frameworks, as appropriate, so as to provide the citizenry with broad access to public information.
4. Also to encourage member states, when preparing and/or adjusting their respective legal and regulatory frameworks, as appropriate, to provide civil society with the opportunity to participate in that process; and to urge them, when drafting and/or adapting their national legislation, to take into account clear and transparent exception criteria.
5. To encourage member states to take the necessary measures, through their national legislation and other appropriate means, to make public information available electronically or by any other means that will allow ready access to it.
6. To encourage civil society organizations to make information related to their work available to the public.
7. To encourage states to consider, when they are designing, executing, and evaluating their regulations and policies on access to public information, where applicable, with the support of the appropriate organs, agencies, and entities of the Organization, implementing the recommendations on access to public information contained in the Study organized by the Department of International Law and submitted to the Committee on Juridical and Political Affairs on April 24, 2008.
8. To instruct the Permanent Council, in the framework of the Committee on Juridical and Political Affairs to:

- a. Convene in the second half of 2008 a special meeting with the participation of the member states, the General Secretariat, and representatives of civil society to examine the possibility of preparing an Inter-American Program on Access to Public Information, bearing in mind the recommendations contained in the aforementioned Study.
- b. Update the Report on the Questionnaire regarding Legislation and Best Practices on Access to Public Information (CP/CAJP-2599/08) requesting to that end contributions by member states, the Special Rapporteurship for Freedom of Expression of the IACHR, the Inter-American Juridical Committee, the Department of International Law, the Department of State Modernization and Good Governance of the Secretariat for Political Affairs, interested entities and organizations and civil society representatives.
- c. To include in the study mentioned in the foregoing subparagraph the right of all citizens to seek, receive, and disseminate public information

9. To instruct the Department of State Modernization and Good Governance of the Secretariat for Political Affairs, and to invite the Special Rapporteurship for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), to support the efforts of member states that request such support to design, execute, and evaluate their regulations and policies with respect to access by citizens to public information.

10. To instruct the Department of International Law to prepare a study with recommendations on the protection of personal data, using as a basis the contributions of member states, the organs of the inter-American system and of civil society, and the preparatory work done during the special meeting of the CAJP on that subject.

11. To instruct the Special Rapporteurship Freedom of Expression to continue to include in the Annual Report of the IACHR a report on the situation regarding access to public information in the region.

12. To instruct the Inter-American Agency for Cooperation and Development (IACD) to identify new resources to support member states' efforts to facilitate access to public information.

13. To request the Secretary General to report, through the Permanent Council, to the General Assembly at its thirty-ninth regular session on the implementation of this resolution, the execution of which shall be subject to the availability of financial resources in the program-budget of the Organization and other resources.

**7. Resolution 2434 (XXXVIII-O/08) adopted by the General Assembly of the OAS: Right to Freedom of Thought and Expression and the Importance of the Media**

AG/RES. 2434 (XXXVIII-O/08)

**RIGHT TO FREEDOM OF THOUGHT AND EXPRESSION  
AND THE IMPORTANCE OF THE MEDIA**

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

HAVING SEEN the Annual Report of the Permanent Council to the General Assembly (AG/doc.xxxx/08);

TAKING INTO ACCOUNT resolution AG/RES. 2237 (XXXVI-O/06) and AG/RES. 2287 (XXXVII-O/07), "Right to Freedom of Thought and Expression and the Importance of the Media";

UNDERSCORING the Declaration of Santo Domingo: Good Governance and Development in the Knowledge-Based Society [AG/DEC. 46 (XXXVI-O/06)], adopted on June 6, 2006;

RECALLING that the right to freedom of thought and expression, which includes the freedom to seek, receive, and impart information and ideas of all kinds, is recognized in Article IV of the American Declaration of the Rights and Duties of Man, Article 13 of the American Convention on Human Rights, the Inter-American Democratic Charter (including Article 4), the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and other international instruments and national constitutions, as well as United Nations General Assembly resolution 59 (I) and resolution 104 of the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO);

RECALLING ALSO that Article IV of the American Declaration of the Rights and Duties of Man states that "[e]very person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever";

RECALLING FURTHER that Article 13 of the American Convention on Human Rights states that:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice;

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

- a. Respect for the rights or reputations of others; or
- b. The protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law;

BEARING IN MIND principles 10 and 11 of the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), of 2000, which refer to the decriminalization of "*desacato*" (offensive expressions directed at public officials);

RECALLING the relevant volumes of the Annual Reports of the IACHR for 2004, 2005, 2006, and 2007 on freedom of expression, as well as the comments by member states during meetings at which said reports were presented;

TAKING INTO ACCOUNT resolutions 2004/42 and 2005/38, "The Right to Freedom of Opinion and Expression," of the United Nations Commission on Human Rights; and

RECALLING the significance of the studies and contributions approved by UNESCO regarding the contribution of the media to strengthening peace, tolerance, and international understanding, to the promotion of human rights, and to countering racism and incitement to war,

#### RESOLVES:

1. To reaffirm the right to freedom of expression and to call upon member states to respect and ensure respect for this right, in accordance with the international human rights instruments to which they are party, such as the American Convention on Human Rights and the International Covenant on Civil and Political Rights, *inter alia*.

2. To reaffirm that freedom of expression and dissemination of ideas are fundamental for the exercise of democracy.

3. To urge member states to safeguard, within the framework of the international instruments to which they are party, respect for freedom of expression in the media, including radio and television, and, in particular, respect for the editorial independence and freedom of the media.

4. To urge those member states that have not yet done so to consider signing and ratifying, ratifying, or acceding to, as the case may be, the American Convention on Human Rights.

5. To reaffirm that free and independent media are fundamental for democracy and for the promotion of pluralism, tolerance, and freedom of thought and expression; and to facilitate dialogue and debate, free and open to all segments of society, without discrimination of any kind.

6. To urge member states to promote a pluralistic approach to information and multiple points of view by fostering full exercise of freedom of expression and thought, access to media, and diversity in the ownership of media outlets and sources of information, through, *inter alia*, transparent licensing systems and, as appropriate, effective regulations to prevent the undue concentration of media ownership.

7. To urge member states to consider the importance of including, in their domestic legal systems, rules about the establishment of alternative or community media and safeguards to ensure that they are able to operate independently, so as to broaden the dissemination of information and opinions, thereby strengthening freedom of expression.

8. To call upon member states to adopt all necessary measures to prevent violations of the right to freedom of thought and expression and to create the necessary conditions for that purpose, including ensuring that relevant national legislation complies with their international human rights obligations and is effectively implemented.

9. To urge member states to review their procedures, practices, and legislation, as necessary, to ensure that any limitations on the right to freedom of opinion and expression are only such as are provided by law and are necessary for respect of the rights or reputations of others or for the protection of national security, public order (*ordre public*), or public health or morals.

10. To recognize the valuable contribution of information and communication technologies, such as the Internet, to the exercise of the right to freedom of expression and to the ability of persons to seek, receive, and impart information, as well the contributions they can make to the fight against racism, racial discrimination, xenophobia, and related and contemporary forms of intolerance, and to the prevention of human rights abuses.

11. To request the Inter-American Commission on Human Rights once again to follow up on and deepen its study of the issues addressed in the relevant volumes of its 2004, 2005, 2006, and 2007 Annual Reports on freedom of expression, on the basis, *inter alia*, of the inputs on the subject that it receives from member states.

12. To invite member states to consider the recommendations concerning defamation made by the Office of the Special Rapporteur for Freedom of Expression of the IACHR, namely by repealing or amending laws that criminalize *desacato*, defamation, slander, and libel, and, in this regard, to regulate these conducts exclusively in the area of civil law.

13. To reiterate to the Permanent Council that, through its Committee on Juridical and Political Affairs, it is to hold a special two-day meeting to delve further into the existing international jurisprudence on the subject covered in Article 13 of the American Convention on Human Rights and include the following items on the agenda of that meeting:

- a. Public demonstrations as exercise of the right to freedom of expression; and
- b. The subject of Article 11 of the American Convention on Human Rights.

Invitees to the aforementioned meeting will include members of the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights, including the Special Rapporteur for Freedom of Expression, and experts from the member states, all for the purpose of sharing their experiences with these issues.

14. To take into consideration the findings of, and views expressed at, the Special Meeting on Freedom of Thought and Expression, held on February 28 and 29, 2008, in the



framework of the Committee on Juridical and Political Affairs; and to request the Special Rapporteur of the IACHR to report on the conclusions and recommendations issued by the experts at that special meeting, in order to follow up on the matter.

15. To request the Permanent Council to report to the General Assembly at its thirty-ninth regular session on the implementation of this resolution, the execution of which shall be subject to the availability of financial resources in the program-budget of the Organization and other resources.