

1. Antigua y Barbuda

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

2. Argentina

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

...continuation

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

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

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

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

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

destruction of communications media, violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

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

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

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

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

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

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

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

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

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

3. Barbados

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

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

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

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

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

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

4. Bolivia

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

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

⁴¹ The text of the new Political Constitution of the State is available at: http://www.vicpresidencia.gob.bo/Portals/0/documentos/NUEVA_CONSTITUCION_POLITICA_DEL_ESTADO.pdf.

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

Article 106

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

Article 107.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Brazil

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁹⁵ Asociación Mundial de Radios Comunitarias. May 20, 2009. *Gobierno otorga concesiones de radio y televisión a sindicato.* Available at: <http://legislaciones.item.org.uy/index?q=node/990>; Noticias Terra. May 14, 2009. *Lula concede TVs e rádios a fundação mantida por sindicato.* Available at: <http://noticias.terra.com.br/brasil/interna/0,,013764963-E17896-00-Lula+concede+TVs+e+rádios+a+fundacao+mantida+por+sindicato.html>.

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

6. Canada⁹⁷

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

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

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

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

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

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

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

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

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

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

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

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

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

7. Chile

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Colombia¹¹⁰

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

a. Advances in the area of freedom of expression

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. Illegal interceptions of journalists

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. Right [of] access to information

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. Costa Rica

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Cuba¹⁷¹

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

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

a. Detentions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

169. Article 13 of the American Convention provides that: "Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive and impart information and ideas of all kinds, regardless of international borders, either orally, in writing, in print, in the form of art, or through any medium of one's choice."

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

b. Restrictions on the use of the Internet

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. Aggression and threats

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. Ecuador¹⁹⁴

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²¹⁰ Instituto Prensa y Sociedad. August 28, 2009. *Journalist threatened after reporting on corruption*. Available at: [http://www.ifex.org/ecuador/2009/08/28/proano threatened/](http://www.ifex.org/ecuador/2009/08/28/proano%20threatened/); Fundamedios. Date not specified. *Periodista recibe amenaza por investigación periodística*. Available at: <http://www.fundamedios.org/home/contenidos.php?id=152&identificaArticulo=758>.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. El Salvador

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

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

13. United States

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

...continuation

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

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

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

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

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

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

14. Grenada

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

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

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

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

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

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

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

15. Guatemala

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16. Guyana

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

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

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

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

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

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

17. Haiti²⁷²

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

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

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

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

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

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

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

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

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

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

18. Honduras²⁷⁷

259. Article 13 of the American Convention on Human Rights provides that "[e]veryone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice." It adds that exercise of this right "shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a. respect for the

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

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

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

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

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

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

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

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

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

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

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

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

a. Broadcasting shutdowns [and] interruptions

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

i. Television channels

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

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

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

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

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

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

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

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

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

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

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

270. The signals of privately-owned channels 6 and 11 were interrupted on June 28, according to complaints received by the Commission during its on-site visit. The two channels resumed broadcasting and are back on the air, but there are complaints that they are up against restrictions in terms of what they can say and the views they can express regarding the events, especially when they report news related to President Manuel Zelaya. Nancy John, news coordinator at Channel 11, told the Commission that on the day of the coup “we began to receive phone calls from CONATEL telling us to take CNN in Spanish and TeleSUR off the air. We did establish links with them to be able to report the news that they had, because they had more access; however, we were told that we couldn’t.”²⁸⁵

271. In the department of Colón, at least two channels were forced to stop broadcasting for a number of days. This happened in the case of Channel La Cumbre and Televisora de Aguán, Channel 5. Nahúm Palacios, managing editor of Channel 5, told the Commission that on June 28, “a number of members of the Armed Forces came into the station” and “they forced the channel to stop broadcasting.”²⁸⁶

272. Early on the morning of September 28, the forces of law and order searched and seized broadcasting equipment at Channel 36 and Radio Globo. This was shortly after the *de facto* government approved executive decree PCM-M-016-2009.²⁸⁷

273. On October 20, the *de facto* government’s Foreign Office sent the Commission a communication in response to a request that the Commission had sent on October 6 seeking information. The *de facto* government’s reply states that “with regard to the closing of Channel 36 and Radio Globo, the Commission is advised that these media outlets were closed pursuant to the instructions given in resolutions Nos. OD-019/09 and OD-018/09, which were issued by CONATEL pursuant to Executive Decree PCM-M-016-2009; those instructions designate the First

²⁸³ *De facto* Secretariat of Foreign Affairs, Memorandum No. 526-DGAE-90, dated July 10, 2009.

²⁸⁴ Testimony of Eduardo Maldonado, who conducts the Maya TV program called “Hable como Habla,” as told to the Commission during the on-site visit to Honduras (Tegucigalpa), August 17, 2009.

²⁸⁵ Testimony of Nancy John, Editorial Head of Channel 11, as told to the Commission during the on-site visit to Honduras (Tegucigalpa), August 17, 2009. Inter-American Press Association, “Respect press freedom, IAPA again urges Honduras” (Tegucigalpa) July 2, 2009 Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4210&idioma=us. Reporters Without Borders, “News blackout after army ousts president,” June 29, 2009, Available at: <http://www.rsf.org/News-blackout-after-army-ousts.html>.

²⁸⁶ Testimony that Naúm Palacio, managing editor of Channel 5, gave to the Commission, by telephone, during the on-site visit to Honduras (Tegucigalpa) August 21, 2009.

²⁸⁷ Office of the Special Rapporteur-IACHR, Press Release 71-09: ‘The Office of the Special Rapporteur for Freedom of Expression Condemns the Suspension of Guarantees in Honduras and the Violations of the Right to Freedom of Expression,’ September 29, 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=764&IID=1>. “Micheletti acalla las voces contra el golpe en Honduras” [Micheletti silences the voices protesting coup in Honduras], *El País de Madrid*, September 29, 2009. Available at:

http://www.elpais.com/articulo/internacional/Micheletti/acalla/voces/golpe/Honduras/elpepiint/20090929elpepiint_10/Tes.

Communications Battalion, based in Las Mesas, Department of Francisco Morazán, as the repository of all transmitting equipment, relays and antennas confiscated in the operation". In its response, the *de facto* government added the following: "Inasmuch as the above-mentioned Executive Decree was revoked by Executive Decree PCM-M-020-2009, both Channel 36 and Radio Globo are currently operating normally. The Office of the Special Prosecutor for Human Rights has opened investigations into these cases."²⁸⁸

ii. Signal blocking

274. Apart from these situations, during its on-site visit the Commission confirmed that the National Telecommunications Commission (CONATEL) had instructed cable television companies to either directly or indirectly take the international news broadcasts by CNN in Spanish, TeleSUR, Cubavisión Internacional, Guatevisión, Ticavisión, and others off the air.²⁸⁹

275. However, during the Commission's meeting with the board of CONATEL on August 18 in Tegucigalpa the directors denied having given any order to have the signals of the international news channels blocked; they even said that they watched –from their own homes- the broadcasts by CNN in Spanish and TeleSUR.²⁹⁰

276. The chairman of CONATEL, Miguel A. Rodas, said that he had no "knowledge" of what happened on June 28, because he did not become chairman of CONATEL until five days after President Zelaya was deposed. "We don't know anything. No order has been given since July 3 to take the cable channels off the air," Rodas asserted.²⁹¹

277. In his response to the Commission's preliminary report on its on-site visit,²⁹² the National Commissioner for Human Rights (CONADEH), Ramón Custodio López, said that it was "true" that CONATEL instructed cable television providers to directly or indirectly take the international channels or domestic programs carried by local channels off the air.²⁹³

278. In the meantime, Nancy John, a journalist with Channel 11, told the Commission that on June 28, "we started receiving phone calls from CONATEL to take CNN and TeleSUR off the air." She also said that in these phone calls, they were also told, "[P]lease cut off CNN and

²⁸⁸ *De facto* Secretariat of Foreign Affairs of Honduras, Memorandum 731-DGAE-09 dated October 20, 2009.

²⁸⁹ Office of the Special Rapporteur-IACHR, Press Release 44-09: *Office of the Special Rapporteur for Freedom of Expression Condemns Limitations to Freedom of Expression in Honduras*, June 29 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=753&IID=1>. Reporters Without Borders, "News blackout after army ousts president," June 29, 2009, Available at: <http://www.rsf.org/News-blackout-after-army-ousts.html>. Inter-American Press Association, "IAPA censures acts against journalists and media in Honduras" (Miami), June 29, 2009. Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4208&idioma=us. Inter-American Press Association, "Respect press freedom, IAPA again urges Honduras" (Tegucigalpa) July 2, 2009. Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4210&idioma=us. Article 19, "Honduras: Early Warning Signs of Impending Crisis", (London) July 28, 2009. Available at: <http://www.article19.org/pdfs/press/honduras-early-warning-signs-of-impending-crisis.pdf>. Committee to Protect Journalists, CPJ Alarmed by Suppression of Media in Honduras," (New York) June 30, 2009. Available at: <http://www.cpj.org/blog/2009/06/cpj-alarmed-by-suppression-of-media-in-honduras.php>.

²⁹⁰ Commission's meeting with the Board of CONATEL, during its on-site visit to Honduras (Tegucigalpa), August 18, 2009.

²⁹¹ Commission's meeting with the Board of CONATEL, during its on-site visit to Honduras (Tegucigalpa), August 18, 2009.

²⁹² IACHR, Press Release 60-09: *IACHR presents preliminary observations on its visit to Honduras*, August 21, 2009. Available at: <http://www.cidh.oas.org/Comunicados/English/2009/60-09eng.htm>.

²⁹³ CONADEH's response to the Commission's Press Release 60-09, Honduras (Tegucigalpa), September 1, 2009.

TeleSUR". She said that their argument was that "they wanted to avert more acts of violence, which was why they didn't want the images of the people in the streets to be seen."²⁹⁴

iii. Radio

279. Other media outlets were also taken over or surrounded by security forces on the date of the coup d'état. According to the information received, on the morning of June 28, Army troopers were said to have gone to the facilities of *Radio Progreso* in the city of El Progreso, department of Yoro, and reportedly ordered the station personnel to shut down all the transmitting equipment and go home. Given the display of force, the managing editors of the radio station and its staff allegedly decided to follow orders, which is why Radio Progreso was not broadcasting that day. According to this information, the following day, June 29, the employees returned to the station, by which time the Army troops had apparently left the premises. That day, the station broadcast normally. However, on June 30, precautionary measures were requested from the Inter-American Commission because of the fear that the safety of the news crew had been compromised. Shortly thereafter, the station started broadcasting its signal again.

280. In his testimony to the IACHR, Radio Progreso journalist José Peraza recounted the moment when the military entered and took over the station.²⁹⁵

281. In a communication from the *de facto* government received at the Commission on July 10, the following is written about Israel Moreno, journalist and managing editor of Radio Progreso: "He complained that the station's signal had been suspended; it was restored and an investigation is in progress." As with so many of the situations involving issues related to freedom of expression and about which the Commission requested information, this communication said the following: "The Office of the Special Prosecutor for Human Rights is currently investigating the circumstances surrounding those complaints."²⁹⁶

282. Reports were also received to the effect that the following members of the journalist staff and members of Radio Progreso and the Equipo de Reflexión, Investigación y Comunicación (ERIC) [Jesuit Ministries' Team of Reflection, Research and Communication] had allegedly received threats via their cell phones and monitors: Rita Santa María, María Elena Cubillo, Lolany Pérez,

²⁹⁴ Testimony of Nancy John, as told to the Commission during its on-site visit to Honduras (Tegucigalpa), August 17, 2009.

²⁹⁵ Testimony of Radio Progreso journalists Ismael Moreno, Karla Rivas, Gustavo Cardoza and José Peraza, as told to the Commission during its on-site visit to Honduras (San Pedro Sula), August 19, 2009. Peraza said the following: "Early Sunday morning, the 28th we checked the media that tend to be carrying news at that time of the day; all they were carrying were sports, cartoons, and they said 'nothing's happening in this country. Right away we thought, the military is going to take us over. We knew we had no bargaining position, so we decided to leave the radio station. The first contingent of troops was on the street corner where the station is located at 10:10 a.m. But the people who were in the park, just a block away, came to the station and the soldiers took off running. Then, Karla Rivas, who was in the booth at that time, began to say that the military were here. Within minutes, the military came in, position themselves at key points and ordered the equipment shut down". Office of the Special Rapporteur-IACHR, Press Release 44-09: *Office of the Special Rapporteur for Freedom of Expression Condemns Limitations to Freedom of Expression in Honduras*, June 29 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=753&IID=1>. Reporters Without Borders, "News blackout after army ousts president," June 29, 2009, Available at: <http://www.rsf.org/News-blackout-after-army-ousts.html>. Committee to Protect Journalists, "CPJ Alarmed by Suppression of Media in Honduras," (New York) June 30, 2009. Available at: <http://www.cpj.org/blog/2009/06/cpj-alarmed-by-suppression-of-media-in-honduras.php>. Inter-American Press Association, "IAPA censures acts against journalists and media in Honduras" (Miami), June 29, 2009. Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4208&idioma=us.

²⁹⁶ *De facto* Secretariat of Foreign Affairs, Memorandum No. 526-DGAE-90, received on July 10, 2009.

Rommel Gómez, José Peraza, Lesly Banegas, Gerardo Chevez, Karla Rivas, Félix Antonio Molina and Elvín Fernaly Hernández.²⁹⁷

283. The Managing Editor of Radio Globo, David Ellner Romero, reported that on June 28, the station was surrounded by Army troops for more than two hours, until they finally decided to take over the station. In his testimony to the IACHR Romero recounted that on June 28, he arrived at the station at around 5:30 a.m.: “[T]here were around 40 soldiers surrounding it.” Romero said he received a call from an Armed Forces spokesperson at 8:00 a.m. who “told me I was making a big mistake by saying that there had been a coup d’état, because this was a handover of power.” “But I hung up on them and at 10:00 a.m. they came looking for me at the building from which I was broadcasting. I recalled then that in the 1980s I had been ‘disappeared’ for 6 days.” Romero added, “[W]ith that thought in mind, I jumped from the third floor.”²⁹⁸ That afternoon, the soldiers allegedly entered the station and took the reporters off the air. They were broadcasting live at the time. According to the information received, reporters Alejandro Villatoro, Lidieth Díaz, Rony Martínez, Franklin Mejía, David Ellner Romero and Orlando Villatoro had allegedly been roughed up and threatened. The station was off the air for a number of hours, and then started broadcasting again, but with restrictions. Some of the information about the station’s situation appeared in a letter that Ellner Romero published on the Web page.²⁹⁹

284. In the communication from the *de facto* government, which the Commission received on July 10, the following is stated: “Concerning these complaints, the Office of the Special Prosecutor used his good offices to have the signal of Radio Globo restored and to get the Maya TV program ‘Hable como Habla’ back on the air. Radio Globo has been broadcasting since last week.”³⁰⁰

285. According to information that the Commission received, the executives at Radio Globo had allegedly obtained a copy of the petition filed on August 3 with CONATEL by attorney José Santos López Oviedo, who has his office in the Office of the Judge Advocate General of the Armed Forces. In this petition, the attorney “requests suspension of one media outlet, because it is being used to commit sedition by inciting insurrection, thereby endangering the lives of private citizens.”³⁰¹ According to information received, the complaint is based on the fact that Radio Globo had allegedly broadcast a message from human rights activist Andrés Pavón, who had allegedly called for a popular uprising.

²⁹⁷ Request for precautionary measures filed by the International Mission to investigate the Human Rights Situation in Honduras in the wake of the coup d’état, July 22, 2009.

²⁹⁸ Testimony of David Ellner Romero, as told to the Commission during its on-site visit to Honduras (Tegucigalpa), August 17, 2009.

²⁹⁹ Office of the Special Rapporteur-IACHR, Press Release 44-09: *Office of the Special Rapporteur for Freedom of Expression Condemns Limitations to Freedom of Expression in Honduras*, June 29 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=753&IID=1>. Reporters Without Borders, “News blackout after army ousts president,” June 29, 2009, Available at: <http://www.rsf.org/News-blackout-after-army-ousts.html>. “El apagón de los medios” [The Media Blackout], *BBC World* (London), June 30, 2009. Available at: http://www.bbc.co.uk/mundo/america_latina/2009/06/090630_1030_honduras_medios_sao.shtml.

³⁰⁰ *De facto* Secretariat of Foreign Affairs, Memorandum No. 526-DGAE-90, received on July 10, 2009. Article 19, “Honduras: Early Warning Signs of Impending Crisis”, (London) July 28, 2009. Available at: <http://www.article19.org/pdfs/press/honduras-early-warning-signs-of-impending-crisis.pdf>. Reporter Without Borders, “Gag on media getting steadily tighter in month since coup,” July 28, 2009. Available at: <http://www.rsf.org/Gag-on-media-getting-steadily.html>.

³⁰¹ Commission’s meeting with the board of CONATEL during its on-site visit in Honduras (Tegucigalpa), August 18, 2009.

286. During the meeting between the Commission and the board of CONATEL in Tegucigalpa on August 18, the Chairman of CONATEL, Mr. Miguel A. Rodas, supplied a copy of the ruling that had declared the complaint against Radio Globo “inadmissible” “[o]n the grounds that CONATEL’s authorities and functions do not give it the power to investigate or punish alleged crimes; by law, that authority belongs exclusively to the Public Prosecutor’s Office and the Courts of the Republic, respectively.”³⁰²

287. On August 6, the managing editor of the station, David Romero Ellner, told the IACHR that he had received a phone call from a spokesman for the military chiefs emphasizing that the Armed Forces were not behind the petition and that it was attorney López’ personal initiative.³⁰³

288. Early on the morning of June 28, Radio Juticalpa in the department of Olancho was strafed by machinegun fire. The bullets struck the walls and windows of the broadcast booths. The incident was reported to the delegate of the Olancho Commissioner of Human Rights and to the Police, but there was allegedly no response. The owner of the station, Martha Elena Rubí, told the Commission that on the morning of June 28, a military contingent had come to the station and forced her to close it down. The military occupation of the station lasted until 7:00 p.m. Rubí and her children immediately started to receive death threats over their cell phones. Rubí told the Commission that the officers in charge of the operation refused to give her their names and told her that when she tells the Judge Advocate General what happened, “say that it was the Army.”³⁰⁴

289. Also on June 28, military personnel tried to shut down Radio Marcala in Marcala, department of La Paz. At the time, it was the only station transmitting the events. According to the information received, locals who allegedly heard what was happening, came to the radio station and refused to allow it to be shut down. Suyapa Banegas, a journalist with Radio Marcala, told the IACHR that “on the day of the coup d’état, when the troops showed up at the radio station we announced it on the air and the people planted themselves outside the station”, thereby preventing it from being taken over.³⁰⁵

290. On October 6, the Commission requested information from the *de facto* government concerning the serious threats and acts of harassment that community and commercial radio stations were said to have experienced. In its response, dated October 20, the *de facto* government wrote the following:

³⁰² Commission’s meeting with the board of CONATEL during its on-site visit in Honduras (Tegucigalpa), August 18, 2009.

³⁰³ “Radio globo de Honduras denuncia que auditor militar pidió silenciarla” [Radio Globo of Honduras denounces that military judge advocate seeks to silence it], *El Nacional* (Caracas), August 4, 2009. Available at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/92989/Honduras/Radio-Globo-de-Honduras-denuncia-que-auditor-militar-pidi%C3%B3-silenciarla-. C-Libre, “Fuerzas Armadas intentan cerrar Radio Globo” [Armed Forces Attempt to Shut Down Radio Globo]. (Tegucigalpa), August 4, 2009. Available at: <http://conexihon.com/blog/archives/582>. Testimony of David Romero Ellner, managing editor of Radio Globo, taken by telephone by the Commission on August 6, 2009.

³⁰⁴ Testimony of Martha Elena Rubí, owner of Radio Juticalpa, as told to the Commission during its on-site visit to Honduras (Tegucigalpa), August 21, 2009. Committee of Relatives of Detainees-Disappeared in Honduras, “*Informe Preliminar de Violaciones a los Derechos Humanos en el marco del golpe de Estado en Honduras*” [Preliminary Report on Human Rights Violations in the context of the coup d’état], July 15, 2009. Available at: <http://www.cofadeh.org/>. Request seeking precautionary measures, filed by the Center for Justice and International Law and received on July 20 and 22, 2009.

³⁰⁵ Testimony of Suyapa Banegas, journalist with Radio Marcala, as told to the Commission during its on-site visit to Honduras (Tegucigalpa), August 20, 2009. Committee of Relatives of Detainees-Disappeared in Honduras, “*Informe Preliminar de Violaciones a los Derechos Humanos en el marco del golpe de Estado en Honduras*” [Preliminary Report on Human Rights Violations in the context of the coup d’état], July 15, 2009. Available at: <http://www.cofadeh.org/>.

Apropos the threats and acts of harassment supposedly experienced by Radio Faluna Binetu (Radio Coco Dulce), Radio Durugubuti (Radio San Juan), Radio Lafuru Garabali (Radio Buenos Aires), Radio Stereo Celaque in the Municipality of Tomalá (Department of Lempira), Radio Estereo Lenca of Valladolid (Puerto Lempira), Revista Vida Laboral, Radio Orquídea serving the community of Guadalupe Carney (Department of Colón), Radio Gaurajambala (Department of Intibuca), Radio La Voz Lenca of the Municipality of San Francisco (Department of Lempira), Radio Márcala (Department of La Paz), Defensores en línea.com and the radio program Voces contra el Olvido, which is a broadcast of the Committee of Relatives of Detainees-Disappeared in Honduras (COFADEH), Radio Progreso of the Society of Jesus, and Radio Uno, the Commission is hereby advised that the National Bureau of Criminal Investigation has been instructed to conduct all the necessary investigations to clarify the facts being alleged; however, those who consider themselves to have been aggrieved are urged to file the corresponding complaints with the National Bureau of Criminal Investigation, which has offices nationwide. The Commission is also advised that the Office of the Special Prosecutor for Human Rights has issued instructions to the competent regional prosecutor's offices to look into the situations being alleged and, where appropriate, open investigative case files. Concerning Radio Progreso, the Commission is again advised that a request has been filed by the Public Prosecutor seeking indictment of personnel from the La Lima Air Base in the department of Cortés; as an update, the Judge presiding over case has decided to apply 4 of the 5 precautionary measures requested by the Office of the Special Prosecutor for Human Rights against Lieutenant Colonel Hilmer Enrique Hermida Álvarez and Lieutenant Dennis Mauricio Valdez Rodas, who have been prohibited from leaving the country, visiting the facilities of Radio Progreso and communicating with the station's personnel; they have also been ordered to make a weekly court appearance. The initial hearing has been set for November 16 of this year.³⁰⁶

iv. Impact on the print media

291. The staff of the newspaper Poder Ciudadano, established as the official newspaper of the administration of President Zelaya, was dismissed a few days after the coup d'état.³⁰⁷ On July 14, René Zelaya, Minister of Communications and Press of the *de facto* government, delivered a message to Lic. Mercedes Barahona, the editor of the newspaper, which read as follows: "On orders from the Office of the General Manager of the Presidential Residence and due to budgetary cuts, you are hereby respectfully notified that as of this date, all staff working on what was once the '*Poder Ciudadano*' newspaper is hereby discharged."³⁰⁸

292. In connection with these events, the Commission is compelled to point out that under Article 13 of the American Convention on Human Rights, "[e]veryone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice." Article 13 also provides that "[t]he right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions."

³⁰⁶ *De facto* Secretariat of Foreign Affairs of Honduras, Memorandum 731-DGAE-09 dated October 20, 2009.

³⁰⁷ Article 19, "'Honduras: Early Warning Signs of Impending Crisis", (London) July 28, 2009. Available at: <http://www.article19.org/pdfs/press/honduras-early-warning-signs-of-impending-crisis.pdf>.

³⁰⁸ Note sent to the newspaper Poder Ciudadano by the Presidential House, dated July 14, 2009, a copy of which was received by the Commission during its on-site visit to Honduras (Tegucigalpa), August 17, 2009.

293. Furthermore, Principle 5 of the Inter-American Declaration of Principles on Freedom of Expression states that “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.” Principle 13 states that “[t]he means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

b. Blackouts

294. On the morning of June 28, there was a generalized blackout that lasted for over two hours. According to the complaints received by the Commission during its visit, a number of intermittent blackouts followed for the rest of the day. The power cuts prevented radio and television broadcasts. Among the affected areas were those in which the transmission towers were located. The outages also affected landline and cellular telephone services.³⁰⁹

295. Dagoberto Rodríguez, managing editor of Radio Cadena Voces, confirmed the complaints of electric power being cut off.³¹⁰ Nancy John, news coordinator at Channel 11, also confirmed for the Commission the complaints concerning the incidents in which electric power was cut.³¹¹

296. For her part, Suyapa Banegas, on the staff of Marcala alternative radio in the department of La Paz, said that on the day of the coup d’état, broadcasters on commercial radio stations that supported the ousting of President Manuel Zelaya could be heard saying “[N]othing is happening here.” They asked the public “not to leave home” because “everything” was “normal.”³¹²

³⁰⁹ Office of the Special Rapporteur- IACHR, Press Release 44-09: *Office of the Special Rapporteur for Freedom of Expression Condemns Limitations to Freedom of Expression in Honduras*, June 29 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=753&IID=1>. C-Libre, “Bloqueo de Medios de Comunicación en Honduras. (Tegucigalpa), June 29, 2009. Available at: <http://conexihon.com/blog/archives/324>. Reporters Without Borders, “News blackout after army ousts president,” June 29, 2009, Available at: <http://www.rsf.org/News-blackout-after-army-ousts.html>. Inter-American Press Association. June 29, 2009, IAPA censures acts against journalists and media in Honduras. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4208&idioma=us. BBC. June 30, 2009. “El apagón de los medios” [The media blackout]. Available at: http://www.bbc.co.uk/mundo/america_latina/2009/06/090630_1030_honduras_medios_sao.shtml. Communication sent to the Commission on June 29, 2009.

³¹⁰ Testimony of Dagoberto Rodríguez, managing editor of Radio Cadena Voces, as told to the Commission during its on-site visit to Honduras (Tegucigalpa), August 17, 2009. Rodríguez said the following: “On Sunday the 28th, power was cut several times; one of the outages affected us. But because we have our generator, we solved the problem”. Rodríguez added that on that day, “broadcasting at all stations was suspended for a number of hours and we had to broadcast in segments. On Monday, we didn’t have problems. At least not at our station”.

³¹¹ Testimony of Nancy John, a journalist with Channel 11, as told to the Commission during its on-site visit to Honduras (Tegucigalpa), August 17, 2009. Ms. John said the following: “On the morning of the coup, there was a generalized two-hour blackout in Tegucigalpa and other cities and regions in Honduras. This was followed by a number of power cuts, but they were intermittent”.

³¹² Testimony of Suyapa Banegas, journalist with Radio Marcala, as told to the Commission during its on-site visit to Honduras (Tegucigalpa), August 20, 2009. She said the following; “However, when the radio stations in the country’s interior – the community and alternative stations- realized that what was happening was a coup, it occurred to us that the government –and more specifically the military, who were in control that morning- had decided to cut electric power in the country, specifically in those areas where the local stations were beginning to report the news. All this happened before 11:00 a.m., when electric power was restored”.

297. However, at the meeting that the Commission had with CONATEL's board, Miguel A. Rodas, chairman of CONATEL –which is in charge of regulating telecommunications- assured the Commission that he had no information as to whether the power outages were intentional. Rodas said the following: "What I can tell you is that electricity supply in Honduras is very unstable." By way of example he pointed out that "TIGO," a cell phone company, has "100 percent of its towers operating on generators."³¹³

298. The Commission also received information to the effect that a series of intermittent outages that began in Tegucigalpa on September 21, affected transmission by Channel 36 and Radio Globo. The IACHR also received information to the effect that on September 21, military troops took over the Tegucigalpa electric power plant, which is the plant that controls electric power transmission to the Tegucigalpa region.³¹⁴

c. Detentions of journalists

299. The Commission received reports to the effect that a number of journalists were detained for several hours for reasons associated with the practice of their profession. According to this information, on June 29, some 10 soldiers detained a group of journalists working for the foreign media at their hotel in Tegucigalpa. Among those detained were the following: Adriana Sivori, with TeleSUR, and the members of the crew working for the same channel, María José García and Larry Sánchez; Nicolás García and Esteban Félix, who were working for the Associated Press (AP), and two others also working for AP. According to various reports, the journalists were said to have been taken to an immigration office where they were allegedly questioned about their visas to work in the country. Other reports indicated that the military had allegedly confiscated the work material of the TeleSUR journalists. All were released some hours later.³¹⁵ The TeleSUR journalist, Madeleine García, told the IACHR that on Monday, June 29, they were transmitting "live" from the 12th floor of the Marriot Hotel, a vantage point that allowed them to film "everything that was happening" on the streets below, located in the vicinity of the Presidential Residence, where sympathizers of President Manuel Zelaya were gathered, "pleading for his return." García said that at around midnight, she received a call from the authorities of the *de facto* regime in which they warned her that the authorities were about to arrest them.³¹⁶

³¹³ The Commission's meeting with the board of CONATEL during its on-site visit to Honduras (Tegucigalpa), August 18, 2009.

³¹⁴ Office of the Special Rapporteur-IACHR, Press Release 66-09: *Special Rapporteurship for Freedom of Expression Condemns Restrictions to Freedom of Expression in Honduras*, September 24, 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=753&IID=1>

³¹⁵ Office of the Special Rapporteur-IACHR, Press Release 44-09: *Office of the Special Rapporteur for Freedom of Expression Condemns Limitations to Freedom of Expression in Honduras*, June 29 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=753&IID=1>. Committee to Protect Journalists, "CPJ Alarmed by Suppression of Media in Honduras," (New York) June 30, 2009. Available at: <http://www.cpj.org/blog/2009/06/cpj-alarmed-by-suppression-of-media-in-honduras.php>. Reporters Without Borders, "News blackout after army ousts president," June 29, 2009, Available at: <http://www.rsf.org/News-blackout-after-army-ousts.html>. Article 19, "Honduras: Freedom of Expression Under Threat Following Weekend Coup". (London), July 1, 2009. Available at: <http://www.article19.org/pdfs/press/honduras-freedom-of-expression-under-threat-following-weekend-coup.pdf>. Inter-American Press Association. "Respect Press Freedom, IAPA Again Urges Honduras." (Miami), July 2, 2009. Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4210&idioma=us.

³¹⁶ Testimony of Madeleine García, a journalist with TeleSUR, as told to the Commission during its on-site visit to Honduras (Tegucigalpa), August 17, 2009. García said that the midnight call she received was from a call center; the party at the other end of the line said to her: "Look, Madeleine, why are you doing this? You are showing something that isn't true. We'll be there in 20 minutes". Ms. García went on to say: "And in fact, 20 minutes later, a group of heavily armed military personnel arrived on the hotel's 12th floor and took all the reporters away, including the journalists from the AP and other news agencies. I immediately called General Romeo Vásquez Velázquez and asked him, 'Where are the journalists who were

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300. As with the other situations involving issues of freedom of expression and about which the IACHR requested information, the communication received from the *de facto* government said the following about this case: “The Office of the Special Prosecutor for Human Rights is currently investigating the circumstances under which the events in these complaints transpired.”³¹⁷

301. Caricaturist Allan McDonald was detained together with his 17-month-old daughter. According to the complaint, the caricaturist “reported from a hotel, where he was being held in custody along with the Consul of the Republic of Venezuela and two women journalists from Spain and Chile, with whom he was not acquainted.” The caricaturist said that on June 28, members of the Armed Forces burst into his home, “ransacked” it and built a “bonfire with all his caricatures and drawing materials.” The only thing they allowed him to take when they dragged him from his home was his passport.³¹⁸

302. The news director at Televisor de Aguán, Channel 5, Nahúm Palacios, reported that in Tocoa, department of Colón, soldiers surrounded the television station on June 29 and forcibly entered the facility, while the journalists were covering the coup d’état. The soldiers seized the broadcasting equipment and the channel went off the air.³¹⁹

303. On July 2, Mario Amaya, a photographer for the Salvadoran newspaper El Diario de Hoy, was beaten and taken into custody by soldiers as he was photographing a protest in San Pedro Sula that was being dispersed. On June 29, the same photographer reported having been beaten by alleged demonstrators as he was covering a pro-Zelaya march.³²⁰

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detained?’ All this came out, which is why they acted quickly to release the TeleSUR crew, which had been taken to the immigration office, on the pretext that they were in Honduras illegally”.

³¹⁷ *De facto* Secretariat of Foreign Affairs, memorandum No. 526-DGAE-90, received on July 10, 2009.

³¹⁸ Office of the Special Rapporteur-IACHR, Press Release 44-09: *Office of the Special Rapporteur for Freedom of Expression Condemns Limitations to Freedom of Expression in Honduras*, June 29 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=753&IID=1>. Article 19, “Honduras: Freedom of Expression Under Threat Following Weekend Coup”. (London), July 1, 2009. Verence Bengtson, e-mail received by the Commission on June 29, 2009. *Periodistas en Español*, “Secuestrado en Honduras el caricaturista Allan Mc Donald” [Caricaturist Allan McDonald abducted in Honduras], June 30, 2009. Available at: http://www.p-es.org/index.php?option=com_content&task=view&id=3724&Itemid=78.

³¹⁹ Testimony that Nahúm Palacios, news editor at Televisora de Aguán, Channel 5, gave to the Commission by phone during its on-site visit to Honduras (Tegucigalpa), August 21, 2009. C-Libre, “Director de Noticiero del Aguán también fue atropellado” [Editor at Aguan News also beaten] (Tegucigalpa), July 3, 2009. Available at: http://www.ifex.org/honduras/2009/07/07/nahun_palacios_victim/es/. Committee of Relatives of Detainees-Disappeared in Honduras, “Informe Preliminar Violaciones a Derechos Humanos en el marco del golpe de Estado en Honduras” [Preliminary Report on Human Rights Violations in the context of the coup d’état], July 15, 2009. Available at: <http://www.cofadeh.org/>. Nahúm Palacios, e-mail sent to the Commission on July 16, 2009. Testimony of Naúm Palacios, taken by the Commission by phone on July 15, 2009 and July 22, 2009. CEJIL’s letter to the Executive Secretary of the Commission, Santiago Cantón received by the Commission on July 23, 2009.

³²⁰ “A Micheletti no le preocupan represalias contra Honduras” [Micheletti unconcerned about reprisals against Honduras], El Universo (Guayaquil), July 3, 2009. Available at: <http://www.eluniverso.com/2009/07/03/1/1361/9AB24BE7076D489FA5EDC0956A412372.html>. “Periodista salvadoreño es agredido en Honduras” [Salvadoran journalist assaulted in Honduras], Diario Co Latino (San Salvador), July 3, 2009. Available at: <http://www.diariocolatino.com/es/20090703/nacionales/68733/>. Inter-American Press Association, “IAPA calls for investigation into the Death of Honduran Journalist” (Miami), July 7, 2009. Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4211&idioma=us. “Fotoperiodista salvadoreño golpeado en Honduras” [Salvadoran Photojournalist Beaten in Honduras], La Prensa Gráfica (San Salvador), July 2, 2009. Available at: <http://www.laprensagrafica.com/el-salvador/lodeldia/43920-fotografo-salvadoreno-golpeado-en-manifestacion-en-honduras.html>.

304. On July 2, Rommel Gómez, a reporter from Radio Progreso, was detained by the military as he was covering a protest in San Pedro Sula's Central Park. The soldiers took away his work materials and took photos of his personal documents. According to the complaints received, this was an act of intimidation.³²¹ Rommel Gómez and his wife, Miryam Espinal, also complained of receiving death threats on their private phones.³²²

305. According to information received, on the night of July 11, police in Tegucigalpa detained members of the TeleSUR and VTV news teams and took them to police headquarters on the pretext of confirming their immigration status. After a number of hours, the persons being held were released. The next morning, police had allegedly prevented reporters from leaving their hotels for a number of hours, on the pretext that they were waiting for the immigration authorities to arrive to check their status. According to the information received, journalists and members of the TeleSUR and VTV news teams were allegedly being held up as a form of intimidation, because of their coverage of the coup d'état and of the institutional rupture. According to reports received, the crews from both channels left Honduras the next day believing that they might be in danger. They were escorted [to] the Nicaraguan border by a delegation from Centro para la Prevención, Tratamiento y Rehabilitación de las Víctimas de la Tortura y sus Familiares (CPTRT) [the Center for the Prevention of Torture and the Treatment and Rehabilitation of its Victims and Their Families].³²³

306. On August 14, a reporter from Radio Progreso, Gustavo Cardoza, was taken into custody in Choloma, in the Department of Cortés, as he was covering the violent dispersal of a group of Zelaya sympathizers. The reporter was beaten by police and detained for a number of hours.

307. In the testimony he gave to the Commission, Cardoza recounted how he was beaten by security forces as he was trying to do his reporting.³²⁴ At the same protest, Eduin Castillo, an

³²¹ Defensores en Línea, "Denuncian represión de militares hacia dirigentes sociales y periodistas independientes [Military repression of social leaders and independent journalists denounced]. (Tegucigalpa), July 2, 2009. Available at: <http://libertaddeexpresionhn.blogspot.com/2009/07/denuncian-represion-de-militares-hacia.html>. Reporters Without Borders. September 7, 2009. *Media in Coup Storm*. Available at: <http://www.rsf.org/Media-in-coup-storm.html>. Committee of Relatives of Detainees-Disappeared in Honduras, "Informe Preliminar Violaciones a Derechos Humanos en el marco del golpe de Estado en Honduras" [Preliminary Report on Human Rights Violations in the Context of the Coup d'état], July 15, 2009. Available at: <http://www.cofadeh.org/>. Testimony of Patricia Murillo Gómez, coordinator of the School of Journalism of the Universidad Autónoma de San Pedro Sula and a correspondent for the newspaper *Tiempo de Tegucigalpa*, as told to the Commission during its on-site visit to Honduras (San Pedro Sula), August 19, 2009.

³²² Request seeking precautionary measures, filed by the International Mission Investigating the Human Rights Situation in the wake of the coup d'état, July 22, 2009.

³²³ Testimony of the Centro para la Prevención, Tratamiento y Rehabilitación de las Víctimas de la Tortura y sus Familiares (CPTRT) [Center for the Prevention of Torture and Treatment and Rehabilitation of Its Victims and Their Families], as told to the Commission during its on-site visit to Honduras (Tegucigalpa), August 17, 2009. Office of the Special Rapporteur-IACHR, Press Release R50-09: *Office of the Special Rapporteur for Freedom of Expression Condemns Detention of Foreign Journalists in Honduras*. July 12, 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=755&IID=1>. Committee to Protect Journalists, "Venezuelan journalists leave Honduras after harassment". (New York), July 13, 2009. Available at: <http://cpj.org/2009/07/venezuelan-journalists-leave-honduras-after-harass.php>. Inter-American Press Association, "IAPA condemns harassment of Venezuelan TV crews in Honduras." (Miami), July 14, 2009. Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4215&idioma=us. Comité de Familiares Detenidos Desaparecidos en Honduras [Committee of Relatives of Detainees-Disappeared in Honduras], "Informe Preliminar Violaciones a Derechos Humanos en el marco del golpe de Estado en Honduras" [Preliminary Report on Human Rights Violations in the Context of the Coup d'État], July 15, 2009. Available at: <http://www.cofadeh.org/>.

³²⁴ Testimony of Gustavo Cardoza, reporter from Radio Progreso, as told to the Commission during its on-site visit to Honduras (San Pedro Sula), August 19, 2009. Cardoza said the following: "The security forces were throwing tear gas grenades into the crowd of demonstrators. I took off running in the midst of the smoke. I began coughing, and they handed

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independent journalist from Tela in the department of Atlánti[c]a, complained of having been beaten by the security forces.³²⁵

308. The Commission received information to the effect that just after 6:00 a.m. on September 22, Agustina Flores López, a teacher and broadcaster with Radio Liberada, was allegedly arrested as she was on her way to the Embassy of Brazil in Tegucigalpa, where President Zelaya was. The information added that Flores López had allegedly been beaten and tortured by law enforcement personnel. On October 6, the Commission requested information on this matter from the *de facto* government. In its reply, sent October 20, the *de facto* government stated the following: "Concerning the complaint of the detention and alleged acts of torture committed against Mrs. Agustina Flores López, the Commission is hereby advised that the individual in question entered the National Bureau of Criminal Investigation on September 23 of this year, at 16:55 hours, together with Mr. Mario Enrique Molina Izaguirre. She was brought in on suspicion of the crime of sedition and aggravated vandalism, at the request of Metropolitan Police Headquarters No. 1, after being brought before the Combined Court of Francisco Morazán. When she entered police premises, Mrs. Agustina Flores López had a blow to the jaw area of the face and was therefore asked to have a dental examination; however, she did not respond. On October 12, the hearing was held to review measures. Judge No. 3, attorney Laura Casco, proceeded to release her by ordering substitute measures and payment of a bond of one hundred thousand lempiras (the equivalent of some 5 thousand United States dollars)."

309. The IACHR reiterated the provisions of Principle 5 of the Inter-American Declaration of Principles on Freedom of Expression to the effect that "[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

310. As for the violence to which reporters covering many of the events were subjected, the IACHR would point out that Principle 9 of the Inter-American Declaration of Principles warns that the "murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

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me the microphone to go on the air. I reported that the police were hurling grenades at the houses. A police officer, who must have been a high-ranking officer because his uniform was different, looked at me, drew his weapon and pointed it at me. I decided to run, because I was scared to death. But five anti-riot police caught. They threw us one on top of the other".

³²⁵ Testimony of Eudín Castillo an independent journalist from Tela, as told to the Commission during its on-site visit to Honduras (San Pedro Sula), August 19, 2009. Castillo reported that: "When told us that hundreds of members of the security forces were on their way, we stepped to one side. They came in shouting "Conquer or die." They were soldiers, police and members of the Cobra special strike force. I identified myself and a soldier told me 'Here, you're worthless.' Then they started shoving me. And they said 'son of a bitch, so you like to mix it up, get into fights'. When I protested and asked why the police were saying things just to the media that supported the coup, they slapped handcuffs on me and left me out in the sun. 'You'll fry out here, you son of a bitch'".

d. Assaults on journalists

311. The IACHR received reports of serious and multiple assaults on journalists for reasons associated with their news coverage. These assaults have been perpetrated by agents of the State as well as demonstrators. Information has been received on all these acts of violence.

312. The IACHR received information to the effect that on June 29, a journalist from the newspaper El Heraldo had allegedly been attacked while he was covering a demonstration in front of the Presidential House in Tegucigalpa.³²⁶ At least one photographic journalist from the newspaper La Tribuna, Juan Ramón Sosa, was beaten and verbally abused by police as he was covering the demonstration on June 29 in Tegucigalpa. His camera was also confiscated.³²⁷ Also in Tegucigalpa, three journalists with the program "Entrevistado" on Channel 42 were allegedly attacked on June 28 by a group of demonstrators who also knocked down and destroyed their cameras.³²⁸

313. On July 1, demonstrators presumably in support of President Zelaya, had allegedly assaulted Carlos Rivera, a correspondent with Radio América in the city of Santa Rosa de Copán. When a second journalist was assaulted at the same demonstration, the journalists present had allegedly felt compelled to leave. In the same city, Zelaya sympathizers had allegedly attacked Maribel Chinchilla, the owner of Channel 34 television.³²⁹

314. On July 25, a group of foreign journalists were allegedly assaulted by police in Danlí. According to the information received, photographic journalist Wendy Olivo, of the Agencia Bolivariana de Noticias, was reportedly attacked after trying to photograph persons detained at a police station. When she refused to hand over her camera to the police, Olivo was reportedly beaten up. Other journalists were also assaulted when they attempted to come to the photo-journalist's rescue.³³⁰

315. In the Department of El Paraíso on July 26 reporters from the newspaper La Tribuna reported having been assaulted by demonstrators presumably in favor of President Zelaya's return.

³²⁶ Reporters Without Borders, "News blackout after army ousts president," June 29, 2009, Available at: <http://www.rsf.org/News-blackout-after-army-ousts.html>. Inter-American Press Association, "IAPA Censures Acts against Journalists and Media in Honduras", Tegucigalpa, June 29, 2009. Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4208&idioma=us

³²⁷ Inter-American Press Association, "Respect Press Freedom, IAPA Again Urges Honduras," (Miami), July 2, 2009. Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4210&idioma=us. "Periodistas y fotógrafos denuncian agresiones" [Journalists and photographers denounce assaults], La Tribuna (Tegucigalpa), June 30, 2009. Available at: <http://www.latribuna.hn/web2.0/?p=14635>.

³²⁸ Inter-American Press Association, "Respect Press Freedom, IAPA Again Urges Honduras," (Miami), July 2, 2009. Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4210&idioma=us. "Periodistas y fotógrafos denuncian agresiones" [Journalists and photographers denounce assaults], La Tribuna (Tegucigalpa), June 30, 2009. Available at: <http://www.latribuna.hn/web2.0/?p=14635>.

³²⁹ Reporters Without Borders, "Media in Coup Storm", September 7, 2009. Available at: <http://www.rsf.org/Media-in-coup-storm.html>.

³³⁰ "Agencia estatal venezolana denuncia agresión contra reportera en Honduras" [Venezuelan state agency denounces assault on female reporter in Honduras], *EFE/Yahoo News*, July 25, 2009. Available at: <http://espanol.news.yahoo.com/s/25072009/54/n-world-agencia-estatal-venezolana-denuncia-agresion.html>. "Agredida reportera gráfica de ABN por fuerzas policiales hondureñas" [ABN photographic journalist roughed up by Honduran police], Agencia Bolivariana de Noticias (Caracas), July 25, 2009. Available at: <http://www.abn.info.ve/noticia.php?articulo=192265&lee=16>.

According to the information received, a group of people had allegedly attempted to grab the camera belonging to photo journalist Henry Carvajal. When journalist Martín Rodríguez intervened, they hit him, too, calling them 'coup supporters'. Carvajal allegedly lost all the photographs he had taken that day.³³¹

316. On July 30, a number of journalists and cameramen were assaulted by police as they were covering the repression of the demonstration held that day in Tegucigalpa. According to the information received, Karen Méndez, a reporter from *TeleSUR*, said she was pushed and threatened by a police officer, while a photographer from that same channel, Roger Guzmán, was also assaulted and his work materials taken away.³³² José Oseguera and Luis Andrés Bustillo, cameramen with the *Maya TV* program *Hable como Habla* were said to have been beaten in the Durazno area, on the northern road leading out of Tegucigalpa on July 30.³³³ Edgardo Castro, a journalist with Televisora Hondureña de Comayagua, was said to have been assaulted on July 30, during a demonstration in Tegucigalpa where he was filming the action the police were taking against demonstrators. His equipment was reportedly damaged.³³⁴

317. C-Libre reported that Juan Carlos Cruz, a journalist with the state-run Radio Nacional de Honduras, was beaten and arrested by police on July 31 because he was filming a confrontation between police and some young people who were driving a motorcycle without license plates, in a sector of Comayagüela. Cruz was held for 18 hours and his camera was not returned, even though he had identified himself as a reporter.³³⁵

318. On August 5, Héctor Clara Cruz, photo journalist with the newspaper *Tiempo*, was said to have been beaten by police as he was covering a student demonstration at the Universidad Nacional Autónoma de Honduras (UNAH). According to reports in the newspaper *Tiempo*, at least two police officers beat him up to make him stop taking photographs of the clash between students and police. The beating left him disabled for one week. His camera equipment was also damaged.³³⁶

³³¹ C-Libre, "Comunicadores denuncian agresiones" [Reporters denounce assaults].(Tegucigalpa), July 26, 2009. Available at: <http://conexihon.com/blog/archives/548>. "Seguidores de "Mel" agreden a fotógrafo de LA TRIBUNA" [Mel supporters rough up a photographer from La Tribuna] (Tegucigalpa), July 27, 2009. Available at: <http://www.latribuna.hn/web2.0/?p=23625>.

³³² C-Libre, "Policía hondureña golpea a periodistas y camarógrafos nacionales e internacionales" [Honduran police beat national and international reporters and photographers]. (Tegucigalpa), July 30, 2009. Available at: <http://conexihon.com/blog/archives/569>. "Reprime la policía hondureña a seguidores de Zelaya" [Honduran Police Repress Zelaya Followers], *La Crónica de Hoy* (Mexico, DF), July 31, 2009. Available at: http://www.cronica.com.mx/nota.php?id_notas=448659.

³³³ C-Libre, "Policía hondureña golpea a periodistas y camarógrafos nacionales e internacionales" [Honduran police beat national and international reporters and photographers] (Tegucigalpa), July 30, 2009. Available at: <http://conexihon.com/blog/archives/569>.

³³⁴ Testimony of Edgardo Castro, as told to the Commission during its on-site visit to Honduras (San Pedro Sula), August 19, 2009. C-Libre, "Policía hondureña golpea a periodistas y camarógrafos nacionales e internacionales"[Honduran police beat national and international journalists and cameramen] (Tegucigalpa), July 30, 2009. Available at: <http://conexihon.com/blog/archives/569>. *Habla Honduras*, "3 días de movilizaciones diarias" [Three days of daily demonstrations]. (Tegucigalpa), July 30, 2009. Available at: <http://hablahonduras.com/2009/07/31/hechos-destacados-jueves-30-de-julio-de-2009/>. "Endurecen golpistas acciones contra manifestantes en Honduras" [Coup takes harder line with demonstrators] *Milenio* (Mexico, DF), July 30, 2009. Available at: <http://www.milenio.com/node/259010>.

³³⁵ C-Libre, "Arrestado un policía porque filmaba pleito de jóvenes" [Arrested by police because he was filming a confrontation between police and youngsters] (Tegucigalpa), August 3, 2009. Available at: <http://conexihon.com/blog/archives/580>.

³³⁶ *Diario Tiempo*, "Salvaje golpiza propinan policías a reportero gráfico de Tiempo" [Police beat a photojournalist with *Tiempo* savagely] (Tegucigalpa), August 6, 2009. *Diario Tiempo*, "Evidente ignorancia del viceministro de Seguridad ante golpiza contra reportero gráfico de Tiempo" [Vice Minister of Security's obvious ignorance of the beating of the photo

319. Richard Esmith Cazulá, a cameraman with Channel 36, was said to have been beaten in Tegucigalpa on August 12, as he was filming a demonstration. His camera was also damaged. The reporter said that he was beaten by police.³³⁷

320. During a demonstration on August 14, a group of police assaulted Julio Umaña and confiscated his material. Umaña, a photographer for the newspaper Tiempo, had allegedly shown them his journalist credentials.³³⁸

321. On September 28, Guatemalan journalists Alberto Cardona, a reporter with Guatevisión, and Rony Sánchez, a cameraman with Guatevisión and the Mexican channel Televisa, were beaten by security forces as they were covering the shutdown of Radio Globo. The information received indicates that the security forces confiscated the video they had taken of the radio station being shut down. Police also damaged the television camera.³³⁹

322. The IACHR received information to the effect that in the municipality of El Progreso, department of Yoro, Dunia Montoya, wife of journalist Bartolo Antonio Fuentes, was allegedly assaulted as she was filming her husband being taken into custody on September 15. On October 6, the IACHR requested information on this case from the *de facto* government. In its reply, dated October 20, the *de facto* government maintained that it “has no information [whatsoever] concerning the assault allegedly suffered against Mrs. Dunia Montoya.”³⁴⁰

323. The Commission also received information to the effect that on September 28, Delmer Alberto Membreño Aguilar, graphics editor with the newspaper El Libertador, had reportedly been abducted and assaulted for a number of hours by four individuals wearing ski masks. The Commission requested information on this case from the *de facto* government on October 6. Its reply, dated October 20, reads as follows: “Concerning the alleged abduction of Mr. Delmer Alberto Membreño Aguilar, Graphics Editor with the newspaper El Libertador, the Commission is hereby informed that neither the National Bureau of Criminal Investigation nor the Public Prosecutor’s Office has any record of this episode; nevertheless, instructions have been issued to have the matter investigated.”³⁴¹

...continuation

journalist with Tiempo] (Tegucigalpa), August 7, 2009; IACHR, MC 196/09, Amplification of Precautionary Measures, Honduras, September 4, 2009. Available at <http://www.cidh.org/medidas/2009.eng.htm> ; Diario La Tribuna, Editorial “Libre Expresión” [Free Expression], August 18, 2009. Available at: <http://www.latribuna.hn/web2.0/?cat=10&paged=3>.

³³⁷ C-Libre, “Otro ataque contra la libertad de expresión en Honduras” [Another attack on freedom of expression in Honduras]. (Tegucigalpa), August 12, 2009. Available at: <http://conexihon.com/blog/archives/624>.

³³⁸ Diario La Tribuna, Editorial “Libre Expresión” [Free Expression], August 18, 2009. Available at: <http://www.latribuna.hn/web2.0/?cat=10&paged=3>.

³³⁹ Office of the Special Rapporteur-IACHR, Press Release 71-09: *Office of the Special Rapporteur for Freedom of Expression Condemns the Suspension of Guarantees in Honduras and the Violations of the Right to Freedom of Expression*, September 29, 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=764&IID=1>

³⁴⁰ *De facto* Secretariat of Foreign Affairs of Honduras, Memorandum 731-DGAE-09 dated October 20, 2009.

³⁴¹ *De facto* Secretariat of Foreign Affairs of Honduras, Memorandum 731-DGAE-09 dated October 20, 2009.

e. Violent attacks on the media

324. The IACHR has observed the increasing polarization between sectors of the press, the *de facto* government and the opposition, which has manifested itself in a variety of ways, including violent attacks on the media.

325. The San Pedro Sula newspaper La Prensa reported having been the target of an attack on June 29, in Tegucigalpa, when a group of demonstrators threw stones and sticks against the entrance to the newspaper office.³⁴² Radio América was also allegedly attacked on the night of June 30. According to the information received, a bomb was placed on the premises of the radio station in Tegucigalpa, after the curfew had gone into effect. Police removed the device. According to the complaints received the radio was off the air for the time it took to remove the device.³⁴³

326. On the night of July 4, an unidentified person reportedly left an explosive device in the Centro Comercial Prisa in Tegucigalpa, where the facilities of Channel 11 and the newspaper Tiempo are located.³⁴⁴

327. Early on the morning of August 14, persons wearing hoods and carrying weapons set fire to a vehicle that distributed copies of the newspaper La Tribuna, in an area known as Las Vueltas del Junquillo, on the outskirts of the city of Juticalpa. "The criminals stopped the green Nissan Frontier, driven by José Giovanni Fonseca Contreras, 30, tied him up, blindfolded him, threw him out of the vehicle, and finally set fire to the vehicle," wrote the newspaper El Heraldo when reporting the attack in its Saturday, August 15 edition.³⁴⁵

³⁴² Inter-American Press Association, "Respect press freedom, IAPA again urges Honduras" (Miami) July 2, 2009 Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4210&idioma=us. Gilberto Molina Arcos, "Periodista revela que no hay día sin amenazas a periodistas en Honduras" [Journalist reveals that not a day passes without threats to journalists in Honduras], El Universal (Mexico DF), June 30, de 2009. Available at: <http://www.eluniversal.com.mx/notas/608564.html>.

³⁴³ C-Libre, "Radio América denuncia atentado" [Radio América denounces attack] (Tegucigalpa), July 1, 2009. Available at: <http://conexihon.com/blog/archives/352>. Radio América. July 1, 2009, Radio América condena atentado [Radio América condemns attack]. Available at: <http://www.radioamerica.hn/sitio.cfm?pag=leenoticias&t=Nacionales&id=13379>.

³⁴⁴ Committee of Relatives of Detainees-Disappeared in Honduras, "Informe Preliminar Violaciones a Derechos Humanos en el marco del golpe de Estado en Honduras" [Preliminary Report on Human Rights Violations in the Context of the Coup d'état], July 15, 2009. Available at: <http://www.cofadeh.org/>. C-Libre, "Otro atentado a medio de comunicación en Honduras" [Another attack on a media outlet in Honduras] (Tegucigalpa), July 6, 2009. Available at: <http://conexihon.com/blog/archives/441>. El Tiempo, "Cofadeh constata daños por bombazo en Canal 11" [COFADEH confirms bomb damage at Channel 11]. Available at: <http://www.tiempo.hn/secciones/crisis-politica/13-cofadeh-constata-danos-por-bombazo-en-canal-11>.

³⁴⁵ Diario La Tribuna, Editorial "Libre Expresión" ["Free Expression"] August 18, 2009. Available at: <http://www.latribuna.hn/web2.0/?cat=10&paged=3>. "Queman carro repartidor de diario La Tribuna" ["They set fire to vehicle distributing La Tribuna], El Heraldo, (Tegucigalpa), August 15, 2009.

328. The following day, unidentified persons threw Molotov cocktails against the building that houses the newspaper El Herald. In his testimony to the IACHR, the deputy editor-in-chief of the newspaper, Carlos Mauricio Flores, mentioned the damage caused by the Molotov cocktails.³⁴⁶

329. Executives at Channel 36 and Radio Globo reported that on Sunday night, August 23, a group of hooded individuals attacked their transmission towers on Cerro de Santa Gallo, taking both stations off the air for several hours.³⁴⁷

330. Concerning this string of serious assaults and attacks, the Commission recalls that Principle 9 of the Inter-American Declaration of Principles on Freedom of Expression states that “murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

f. Threats and other forms of intimidation

331. Threats and other forms intimidation have been used to obstruct the work of journalists. Since June 28 the Commission has received a number of complaints that single out the police and supporters of President Zelaya as engaging in these threats and intimidation tactics.

332. Indeed, the threats have come from a variety of sources and have been made by telephone, electronically or in person, while reporters are covering demonstrations or newsworthy events related to the political crisis. The Commission observed that during its visit in the [final] weeks of August, the threats against freedom of the press had increased.

333. TeleSUR reported that journalist Madeleine García had received phone threats from a person who allegedly identified himself as a military officer. This person had reportedly warned the journalist to stop reporting on the protests in support of President Zelaya.³⁴⁸

334. For his part, the managing editor of Radio Cadena Voces, Dagoberto Rodríguez, reported that on June 29 he received three phone calls, supposedly from groups identified with the Zelaya government, in which threats were made against his radio station in Tegucigalpa. Rodríguez filed a complaint with the IACHR to the effect that supporters of President Zelaya had threatened a

³⁴⁶ Testimony of Carlos Mauricio Flores, deputy editor of the newspaper El Herald, as told to the Commission during the on-site visit to Honduras. (Tegucigalpa) August 20, 2009. Flores said the following: “The most recent visible attack came in the early morning hours of Saturday, August 15, when a number of unknown men threw five incendiary bombs. Three of them exploded; two others, thrown at the second floor, fortunately did not explode. Had it not been for the expertise and skill of the building’s security personnel, the building would have caught fire; we believe that was the objective of the attackers”. Diario La Tribuna, “Lanzan bombas molotov contra diario capitalino” [Molotov cocktails hurled at capital city newspaper] (Tegucigalpa), August 16, 2009. Also available at: <http://www.latribuna.hn/web2.0/?p=30005>.

³⁴⁷ Testimony of the owner of Channel 36, Esdras Amado López, given by phone to the Commission on August 24, 2009. “Encapuchados sacan del aire al fundir transmisores de radio Globo y canal 36 [Hooded persons operate in the open to blow up Radio Globo and Channel 36 transmission towers], Diario Tiempo, August 24, 2009. Available at: <http://www.tiempo.hn/secciones/el-pais/2706-encapuchados-sacan-del-aire-al-fundir-transmisores-de-radio-globo-y-el-canal-36>.

³⁴⁸ Committee to Protect Journalists, “CPJ Alarmed by Suppression of Media in Honduras”, (New York) June 30, 2009. Available at: <http://www.cpj.org/blog/2009/06/cpj-alarmed-by-suppression-of-media-in-honduras.php>.

number of journalists from Radio Cadena Voces during the protests against the *de facto* government.³⁴⁹

335. Other reports indicated that journalist Eduardo Maldonado, a collaborator of Zelaya on the consultation that the administration was planning and who hosts his program “Hable como Habla” on Channel 66 Maya, had allegedly received threats and sought protection at an embassy.³⁵⁰

336. On July 2, journalist Jorge Otts Anderson filed a complaint from Bonito Oriental in the department of Colón, where he had to go into hiding because soldiers were looking for him to take away his camera. In a telephone conversation with the IACHR on July 15, Otts explained that channel La Cumbre, which he owns, had been shut down for several days.³⁵¹

337. Héctor Castellanos, who directs the program “El consultorio del Médico” [The Doctor’s Office] on *Radio Globo* said he had received death threats.³⁵² In an e-mail to the IACHR, Castellanos explained that after expressing his opinion on the current political situation in Honduras, he began receiving text messages and e-mails containing threats, as well as threatening phone calls from persons he supposes are supporters of President Zelaya. Castellanos said that he stopped doing his radio program, since on at least two occasions he had been the target of an attempted assault for not being a supporter of President Zelaya.³⁵³

338. Before the coup d’état, Jhonny Lagos, editor of the newspaper *El Libertador*, was threatened with jail and a fine for having asked his readers whether they were for or against the consultation proposed by President Zelaya. According to the information received, the reporter complained that after June 28 he was under constant surveillance and was constantly being followed in Tegucigalpa and that they had cut off the electric power supply to his newspaper or cut off its internet access. The Center for Justice and International Law reported that since July 10, the

³⁴⁹ Testimony of Dagoberto Rodríguez, managing editor de Radio Cadena Voces, as told to the Commission during its on-site visit to Honduras (Tegucigalpa), August 17, 2009. Rodríguez stated that: “a number of our colleagues were threatened at the protest marches. Some were asked to show their identification. The [authorities] don’t have a right to ask that. They asked which media outlets they were associated with and told them they would be beaten if they didn’t answer. The guys identified themselves. That happened to a number of our colleagues. Because of that, we didn’t cover the demonstrations staged by the Resistance group. This was not because we didn’t want to; the ideal would have been to give them more coverage. However, we felt that because of the threats that had been made and the fact that members of the Resistance block were become increasingly radicalized, we would have to stop covering their marches”.

³⁵⁰ Comité por la Libertad de Expresión [Committee for Freedom of Expression], June 29, 2009. Alerta: Bloqueo de Medios de Comunicación en Honduras [Warning: Media Blockout in Honduras]. Available at: <http://conexihon.com/blog/archives/324>. Radio la Primerísima. June 29, 2009. Periodista hondureño corre peligro: clausuran su canal [Honduran journalist in danger: they are shutting down his channel]. Available at: <http://radiolaprimerisima.com/noticias/general/55729>.

³⁵¹ C-Libre, “Continúan hostigamientos contra periodistas” [Harassment of journalists continues] (Tegucigalpa), July 3, 2009. Available at: http://www.movimientos.org/show_text.php3?key=14830. Committee of Relatives of Detainees-Disappeared in Honduras, “Informe Preliminar Violaciones a Derechos Humanos en el marco del golpe de Estado en Honduras” [Preliminary Report on Human Rights Violations in the Context of the Coup d’état], July 15, 2009. Available at: <http://www.cofadeh.org/>.

³⁵² C-Libre, “Continúan hostigamientos contra periodistas” [Harassment of journalists continues] (Tegucigalpa), July 3, 2009. Available at: http://www.movimientos.org/show_text.php3?key=14830. Héctor Castellanos, e-mail received by the Office of the Special Rapporteur for Freedom of Expression on July 16, 2009.

³⁵³ Héctor Castellanos, e-mail received by the Commission on August 13, 2009.

newspaper's offices had been under police guard. Lagos complained about the situation at a press conference held on July 15 at COFADEH's offices in Tegucigalpa.³⁵⁴

339. Information was received to the effect that José Luis Galdámez Álvarez, director of the program "Tras la Verdad" [Pursuing the Truth] on Radio Globo, had come out against the coup d'état, after which he was allegedly subjected to various acts of intimidation, such as surveillance of his home and direct threats made to his children at gunpoint by unidentified persons because of their father's political position.³⁵⁵

340. On July 21, Andrés Molina, a broadcaster on Radio Juticalpa, reported that telephone threats against journalists in the Olancho region who expressed views in opposition to the *de facto* government continued. He said that the previous day, he had himself received a phone call threatening him if he continued to speak on radio.³⁵⁶

341. On August 11, Rosangela Soto, a journalist with Televisión Centro, complained of having been threatened by demonstrators in Tegucigalpa, as a protest against the coup d'état was coming to an end.³⁵⁷

342. Consistent with the pattern of intimidation, the IACHR was also told that soldiers were asking media outlets like Channel 11 and the newspaper *Tiempo*, to stop reporting on the opposition. A similar request was made of the journalists in Tocoa, Colón, two days after the coup d'état.

343. The Commission received information to the effect that on September 23, Raquel Isaula, coordinator of the Red de Desarrollo Sostenible (RDS) [Sustainable Development Network] had allegedly been persecuted for reasons having to do with her work. According to the information received, Isaula had allegedly been visited by CONATEL representatives who asked that the Network suspend all registration of Honduran domain names and that she turn over the lists and databases of the existing "hn" (Honduran) domain names [within two days]. The information received went on to say that Isaula had allegedly received a number of threatening messages on her cell phone. The Commission requested information on this matter from the *de facto* government, which on October 20 replied as follows: "Concerning the situation of Mrs. Raquel Isaula, Coordinator of the Red de Desarrollo Sostenible (RDS), the Commission is informed that the National Police have no knowledge of these events, since the alleged victim did not file a complaint; a review of the files of complaints presented to the Offices of the Special Prosecutor for Human Rights in Tegucigalpa and San Pedro Sula, as well as the files of other regional prosecutors' offices turned up no complaint filed by a person of that name (...) As for the Inspection Visit that CONATEL authorities made to the Sustainable Development Network-Honduras (RDS-HN), the Commission is advised that under the General Regulations of the Telecommunications Sector Framework Law (in

³⁵⁴ Complaint that the CPTRT filed with the Commission during its on-site visit to Honduras (Tegucigalpa), August 17, 2009. During a press conference held at COFADEH offices, Lagos said the following: "I have received mail by the post and electronic messages mentioning my mother and using words intended to scare me. I understand this is a psychological war. That doesn't affect me. I'm telling you right now, if something happens to me, those responsible will be the visible faces of the coup d'état".

³⁵⁵ Request for precautionary measures filed by the Center for Justice and International Law on July 20 and 22, 2009.

³⁵⁶ C-Libre, "Periodistas denuncian presiones para cancelación de contratos de publicidad" [Journalists denounce threats to cancel advertising contracts] (Tegucigalpa), July 21, 2009. Available at: http://movimientos.org/show_text.php3?key=15046.

³⁵⁷ C-Libre, "Otro ataque contra la libertad de expresión en Honduras" [Another attack on freedom of expression in Honduras]. (Tegucigalpa), August 12, 2009. Available at: <http://conexihon.com/blog/archives/624>.

force since December 2002), specifically Article 79B thereof, CONATEL has the authority to regulate and manage domains and IP addresses within the national territory. It also provides that CONATEL may take the measures necessary to ensure that the administration of domains and IP addresses can be done through other public or private institutions, for which purpose agreements shall be signed and the corresponding regulations issued.”³⁵⁸

344. The acts of aggression described earlier and the threats mentioned in this section are attributed both to the *de facto* government and to alleged members of the opposition, and illustrate how very polarized Honduran society is at the present time.

345. Once again, the Commission recalls the provisions of principle 9 of the Inter-American Declaration of Principles on Freedom of Expression, which states that “murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

g. Other abuses

346. The Commission also received a number of complaints related to the suspension of programs whose editorial leanings were against the coup d’état, restriction of official advertising on media outlets not sympathetic to the *de facto* government or a temporary ban on journalists’ access to Government House.

347. On July 11, the program “Tiempos de Hablar,” carried over *Radio Cadena Voces* and hosted by journalist Daisy Flores, was allegedly cut off on the morning when Flores asked the panelists for their opinion of the coup d’état. According to the information received, the management of the radio station had reportedly told her that they had no explanation for the cut-off. Hours later, when she was about to go on air again in connection with the program “La Bullaranga,” which is a production of the Centro de Estudios de la Mujer de Honduras [Honduran Women’s Studies Center], the broadcast was interrupted again.³⁵⁹

348. Information was also received to the effect that the program “Voces contra el Olvido” [Lest We Forget], a production of the Comité de Familiares de Detenidos y Desaparecidos en Honduras [Committee of Relatives of Detainees-Disappeared in Honduras] broadcast by contract on Radio América, was taken off the air in mid-July. According to this information, the radio station’s management had allegedly informed the Committee that the program would be off the air until further notice, “given the situation in the country.” Bertha Oliva, one of the program’s hosts, told the IACHR that on July 11 she was told that her program was being taken off the air, “without an

³⁵⁸ *De facto* Secretariat of Foreign Affairs of Honduras, Memorandum 731-DGAE-09 dated October 20, 2009.

³⁵⁹ Comité de Familiares Detenidos Desaparecidos en Honduras [Committee of Relatives of Detainees-Disappeared in Honduras], “Informe Preliminar Violaciones a Derechos Humanos en el marco del golpe de Estado en Honduras” [Preliminary Report on Human Rights Violations in the Context of the Coup d’état], July 15, 2009. Available at: <http://www.cofadeh.org/>. Letter from CEJIL to the Commission’s Executive Secretary, Santiago Cantón. Received by the Commission on July 23, 2009. C-Libre/IFEX, “Two feminist movement radio programs censored” (Tegucigalpa), July 14, 2009. Available at: http://www.ifex.org/honduras/2009/07/20/cadena_voces_suspends_programmes/es/. Article 19, “Honduras: Early Warning Signs of Impending Crisis”, (London) July 28, 2009. Available at: <http://www.article19.org/pdfs/press/honduras-early-warning-signs-of-impending-crisis.pdf>.

explanation.” Oliva told the Commission that on Friday, July 10, she was called and told that her that the program was being suspended.³⁶⁰

349. On July 15, broadcaster Allan Adális Martínez complained that he was being dismissed for describing the *de facto* government as “golpista” on his radio show “Libre Expresión” on Radio Alegre, in Tocoa, Colón. According to Martínez, the owner of the station, where Martínez had worked for 13 years, had told him that some broadcasters would be discharged from the station for expressing views of that type.³⁶¹

350. In the meantime, Esdras López at Channel 36 and Radio la Catracha, and Eduardo Maldonado on Maya TV, complained that the *de facto* government had brought pressure to bear on private businesses to cancel advertising on their programs and media outlets.³⁶²

351. Information was also received to the effect that on July 13, a journalist from *Radio Globo*, Liliet Díaz, was denied entry to Government House, even though she had been given the credentials to enter more than a year earlier.³⁶³

352. On August 10, journalist Ivis Alvarado and cameraman Alejandro Fiallos, both from Channel 36 and accredited to the Presidential Residence, were not allowed to enter the presidential office “on orders from above.” The two members of the Channel 36 crew and the channel’s managing director, Esdras López Amado, lodged a complaint with the Office of the Special Prosecutor for Human Rights. The latter reportedly sent prosecutors to check [on] the situation, and they, too, were denied entry to the Presidential Residence. According to López Amado, other media outlets were given access to the Presidential Residence. This was the first time that members of the channel’s news crew had been unable to enter a State office to perform their job. The Presidential Residence lifted the suspension two days later.³⁶⁴

³⁶⁰ Testimony of Bertha Oliva, host of the COFADEH program “Voces contra el Olvido” [Lest We Forget], to the Commission during its on-site visit to Honduras (Tegucigalpa), August 17, 2009. Oliva said the following: “They said it was because of the crisis the country was experiencing, even though we had a contract until December (...) The one who called was an administrative assistant; she told us not to send the program, because the station couldn’t air it. She said this was temporary, not a big thing, and it was because of the situation in the country. We asked her to send us the message in writing, but they never did. We want them to notify us in writing. And although we’ve contacted them about this four times, they’ve never done”. C-Libre, “Radio América saca del aire programa radial” [Radio América takes radio program off the air] (Tegucigalpa), July 22, 2009. Available [in Spanish] at: <http://hablahonduras.com/2009/07/23/alerta-radio-america-saca-del-aire-programa-radial-de-cofاده-comite-de-familiares-de-detenedos-y-desaparecidos-en-honduras/>.

³⁶¹ C-Libre/IFEX, “Periodista despedido por oponerse al coup d’état” [Journalist fired for opposing the coup]. (Tegucigalpa), July 16, 2009. Available at: http://www.ifex.org/honduras/2009/07/20/martinez_fired_diaz_barred/es/. Reporters Without Borders, “International community urged to demand an end to news media lockdown by de facto authorities”, July 23, 2009. Available at: http://www.rsf.org/International-community-urged-to_33960.html.

³⁶² Testimony of journalists Esdras López Amado and Eduardo Maldonado, as told to the Commission during its on-site visit to Honduras (Tegucigalpa), August 17, 2009. C-Libre, “Periodistas denuncian presiones para cancelación de contratos de publicidad” [Journalists denounce threats to cancel advertising contracts] (Tegucigalpa), July 21, 2009. Available at: http://movimientos.org/show_text.php3?key=15046.

³⁶³ C-Libre, “Impiden acceso en Casa Presidencial a periodista de Radio Globo” [Radio Globo journalist denied access to Presidential House]. (Tegucigalpa), July 13, 2009. Available at: <http://conexihon.com/blog/archives/489>. Reporters Without Borders, July 23, 2009 “International community urged to demand an end to news media lockdown by de facto authorities”, July 23, 2009. Available at: http://www.rsf.org/International-community-urged-to_33960.html. “Vuelven a Presidencial periodistas de Canal 36 y Radio Globo” [Journalists from Channel 36 and Radio Globo return to Presidential Residence], *Diario La Tribuna* (Honduras), August 13, 2009.

³⁶⁴ Testimony of Esdras López Amado, taken by the Commission by phone on August 10, 2009. C-Libre, “Más violaciones a la libertad de expresión del Gobierno de facto en Honduras” [More violations of freedom of express by Honduras’ de facto government] (Tegucigalpa), August 10, 2009. Available at: <http://conexihon.com/blog/archives/612?action=lostpassword>. “Vuelven a Presidencial periodistas de Canal 36 y Radio

353. Journalist Pedro Antonio Noriega Nieto, host of the program “Noticias en línea” on Channel 51, told the Commission that officials of the television channel had removed his program on August 19 “because of pressure from above,” an allusion to the *de facto* government.³⁶⁵

354. In the meantime, on September 16, Channel 36 complained that its television signal was being sabotaged by order of the *de facto* government. In a news item broadcast on several occasions on the program “Así se informa” on that channel, the executive branch headed by Mr. Micheletti, CONATEL and the Honduran Telecommunications Company (HONDUTEL) were all blamed for the interruptions.³⁶⁶

355. On September 22 and October 7, the *de facto* government of Honduras published in the Official Gazette, two executive decrees containing provisions that disproportionately restricted the right to freedom of expression.

356. On September 22, the *de facto* government issued Executive Decree PCM-M-016-2009, which was published in the Official Gazette of September 26. This decree, *inter alia*, suspended the constitutional right to freedom of expression by prohibiting any publication that “offends human dignity or the dignity of public officials, or that violates the law and government decisions.” The decree authorized the National Telecommunications Commission (CONATEL) to use the forces of law and order to interrupt broadcasting by any radio station, television channel or cable system that in its judgment was in violation of the aforesaid prohibitions. Enforcing that decree, in the early morning hours of September 28, the security forces proceeded to search and confiscate the broadcasting equipment at television Channel 36 and Radio Globo. Both media outlets had been critical of the *de facto* government. The decree was nullified subsequent to its announcement, on Monday, October 19.

357. On October 7, the *de facto* government published Executive Decision 124-2009 in the Official Gazette. Under that decision, “in order to protect national security for the sake of the overriding interests of the Nation, and to defend the rights and physical and moral integrity of the human person,” “CONATEL and other competent organs of the State” were ordered to “revoke the permits and operating licenses that CONATEL granted to operators of radio and television stations that broadcast messages that seek to justify hatred of the nation and violation of protected rights and claims, and that defend a system of social anarchy as opposed to a democratic State and in so doing violate social peace and human rights.”

358. The IACHR was informed that on October 16, the executives at Radio Cadena Voces allegedly cancelled three feminist programs: “Aquí entre Chonas,” produced by the Movimiento de Mujeres por la Paz Visitación Padilla [Visitation Padilla Women’s Pro-Peace Movement], “Tiempo de

...continuation

Globo” [Journalists from Channel 36 and Radio Globo return to Presidential Residence], Diario La Tribuna (Honduras), August 13, 2009.

³⁶⁵ Testimony of Pedro Antonio Noriega Nieto, host of the program “Noticias en línea,” as told to the Commission during the on-site visit to Honduras (Tegucigalpa), August 21, 2009.

³⁶⁶ “Canal 36 asegura que el gobierno le sabotea la señal” [Channel 36 is certain that the government is sabotaging its signal], Diario Tiempo (Tegucigalpa), September 16, 2009. Available at: <http://www.tiempo.hn/secciones/el-pais/4052-fiscalia-y-conatel-intervienen-instalaciones-de-cablecolor-y-canal-11>. A fragment from an announcement made on the program “Así se informa” on Channel 36 went as follows: “Speaking to our listeners, to cable systems throughout the nation and to the international community: Channel 36 is reporting that the temporary suspensions of broadcasts in various parts of Honduras are the work of terrorists hired by the coup government of Roberto Micheletti, in complicity with CONATEL and HONDUTEL, to sabotage our satellite signal. We blame them for the interruptions of our broadcasts”.

Hablar” produced by the Centro de Derechos de Mujeres [Women’s Rights Center] (CDM) and “La Bullaranga” produced by the Centro de Estudios de la Mujer Honduras [Honduran Women’s Studies Center] (CEM-H). It did so on the grounds that it feared the *de facto* government would take away its license, in application of Executive Decision 124-2009.³⁶⁷

359. In response to complaints the Commission has received since June 28 alleging threats to physical integrity, the Commission has granted precautionary measures on behalf of dozens of journalists in private media and alternative or local media, located both in Tegucigalpa and elsewhere in Honduras.

h. Journalistic ethics

360. The Commission has been told by a number of sources that various media outlets may have manipulated the news, thereby preventing the Honduran public from receiving enough information, presented from all sides, about the situation that the country is experiencing. The IACHR recalls that at times of political crisis like the one Honduras is now experiencing, it is more important than ever that the exchange of ideas be as prolific as possible, which presupposes a well-informed society. In this context the separation of the editorial line from the news reporting offered to the population may contribute to achieving that objective. States should refrain from imposing standards of ethical conduct to the media; instead, journalists should pursue self-regulation by subscribing to deontological codes of ethics, style manuals, rules of composition, and by serving as watchdogs for the public’s interests, providing advice, and other mechanisms.

361. Principle 6 of the Inter-American Declaration of Principles on Freedom of Expression states that “[j]ournalistic activities must be guided by ethical conduct, which should in no case be imposed by the State.”

362. With respect to the right to freedom of expression, the Commission must remind the Honduran State of its obligation to respect the right to freedom of expression unreservedly, which demands that it guarantee to all journalists, irrespective of their editorial position, the freedom to express their ideas and impart the information they gather. Acts of intimidation and censorship, either direct or indirect, by reason of a media outlet’s coverage of a story or its editorial position and for the purpose of silencing it, are a blatant violation of the right that all persons have to express themselves without fear of reprisals, and of society’s fundamental right to receive information from multiple and diverse sources, without any form of censorship.

363. The Honduran State is also reminded that any restriction on the right to freedom of expression, even in a state of emergency or exception, can only be ordered by a legitimate government and must be proportionate and strictly necessary to protect the democratic system. Silencing dissident opinions or criticism by evoking words like ‘contempt’ -as was indeed attempted in Honduras- and giving law enforcement the authority to search and confiscate broadcasting equipment when, in the opinion of the government authorities, the media are engaging in behavior that they deem to be in violation of existing law, constitutes a serious, unnecessary, arbitrary and disproportionate restriction of every Honduran’s right to express himself or herself freely and to receive information from multiple and diverse sources.

³⁶⁷ Web page for “Las Chonas”. October 17, 2009. “Dictadura cierra tres programas radiales de mujeres” [Dictatorship takes three women’s radio programs off the air]. Available at: http://www.laschonas.com/cms/noticias.php?subaction=showfull&id=1255792139&archive=&start_from=&ucat=5&. Testimony of Mery Agurcia, COFADEH attorney, as told to the IACHR during its 137th regular session, November 3, 2009, Washington, D.C.

364. The Commission urges Congress and the Supreme Court to put a stop to enforcement of any measure that can violate the right to freedom of expression, and also to take steps to correct the adverse effects that may have been caused while those provisions were in effect. It also demands that the *de facto* government grant all the guarantees necessary so that media outlets and journalists are able to discharge their mission of informing and reporting with complete freedom and in total safety.

19. Jamaica

365. On March 20, 2009, during the 134th period of sessions, the IACHR held a public hearing on the situation of freedom of expression in Jamaica. Representatives of the State and of civil society participated in the hearing. The Office of the Special Rapporteur used the information submitted at the hearing in preparing this section of the Annual Report 2009.³⁶⁸

366. During the hearing, the petitioners stated that the laws on defamation in Jamaica do not establish special protection for expression related to public officials doing official work. Likewise, they stated that in some civil defamation trials, the courts have ordered media outlets to pay fines of such a high amount that they are having a chilling effect on the exercise of freedom of expression in the country.³⁶⁹ For their part, the representatives of the State indicated that in 2008, Prime Minister Bruce Golding provided for the creation of a new committee whose purpose is to review Jamaica's defamation laws. They stated further that on February 28, 2008, the committee issued a report whose recommendations were presented before the Parliament's House of Representatives. According to the State, the committee proposed abolishing criminal defamation, eliminating the distinction between the civil offenses known as slander and libel, and reducing the statute of limitations from six years to 12 months. It is worth noting that during the hearing, the petitioners indicated that the process for implementing these recommendations had not yet moved forward.³⁷⁰ In this context, the Office of the Special Rapporteur reiterates the importance of the State adjusting its legislation on matters of freedom of expression to inter-American standards.³⁷¹ The Office of the Special Rapporteur reminds the State that Principle 10 of the Declaration of Principles holds that, "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news."

³⁶⁸ The public hearing was requested by Oliver Clarke, director of daily newspaper *The Gleaner*. An audio recording of the hearing is available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=8>.

³⁶⁹ Information submitted on April 6, 2009, to the Office of the Special Rapporteur for Freedom of Expression from *The Gleaner*.

³⁷⁰ Information submitted on March 6 2009 by the State to the Office of the Special Rapporteur for Freedom of Expression. As of the date of this report, no information has been received regarding the progress of the initiative. In this regard, see Inter-American Press Association. *65th General Assembly, November 6-10, 2009. Buenos Aires, Argentina.* Country: *Jamaica.* Available at: [http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=24&infoid=368&idioma=us](http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=24&infoid=368&idioma=us;); Reporters Without Borders. *Jamaica.* Available at: <http://www.rsf.org/en-rapport183-Jamaica.html>.

³⁷¹ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

367. The Office of the Special Rapporteur takes note of information indicating that in June of 2009, the Parliament began a debate to determine if providers of telecommunications services can be the subject of lawsuits for spreading third-party material via the Internet. According to the information received by the Office of the Special Rapporteur, during the debate, the Internet service providers argued that they should not be responsible for defamatory expressions or opinions placed on the Internet.³⁷²

368. The Office of the Special Rapporteur also received information according to which on February 20, 2009, Ricardo Makyn, a photographer with daily newspaper *The Gleaner*, was arrested while taking photographs of a police officer who fired at and wounded an individual who had tried to seize his mobile phone. At the time, Makyn was informed that he was being arrested for insulting, disobeying, and assaulting an officer of the law. According to the information received by the Office of the Special Rapporteur, in March of 2009, police authorities admitted that the detention of the photographer should not have happened.³⁷³

369. Finally, on February 20, 2009, the Broadcasting Commission of Jamaica issued two directives prohibiting the television or radio broadcast of soca or hip-hop music or videos, or any other rhythm whose content “displays, simulates, or instructs about sexual activities or positions,” or whose lyrics “glorify[] the gun and promot[] killings and other acts of violence.” The Broadcasting Commission of Jamaica also announced that the media outlets that violate these directives will be fined.³⁷⁴ Regarding this point, the Office of the Special Rapporteur recognizes the State’s important duty to prevent acts of violence. However, bans that are generic, ambiguous, or simply reproduce one of the many ethic or moral visions that exist in a plural society are incompatible with the defense of the right to freedom of expression. On this point, the Office of the Special Rapporteur reminds the state that the right to freedom of expression should be guaranteed not only in the spread of ideas and information that are favorably received or considered inoffensive or neutral, but also in the spread of information that is offensive, shocking, disturbing, or unpleasant to public officials or a segment of the population, unless otherwise established by article 13 of the American Convention. These are the requirements of pluralism, tolerance, and a spirit of openness, without

³⁷² Association of Caribbean Media Workers. June 18, 2009. *Legislators consider defamation suits against telecom providers*. Available at: http://www.ifex.org/jamaica/2009/06/18/telecoms_liable/; Jamaica *Gleaner*. June 13, 2009. *Telecommunications provider rejects content regulations*. Available at: <http://www.jamaica-gleaner.com/gleaner/20090613/news/news1.html>; Radio Jamaica. June 11, 2009. *Telecoms companies should not be held liable for defamatory statements made using its networks*. Available at: <http://www.radiojamaica.com/content/view/18798/51/>.

³⁷³ Inter-American Press Association. *65th General Assembly, November 6-10, 2009. Jamaica*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=24&inford=368&idioma=us; Reporters Without Borders. February 24, 2009. *Journalist Ricardo Makyn arrested for taking photos of police officer who shot, wounded man*. Available at: http://ifex.org/jamaica/2009/02/24/journalist_ricardo_makyn_arrested/; Radio Jamaica. March 13, 2009. *Police and Media meet to quell tension*. Available at: <http://www.radiojamaica.com/content/view/16306/26/>.

³⁷⁴ Broadcasting Commission of Jamaica. February 20, 2009. *Broadcasting Commission issues further directives on soca coverage and gun lyrics*. Available at: <http://www.broadcastingcommission.org/uploads/releases/BCJ%20issues%20further%20Directives%20on%20Soca%20and%20Gun%20Lyrics.pdf>; Broadcasting Commission of Jamaica. February 6, 2009. *Statement by the Broadcasting Commission on actions and recent directives relating to broadcast media content*. Available at: <http://www.broadcastingcommission.org/uploads/releases/Broadcasting%20Commission%20Statement%20on%20Dagginger%20Songs.pdf>; Caribbean Net News. February 23, 2009. *Broadcasting Commission brings soca and gun lyrics under control in Jamaica*. Available at: http://www.caribbeanetnews.com/jamaica/jamaica.php?news_id=14460&start=200&category_id=9; Caribbean Net News. February 11, 2009. *Jamaica to take tough stance against lewd and violent music, says PM*. Available at: http://www.caribbeanetnews.com/jamaica/jamaica.php?news_id=14183&start=240&category_id=9; The Gleaner. February 21, 2009. *Broadcasting Commission targets soca*. Available at: <http://www.jamaica-gleaner.com/gleaner/20090221/lead/lead3.html>.

which a truly democratic society cannot exist.³⁷⁵ Principle 5 of the Declaration of Principles holds that, "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

20. Mexico³⁷⁶

370. The Office of the Special Rapporteur notes the progress made in the judicial investigation into the murder of journalist Roberto Javier Mora García, which occurred on March 19, 2004 in Nuevo Laredo, State of Tamaulipas. Hiram Oliveros Ortiz was sentenced to 16 years in prison by the Second Criminal Court of Nuevo Laredo, which found him guilty of participating in the murder. According to the information received, the judicial investigation was plagued by irregularities and attempted anomalies.³⁷⁷

371. Likewise, the Office of the Special Rapporteur appreciates the progress made in the case of Amado Ramírez, a radio host and *Televisa* correspondent in Acapulco, who was murdered in April of 2007. According to the information received, in March of 2009 the alleged perpetrator of the crime, Genaro Vázquez Durán, was sentenced to 38 years in prison. The complaints indicate that the journalist had received threats prior to his death.³⁷⁸

372. The Office of the Special Rapporteur also emphasizes the advances made by Congress in the process of making crimes against freedom of expression federal offenses. This initiative was driven by journalists and press organizations, and more recently was supported by the Executive Branch. The bill was passed in the House of Representatives, and is now pending before

³⁷⁵ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. paras. 30-31. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf> ; See also: I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 113; I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. para. 69

³⁷⁶ In preparing this section of chapter II of its 2009 Annual Report, the Office of the Special Rapporteur took into account information available until November 30, 2009. Information regarding incidents that occurred after this date is available in the press release section of the websites of the Office of the Special Rapporteur (<http://www.cidh.org/relatoria>) and the IACHR (<http://www.cidh.org>).

³⁷⁷ Inter American Press Association. June 4, 2009. *Sentenciado asesino de periodista mexicano*. Available at: <http://www.impunidad.com/index.php?shownews=304&idioma=sp>; CEPET. June 8, 2009. *Sentencian a presunto asesino de periodista, el proceso plagado de anomalías*. Available at: http://www.ifex.org/mexico/2009/06/08/alleged_murderer_sentenced/es/

³⁷⁸ Reporters Without Borders. March 27, 2009. *Condenan a 38 años de cárcel, en primera instancia, a un hombre acusado de asesinar a un periodista*. Available at: http://www.ifex.org/mexico/2009/03/27/man_sentenced_to_38_years_in_prison/es/; Crimes against Journalists. Impunity Project. March 24, 2009. *Sentencian a asesino de periodista mexicano Amado Ramírez*. Available at: <http://impunidad.com/index.php?shownews=282&idioma=sp>; Milenio. March 24, 2009. *Sentencian a 38 años de cárcel a asesino de Amado Ramírez*. Available at: <http://www.milenio.com/node/189075>; El Universal. March 24, 2009. *Presunto homicida de periodista es sentenciado a 38 años*. Available at: <http://www.eluniversal.com.mx/notas/586195.html>.

the Senate.³⁷⁹ Given this positive sign, it is the hope of the Office of the Special Rapporteur that the initiative will be approved in the Senate, where it apparently has not made significant progress.³⁸⁰

373. The Office of the Special Rapporteur is pleased by the June 17, 2009 decision of the Supreme Court, which ruled that several criminal provisions were inapplicable due to their incompatibility with the Constitution and with international standards on freedom of expression. In this decision, the Supreme Court revoked a judgment that, based on the right to honor and to privacy, imposed a prison sentence against the director of a newspaper that had published an article about the behavior of a public official. The judgment of the Supreme Court, citing expressly the highest inter-American standards, emphasized the need to prevent criminal law from being used as a mechanism to silence democratic speech concerning government officials and matters of public interest. The Court also found that the norms on slander and libel in the Press Law of the State of Guanajuato, given its extreme vagueness and lack of specificity, was inconsistent with the Constitution and the standards of the inter-American system regarding freedom of expression.³⁸¹

374. In another recent decision, the Supreme Court affirmed a judgment releasing the magazine *Proceso* from the payment of damages for pain and suffering resulting from the publication of an article on the first divorce of the wife of a former President of the Republic. In rendering this decision, the Supreme Court found that the case dealt with “a public figure who, although she did not hold public or elected office at the time the contested article was published, was certainly nationally and internationally known due to his personal status and even his political activities.” It stated that this renown was of such magnitude “that it entailed greater public scrutiny or interest in his actions or behavior, and therefore the legitimate interest of society to receive certain information about [it].”³⁸²

375. The Office of the Special Rapporteur also views positively the fact that on June 29, 2009, the Congress of the State of Nuevo León passed an amendment to the state Criminal Code that imposes penalties of up to 35 years in prison for the murder of a journalist or his relatives,

³⁷⁹ CENCOS. April 2, 2009. *Aprueban diputados federalización de delitos contra la libertad de expresión; se turna al Senado*. Available at: <http://www.cencos.org/es/node/20566>; CENCOS. April 2, 2009. *“Urgente” que pase al Senado la iniciativa de federalización de delitos contra la libertad de expresión*. Available at: <http://cencos.org/es/node/20562>; El Universal. April 1, 2009. *Impulsan federalizar delitos contra actividad periodística*. Available at: <http://www.eluniversal.com.mx/nacion/166786.html>.

³⁸⁰ Inter American Press Association. March 3, 2009. *La SIP alerta sobre retroceso en los esfuerzos para federalizar crímenes contra periodistas*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4143&idioma=sp; Committee to Protect Journalists. April 6, 2009. *El Congreso mexicano debe aprobar medidas para federalizar los crímenes contra la libertad de expresión*. Available at: <http://cpj.org/es/2009/04/el-congreso-mexicano-debe-aprobar-medidas-para-fed.php>; Article 19. April 16, 2009. *Mexico: Reform of the Federal Penal Code Falls Short in Protecting the Right to Freedom of Expression*. Available at: <http://www.article19.org/pdfs/press/mexico-reform-of-the-federal-penal-code-falls-short-in-protecting-the-right-.pdf>.

³⁸¹ Office of the Special Rapporteur - IACHR. June 22, 2009. Press Release No. R38/09. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=750&IID=2>; Supreme Court of Mexico. June 17, 2009. *Amparan a sentenciado por delito de ataques a la vida privada*. Available at: <http://www.scjn.gob.mx/PortalSCJN/MediosPub/Noticias/2009/17-Junio-2009.htm>; CEPET. June 18, 2009. *Ampara la Corte a periodista y fija límites a demandas penales contra comunicadores*. Available at: http://libex.cepel.org/index.php?option=com_content&view=article&id=616:ampara-la-corte-a-periodista-y-fija-limites-a-demandas-penales-contracomunicadores&catid=36:alertas&Itemid=55.

³⁸² Supreme Court, Judgment of October 7, 2009. Direct Amparo 6/2009. CEPET. October 9, 2009. *Absuelve corte al semanario “Proceso” por demanda de ex primera dama*. Available at: http://www.ifex.org/mexico/2009/10/09/wornat_owes_damages/es/.

when it can be proven that the crime was due to reasons connected to the practice of his professional work.³⁸³

376. The Office of the Special Rapporteur notes that on November 5, 2009, representatives from the Ministry of the Interior announced that "the competent authorities [had] approve[d] the issuance of permits for six community radios."³⁸⁴ Nevertheless, the Office of the Special Rapporteur was later informed that the granting of such permits would require an additional issuance procedure before the Department of Communications and Transportation. According to this information, on October 28, 2009, the Federal Telecommunications Commission (COFETEL) issued a favorable opinion for the Department of Communications and Transportation to issue the permits to those communities.³⁸⁵

377. In spite of the progress cited, during 2009 the Office of the Special Rapporteur observed with great concern the increase in the number of murders committed against journalists and other members of the media in Mexico.

378. On May 3, 2009, journalist Carlos Ortega Melo Samper, a correspondent for the newspaper *El Tiempo de Durango*, was murdered in the municipality of Santa María de El Oro. According to the information received, Ortega was on his way home when two pick-up trucks intercepted him, and unidentified persons forced him to get out of his car. He resisted, and was shot several times in the head. Days earlier, the reporter had denounced in an article that he had been threatened by alleged representatives of the local government in connection with a piece he had published regarding acts of corruption.³⁸⁶ The authorities have investigated those officials' links to the crime, but no significant progress has been made.

379. On May 25, 2009, journalist Eliseo Barrón Hernández of the newspaper *La Opinión Milenio* was kidnapped. His body, which showed signs of torture, was found 24 hours later in the municipality of Tlahualilo, in the state of Durango. The information received indicates that on the night of May 25, 2009, Barrón was forcibly removed from his home in front of his wife and daughters by a group of unidentified armed individuals. Barrón had been covering police news for *La Opinión de Torreón* for eleven years. In the days leading up to the events, the reporter had written

³⁸³ Milenio. June 29, 2009. *Endurecen penas para asesinos de periodistas en NL*. Available at: <http://www.milenio.com/node/240019>; CEPET. July 2, 2009. *Incrementa Congreso de Nuevo León penas contra asesinatos de periodistas*. Available at: http://libex.cepet.org/index.php?option=com_content&view=article&id=638:incrementa-congreso-de-nuevo-leon-penas-contra-asesinos-de-periodistas-&catid=36:alertas&Itemid=55.

³⁸⁴ Public hearing "Status of Political Rights in Mexico", held on November 5, 2009 during the 137th Period of Sessions of the IACHR. Available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=117&page=2>.

³⁸⁵ Information sent by Asociación de Radios Comunitarios (AMARC) on November 3, 2009 via email to the Office of the Special Rapporteur.

³⁸⁶ Office of the Special Rapporteur – IACHR. May 7, 2009. Press Release No. R22/09. Available at: <http://www.cidh.org/Relatoria/showarticle.asp?artID=741&IID=2>; Inter American Press Association. May 6, 2009. *Condena la SIP asesinato de periodista en México*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4183&idioma=sp; Inter American Press Association. May 6, 2009. *Resumen de caso: Carlos Ortega Melo Samper*. Available at: <http://www.impunidad.com/index.php?showreporte=114&idioma=br>; Reporters Without Borders. May 5, 2009. *Asesinan a un periodista en conflicto con las autoridades del municipio del Estado de Durango*. Available at: <http://www.rsf.org/Asesinan-a-un-periodista-en,33182.html>; Diario La Jornada. May 5, 2009. *Asesinan a balazos a un periodista en Durango*. Available at: <http://www.jornada.unam.mx/2009/05/05/index.php?section=estados&article=033n1est>; CENCOS. May 19, 2009. *El Director General de la Unesco condena el asesinato del periodista mexicano Carlos Ortega Melo Samper*. Available at: <http://cencos.org/es/node/20799>.

about corruption in Torreón.³⁸⁷ The Office of the Special Rapporteur received information indicating that on June 12, 2009, five members of the criminal organization "Los Zetas" had been arrested and had confessed their involvement in Barrón's kidnapping and murder. On August 13, 2009, they were indicted and ordered to stand trial in the Second District Court of Saltillo, state of Coahuila.³⁸⁸

380. On July 12, 2009, journalist Martín Javier Miranda was murdered in his residence in the city of Zitácuaro, in the state of Michoacán. His colleagues at the newspaper *Panorama* stated that he had been the victim of recent threats.³⁸⁹

381. On July 28, 2009, the body of reporter Juan Daniel Martínez Gil was discovered in Acapulco, state of Guerrero. According to the information received, members of the Police had been informed of the crime in an anonymous telephone call. The reporter's body had been found buried in a vacant lot in the town of La Máquina. Apparently he was bound at the hands and feet, his head was wrapped in brown tape and he had been severely beaten. Martínez Gil was the host of a news show on *W Radio* and the program *Guerrero en vivo* on the *Rádiorama Acapulco* radio station.³⁹⁰

382. On September 23, 2009, unknown persons killed Norberto Miranda Madrid, a journalist from the digital newspaper *Radio Visión*, in the municipality of Nuevo Casas Grandes, Chihuahua. According to the information received, on the night of September 23, 2009, a group of heavily armed individuals had burst into the editorial office of the digital newspaper and fired several shots at the journalist. Miranda Madrid had in recent weeks decried the insecurity of living in northern Mexico, especially in the town of Casas Grandes, where 25 people had been killed since September 1, 2009. The reports also indicate that Miranda Madrid had told other journalists that he had been threatened when he published a story relating to the arrest of members of the so-called "Juárez Cartel."³⁹¹

³⁸⁷ Office of the Special Rapporteur – IACHR. May 29, 2009. Press Release No. R34/09. Available at: <http://www.cidh.org/Relatoria/showarticle.asp?artID=748&IID=2>; CENCOS. May 26, 2009. *Encuentran cadáver de periodista secuestrado en Durango*. Available at: <http://cencos.org/es/node/20852>.

³⁸⁸ CEPET. September 1, 2009. *Dictan formal prisión contra presuntos asesinos de periodista*. Available at: http://libex.cepet.org/index.php?option=com_content&view=article&id=709:dictan-formal-prision-contra-presuntos-asesinos-de-periodista&catid=36:alertas&Itemid=55; El Universal. September 2, 2009. *Dictan prisión a asesinos de Eliseo Barrón*. Available at: <http://www.eluniversal.com.mx/notas/623828.html>.

³⁸⁹ Inter American Press Association. July 16, 2009. *Condena la SIP asesinatos de dos periodistas en México y pide investigar*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4218&idioma=sp; Reporters Without Borders. July 16, 2009. *Asesinan a dos periodistas en veinticuatro horas; los móviles no se han averiguado todavía*. Available at: <http://www.rsf.org/Asesinan-a-dos-periodistas-en,33863.html>; El Universal. July 28, 2009. *Unesco condena crimen contra periodista mexicano*. Available at: <http://www.eluniversal.com.mx/notas/615389.html>.

³⁹⁰ Office of the Special Rapporteur – IACHR. July 30, 2009. Press Release No. R54/09. Available at: <http://www.cidh.org/Relatoria/showarticle.asp?artID=757&IID=2>. El Universal. July 29, 2009. *Sicarios a sueldo, posibles asesinos de reportero de W Radio*. Available at: <http://www.eluniversal.com.mx/notas/615700.html>.

³⁹¹ Office of the Special Rapporteur – IACHR. September 29, 2009. Press Release No. R70/09. Available at: <http://www.cidh.org/Relatoria/showarticle.asp?artID=763&IID=2>; Inter American Press Association. September 25, 2009. *Condena la SIP asesinatos de periodistas en México y Colombia*. Available at: <http://www.impunidad.com/index.php?comunicados=detalle&idioma=sp&id=4265>; CENCOS. September 25, 2009. *Article 19 y Cencos condenan asesinato de Norberto Miranda y denuncian las condiciones para ejercer el periodismo en el país*. Available at: <http://cencos.org/es/node/21725>; CEPET. September 24, 2009. *Asesinan a periodista dentro de redacción en Chihuahua*. Available at: http://libex.cepet.org/index.php?option=com_content&view=article&id=743:asesinan-a-periodista-dentro-de-redaccion-en-chihuahua&catid=36:alertas&Itemid=55; Reporters Without Borders. September 25, 2009. *Un periodista de radio en línea asesinado por un comando en su redacción en el Estado de Chihuahua*. Available at: <http://www.rsf.org/Un-periodista-de-radio-en-linea.html>.

383. On November 2, 2009, the body of journalist José Bladimir Antuna García of the newspaper *El Tiempo* of Durango was found. The Office of the Special Rapporteur received information that Antuna García had been kidnapped on the morning of the same day on which he was killed. His body was apparently found with a note, the content of which has not been revealed by the authorities. The information adds that shortly before the murder of journalist Eliseo Barrón Hernández of the newspaper *La Opinión* (see *supra*), Antuna García had met with him to exchange information on police corruption and organized crime.³⁹²

384. On December 22, 2009, José Alberto Velázquez López, owner of the newspaper *Expresiones de Tulum* in the State of Quintana Roo, was wounded by various bullets fired by individuals on a motorcycle, while he drove his vehicle in the city of Cancún. The information received by the Office of the Special Rapporteur indicates that the journalist was taken to a hospital closeby, where he died hours later. Spokespeople for the newspaper indicated that that the daily had received a series of threats in prior weeks as a result of a publication regarding alleged corruption by local authorities. They also indicated that the newspaper's printing press had been attacked with an incendiary bomb in November 2009.³⁹³

385. The Office of the Special Rapporteur also learned of five other murders of members of the media during 2009. In three of these cases, there is some evidence that the murders could be connected to the victims' profession, although the motive is still unclear. In the other two cases, some local organizations believe that the murders were not related to the journalists' work.³⁹⁴ In any case, the Office of the Special Rapporteur urges the authorities to investigate these events and determine through the courts their possible relationship to journalistic activity and freedom of expression.

386. Indeed, the Office of the Special Rapporteur was informed of the case of Jean Paul Ibarra Ramírez, a photographer for the newspaper *El Correo*, who was shot and killed on February 13, 2009 in the city of Iguala, state of Guerrero, while riding his motorcycle with his colleague Yenny Yuliana Merchán. Later, on February 26, 2009, the police had arrested the alleged perpetrator of the crime. In spite of the fact that the authorities are considering the possibility that the crime was motivated by personal revenge, the hypothesis that it was motivated by journalistic work has not been ruled out.³⁹⁵

387. On February 27, 2009, journalist Juan Carlos Hernández was also murdered in the state of Guerrero, but in the city of Taxco. According to the information submitted to the Office of

³⁹² Office of the Special Rapporteur – IACHR. November 4, 2009. Press Release No. R76/09. Available at: <http://www.cidh.org/Relatoria/showarticle.asp?artID=772&IID=2>; Article 19 – México and Cencos. *José Bladimir Antuna García, noveno periodista asesinado este año*. Available at: <http://www.libertad-expresion.org.mx/noticias/alerta-le-jose-bladimir-antuna-garcia-noveno-periodista-asesinado-este-ano/>.

³⁹³ Office of the Special Rapporteur – IACHR. December 29, 2009. Press Release, No. R87/09. Available at: <http://cidh.org/relatoria/showarticle.asp?artID=776&IID=2>.

³⁹⁴ Article 19 – México and Centro Nacional de Comunicación Social [National Center for Social Communication] (Cencos), October 28, 2009. *Article 19 y Cencos presentan Tercer Informe Trimestral sobre Agresiones contra la Libertad de Expresión en México*. Available at: <http://www.libertad-expresion.org.mx/noticias/articulo19-y-cencos-presentan-tercer-informe-trimestral-sobre-agresiones-contra-la-libertad-de-expresion-en-mexico/>; Sociedad Interamericana de Prensa. *65ª Asamblea General, 6 al 10 de noviembre 2009, Buenos Aires. Informe por país: México*. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=24&inoid=380&idioma=sp.

³⁹⁵ El Universal. February 18, 2009. *SIP condena asesinato de fotógrafo mexicano*. Available at: <http://www.eluniversal.com.mx/notas/577746.html>; Reporters Without Borders. March 6, 2009. *Detenido un sospechoso en la investigación del asesinato del fotógrafo Jean Paul Ibarra; el móvil es muy vago*. Available at: <http://www.rsf.org/Asesinan-a-un-fotografo-del-Estado.html>.

the Special Rapporteur, Hernández was traveling in his vehicle when he was intercepted by another car, from which an unknown person exited and shot him several times. The journalist was the director of the local newspaper *El Quijote*, as well as the representative of an *ejido* [communally-owned land] and a businessman in the pharmaceutical industry. The motives for the crime are unknown, but its relationship to his work as a journalist cannot be ruled out completely.³⁹⁶

388. Likewise, journalist Luis Daniel Méndez of the radio station *La Poderosa*, in the city of Huayacocotla, state of Veracruz, was killed on February 23, 2009. The crime occurred at night, during the city's carnival celebrations. According to the authorities, the murder took place as part of a fight during the festivities. However, the local press organizations do not rule out possible journalistic motives for the murder.³⁹⁷

389. Finally, the Office of the Special Rapporteur received information on the murder of journalist Fabián Ramírez López of the radio station *La Magia 97.1*, who was missing for two days before his body was found on October 11, 2009 in Mazatlán, state of Sinaloa.³⁹⁸ The other was the case of Ernesto Montañez, editor of the magazine *Enfoque*, a publication of the newspaper *El Sol*, who was murdered on July 14, 2009 as he was traveling with his son in a vehicle in Ciudad Juárez, in the state of Chihuahua.³⁹⁹ Although a link to the profession has not been verified in these cases, the Office of the Special Rapporteur urges the authorities not to dismiss that possibility completely before conducting an exhaustive investigation.

390. With regard to the journalists murdered in Mexico and the risk of impunity in the judicial investigations of these events, the Office of the Special Rapporteur notes and underscores what the National Human Rights Commission of Mexico (CNDH) stated on August 19, 2009 in its General Recommendation No. 17/09.⁴⁰⁰

³⁹⁶ CEPET. March 1, 2009. *Ejecutan a tiros a director de un semanario*. Available at: http://libex.cepet.org/index.php?option=com_content&view=article&id=458:ejecutan-a-tiros-a-director-de-un-semanario&catid=36:alertas&Itemid=55; Periodistas en Español. March 3, 2009. *Asesinado en México el director de "El Quijote" de Taxco Juan Carlos Hernández Mundo*. Available at: http://www.p-es.org/index.php?option=com_content&task=view&id=2649&Itemid=62; Federación Latinoamericana de Periodistas [Latin American Federation of Journalists]. April 5, 2009. *Incontenible el ritmo de asesinatos de periodistas; caen tres en un mes*. Available at: <http://www.felap.info/archivo/2009/0409/1T.20090405.html>.

³⁹⁷ CENCOS. February 25, 2009. *Ultiman por la espalda a periodista en Huayacocotla, Veracruz*. Available at: <http://cencos.org/es/node/20351>; Periódico ADN. February 25, 2009. *SIP condena asesinato de periodista en México*. Available at: <http://www.adn.es/sociedad/20090225/NWS-3535-SIP-Mexico-periodista-asesinato-condena.html>; Reporters Without Borders. February 25, 2009. *Matan a un joven periodista radiofónico en el Estado de Veracruz; aún no se ha establecido el móvil*. Available at: <http://www.rsf.org/Matan-a-un-joven-periodista.html>; El Universal. February 24, 2009. *Periodista es asesinado en carnaval de huasteca veracruzana*. Available at: <http://www.eluniversal.com.mx/notas/579365.html>.

³⁹⁸ International Federation of Journalists. October 14, 2009. *Los periodistas siguen en el punto de mira en México*. Available at: <http://www.ifj.org/es/articles/los-periodistas-siguen-en-el-punto-de-mira-en-mexico>; CEPET. October 13, 2009. *Locutor de radio, asesinado en Sinaloa*. Available at: http://libex.cepet.org/index.php?option=com_content&view=article&id=764:locutor-de-radio-asesinado-en-sinaloa&catid=36:alertas&Itemid=55; Reporters Without Borders. October 13, 2009. *Un locutor de radio aparece asesinado a las cuarenta y ocho horas de su desaparición*. Available at: <http://www.rsf.org/Un-locutor-de-radio-aparece.html>.

³⁹⁹ Inter American Press Association. July 16, 2009. *Condena la SIP asesinatos de dos periodistas en México y pide investigar*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4218&idioma=sp; Reporters Without Borders. July 16, 2009. *Asesinan a dos periodistas en veinticuatro horas; los móviles no se han averiguado todavía*. Available at: <http://www.rsf.org/Asesinan-a-dos-periodistas-en-33863.html>; El Universal. July 28, 2009. *Unesco condena crimen contra periodista mexicano*. Available at: <http://www.eluniversal.com.mx/notas/615389.html>.

⁴⁰⁰ Comisión Nacional de los Derechos Humanos de México [National Human Rights Commission of Mexico]. August 19, 2009. *Recomendación General No. 17/09: Sobre los casos de agresiones a periodistas y la impunidad prevaleciente*. Available at: <http://www.cndh.org.mx/recomen/general/017.htm>.

391. General Recommendation No. 17/09 indicates that between 2001 and July of 2009, the CNDH opened 492 complaint files for alleged violations of the right to freedom of expression in the practice of journalism. According to the CNDH, the number of complaints doubled when compared to the previous decade, during which only 245 files were opened. The CNDH stresses, however, that "the figure is most certainly higher, considering those cases that the state government human rights bodies have documented, plus those that go unreported."

392. The CNDH's diagnosis underscores that the growing tendency is "particularly serious" given that during the last decade it reviewed "the cases relating to the death of 52 journalists or media workers murdered, presumably, because of their work," and "the disappearance of 7 journalists during that time period, as well as 6 explosives attacks on newspaper facilities." In the opinion of the CNDH, the examination of the complaint files of the cases from the 2000-2009 period reveals a noticeable increase in the number of acts of violence against journalists, "in most cases without the justice system authorities clarifying the facts that motivated the crimes committed, which, by act or omission, encourages impunity." In this respect, the CNDH underscores that "the impact of this violence, expressed brutally by taking the lives of journalists, or by taking them away from their families, friends and colleagues, has a multiplier effect, with a climate of intimidation that hinders the informative work of the trade."

393. Indeed, according to General Recommendation No. 17/09, the CNDH observes that in only 17 of the 65 aforementioned cases do the different state and federal prosecutors' offices "report having conducted the appropriate preliminary investigations." The CNDH adds that only 9 of those cases resulted in convictions. In the organization's opinion, "the lack of diligence on the part of the prosecuting authorities has resulted, to a great extent, in the offenses being met with impunity, or in the failure to exhaust the proper lines of investigation, including those relating to freedom of expression."

394. With respect to the 48 other cases, the CNDH concludes that, in 10 of them, "the investigations are reported in secret by the prosecuting authorities," and that "the authorities argue that [those cases] lack sufficient evidence for them to criminally prosecute anyone." The organization added that in some of those 10 confidential cases it was "clear that the prosecuting authorities did not take all of the necessary steps to exhaust the proper lines of investigation, settling in many cases for taking statements from the relatives and requesting the investigation from the appropriate police authorities." The CNDH further notes that in some of those cases, it was not even confirmed "that an investigation was conducted with respect to the journalistic or work setting, or into the evidence arising from the investigation itself."

395. As for the other 38 cases, the CHDH concludes that in 9 there have been "prolonged periods of inactivity and omissions in the consolidation of the preliminary investigations opened," and in the remaining 29 cases "the appropriate preliminary investigation has not been concluded, the person or persons allegedly responsible for the acts committed against the members of the media have not been identified, and neither have the motives and reasons behind the attack."

396. According to General Recommendation No. 17/09, this lack of results is due fundamentally to four factors: (a) the prolonged periods of inactivity on the part of the prosecuting authorities; (b) the delays that arise when it is decided to substitute the government attorneys or public prosecutors who opened the investigation; (c) the inactivity or even the lack of preliminary investigation that arise in those cases in which the Office of the Attorney General of a particular state decides to forward the case to the Office of the Federal Attorney General but that office does not accept it for lack of jurisdiction or because there is no demonstrated nexus of the offenses with a federal crime; in these cases, jurisdiction again shifts to the local level, which can result in inactivity or even the failure to conduct a preliminary investigation; and (d) the failure of the prosecuting authorities to take statements, locate witnesses and check out the different leads that

arise from the investigation, as well as the deficient involvement of experts, who in some cases cause the investigation to be oriented or limited to specific facts, due to which, on the basis of an erroneous premise, the investigation is sent through the wrong channels or the lines of investigation are limited.

397. General Recommendation No. 17/09 thus notes "the urgent need to promote the effective, complete and independent pursuit of justice in light of the attacks perpetrated against the journalism trade. The investigative acts undertaken by the authorities—many or few, depending on the case—will never be enough as long as the attacks and crimes go unsolved and the perpetrators are not identified and punished, and so long as the whereabouts of the disappeared journalists remain unknown."

398. In the same respect, it concludes that "the authorities in charge of seeking justice are responsible for delays and for the deficient integration of the investigations in the cases of violence against journalists and communications media, which translates into the violation of the rights to personal safety and security, and to legal certainty. It is also noted that there is a widespread tendency to rule out in advance the possibility of journalistic work being the motive for the attacks, which in many cases prevents the establishment of a violation of the right to freedom of expression."

399. General Recommendation No. 17/09 contains several recommendations to various Mexican authorities at both the state and federal levels, among which the following are of particular note: "to take the necessary and proper measures to promote a decisive, direct and constant fight against impunity;" "to undertake the forceful and necessary actions to guarantee sufficient conditions of safety and prevention" for the exercise of freedom of expression; and "to provide human rights training to prosecutors, their assistants, police officers and experts, in order for the members of the justice system to preserve and guarantee the rights of journalists."

400. For its part, the Office of the Federal Attorney General submitted a report to the Office of the Special Rapporteur listing the activities undertaken by that institution to serve victims of crime. It detailed the jurisdiction of the Office of the Special Prosecutor for Crimes against Journalists (FEADP), described the various legislative initiatives on freedom of expression introduced before Congress during the last decade, and reported on the status of the investigations in the cases of threats against journalist Lydia Cacho, and the murders of media professionals Bradley Will and Eliseo Barrón Hernández.⁴⁰¹

401. On this point, the Office of the Special Rapporteur notes the recommendation of the Attorney General's Office, which states that: "There is a need to strengthen the exercise of journalistic activity through effective protection against the attacks that, through increasingly violent means, are perpetrated against media workers, and which have been reported not only by trade organizations and public bodies for the protection of human rights but also by the federal authorities themselves, through the Office of the Special Prosecutor for Crimes against Journalists within the Office of the Federal Attorney General."

402. Therefore, the Office of the Special Rapporteur urgently calls on the Mexican authorities to promptly and exhaustively investigate the crimes mentioned and to arrest and punish the perpetrators appropriately. Likewise, it urges the State to adopt, as soon as possible, essential measures to protect the press, such as the strengthening of the FEADP, the classification of crimes

⁴⁰¹ Office of the Federal Attorney General. Cooperation Meeting between the Office of the Federal Attorney General and Special Rapporteurs Catalina Botero (OAS) and Frank La Rue (UN).

against freedom of expression as federal offenses, and the implementation of permanent mechanisms of specialized protection to guarantee the life and safety of media professionals at risk.

403. In its 2006 Annual Report, the Office of the Special Rapporteur viewed the creation of the FEADP positively.⁴⁰² Nevertheless, according to the information received, four years after it was established, this office lacks the human and financial resources to carry out its work.⁴⁰³ This circumstance is of concern to the Office of the Special Rapporteur, bearing in mind the high number of cases still pending relative to murders, assaults and threats against journalists in Mexico and the growing number of murders reported during the course of this year. The Office of the Special Rapporteur considers it extremely important that such an office exists, with personnel assigned specifically to that issue, and it urges the State to provide this office with the legal framework, the personnel and the budgetary resources necessary for the investigation of these crimes.

404. In addition to the murders in 2009, the Office of the Special Rapporteur was aware of cases of serious assaults and threats against journalists. These acts of intimidation arose principally in the context of information published on organized crime (drug trafficking and human trafficking) and government corruption. References are made below to some of these cases.

405. In March of 2009, the director of the newspaper *Diario de los Altos*, of the municipality of Los Altos, state of Jalisco, received several threatening emails and telephone calls. According to the victim's statement to local communications media, the intimidation came from a local government official. Nevertheless, there are no known investigations or court decisions with respect to the matter.⁴⁰⁴

406. The Office of the Special Rapporteur learned that in May of 2009, journalist Lydia Cacho had received death threats for reasons associated with the practice of her profession. The CNDH indicated that the journalist was the victim of "acts of torture" and other serious violations of her human rights. These events occurred, according to the information received, in retaliation for having published a book in 2005 in which she denounced the existence of a network of pedophiles in the country.⁴⁰⁵ It is worth noting that on August 10, 2009, the IACHR granted precautionary measures to Lydia Cacho and her family as a result of these events. The IACHR requested that the State take the necessary measures to guarantee the beneficiaries' lives and personal safety, and to report on actions taken to investigate the events that gave rise to the adoption of precautionary

⁴⁰² Office of the Special Rapporteur – IACHR. 2006 Annual Report. Chapter II, para. 17. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=691&IID=2>.

⁴⁰³ CENCOS. December 9, 2008. *Pobres resultados de la FEADP en su informe 2008*. Available at: <http://cencos.org/es/node/19996>; Misión Internacional de Documentación sobre Ataques en Contra de Periodistas y Medios de Comunicación. August, 2008. *Libertad de Prensa en México: La Sombra de la Impunidad y la Violencia*, p. 25. Available at: <http://www.libertad-expresion.org.mx/downloads/informe-la%20sombra%20de%20la%20imp%20y%20la%20viole.pdf>.

⁴⁰⁴ Article 19/CENCOS. March 25, 2009. *Amenazas e intimidación a periodista en Jalisco*. Available at: <http://cencos.org/es/node/20531>; Amnesty International. March 25, 2009. *Miguel Ángel Casillas Báez, su familia y otros periodistas del Diario de los Altos*. Available at: <http://www.amnesty.org/fr/library/asset/AMR41/017/2009/fr/6363046b-4311-4945-809c-22a424f20136/amr410172009spa.html>; Diario La Jornada. March 26, 2009. *Director del Diario de Los Altos presentó denuncia por amenazas*. Available at: <http://www.lajornadajalisco.com.mx/2009/03/26/index.php?section=politica&article=003n3pol>.

⁴⁰⁵ Office of the Special Rapporteur – IACHR. May 29, 2009. Press Release No. R34/09. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=748&IID=2>; Article 19. May 27, 2009. *Mexico: ARTICLE 19 Concerned About Personal Safety of Lydia Cacho*. Available at: <http://www.article19.org/pdfs/press/mexico-article-19-concerned-about-personal-safety-of-lydia-cacho.pdf>.

measures.⁴⁰⁶ At the time this report went to press, the Office of the Special Rapporteur was keenly awaiting information on this situation.

407. On July 30, 2009, journalist David Ávila León was kidnapped for several hours and threatened. According to the information gathered, the journalist was investigating the illegal exploitation of a natural area.⁴⁰⁷

408. The Office of the Special Rapporteur also received information on the status of journalist Emilio Gutiérrez Soto, who after having received threats in June of 2008, left Mexico with his son and apparently entered the United States illegally. Gutiérrez, a correspondent for *El Diario* in Ciudad Juárez, spent seven months at the El Paso detention center and was released on January 30, 2009. Gutiérrez had denounced that the threats had been made by members of law enforcement. The reporter requested political asylum in the United States, and his proceedings are currently pending.⁴⁰⁸

409. The Office of the Special Rapporteur also received information indicating that on May 28, 2009, personnel from *El Diario* of Ciudad Juárez received threats after publicizing information related to individuals allegedly tied to drug trafficking in the municipality of Parral, in the state of Chihuahua.⁴⁰⁹

410. Furthermore, during the first few days of April, 2009, three journalists were attacked in separate incidents in the state of Oaxaca. The cases are those of Federico Cabrera, a correspondent for several media outlets in the region of La Cañada; Rebeca Luna Jiménez, a reporter for *Diario PM*; and Jaime Méndez, who was covering a meeting of *ejido* members in San José del Progreso.⁴¹⁰

411. In addition, five members of the military attacked the journalists who were covering the collision of a vehicle in which several members of the Army were traveling in Ciudad Juárez,

⁴⁰⁶ IACHR. *Precautionary Measures Granted During 2009. MC 192/09 – Lydia Cacho and others., Mexico.* Available at: <http://www.cidh.oas.org/medidas/2009.sp.htm>.

⁴⁰⁷ CEPET. August 6, 2009. *Levantán y amenazan de muerte a periodista; investigaba negocio ilegal de funcionario.* Available at: http://libex.cepet.org/index.php?option=com_content&view=article&id=679:levantan-y-amenazan-de-muerte-a-periodista-investigaba-negocio-ilegal-de-funcionario-&catid=36:alertas&Itemid=55; Revista Zócalo. August 11, 2009. *Amenazan de muerte a periodista en Guanajuato.* Available at: http://www.revistazocalo.com.mx/index.php?option=com_content&view=article&id=134:amenazan-de-muerte-a-periodista-en-guanajuato.

⁴⁰⁸ Committee to Protect Journalists. January 30, 2009. *Mexican reporter released from U.S. detention center.* Available at: <http://cpj.org/blog/2009/01/mexican-reporter-released-from-us-detention-center.php>; Reporters Without Borders. January 30, 2009. *Puesto en libertad el periodista mexicano Emilio Gutiérrez: Reporters Without Borders pide que se le conceda asilo.* Available at: <http://www.rsf.org/Puesto-en-libertad-el-periodista.html>; Committee to Protect Journalists. June 24, 2009. *Informar y Sobrevivir en Ciudad de Juárez.* Available at: <http://cpj.org/es/2009/06/informar-y-sobrevivir-en-ciudad-juarez.php>.

⁴⁰⁹ Committee to Protect Journalists. June 24, 2009. *Informar y Sobrevivir en Ciudad de Juárez.* Available at: <http://cpj.org/es/2009/06/informar-y-sobrevivir-en-ciudad-juarez.php>; CEPET. June 5, 2009. *Amenazan a diario por su cobertura del narcotráfico; militares agreden a periodistas.* Available at: http://libex.cepet.org/index.php?option=com_content&view=article&id=596:amenazan-a-diario-por-su-cobertura-del-narcotrafico-militares-agreden-a-periodistas-&catid=36:alertas&Itemid=55.

⁴¹⁰ CENCOS. April 22, 2009. *Más agresiones a periodistas en Oaxaca.* Available at: <http://cencos.org/es/node/20649>; CENCOS. August 14, 2009. *Libertad de prensa y militarización en México.* Available at: <http://cencos.org/es/node/21416>; CEPET. April 13, 2009. *CEPET preocupado por Series de agresiones contra periodistas en el estado de Oaxaca.* Available at: <http://www.ifex.org/mexico/2009/04/13/cepet-concerned-over-spate-of-attacks/es/>; CEPET. April 22, 2009. *Presuntos militantes partidistas golpean a caricaturista de un diario.* Available at: http://libex.cepet.org/index.php?option=com_content&view=article&id=525:presuntos-militantes-partidistas-golpean-a-caricaturista-de-un-diario&catid=36:alertas&Itemid=55.

Chihuahua. According to the information received, one journalist was knocked down and beaten on the ground, while another had his equipment taken away. Several days later, the Department of Defense punished the military members who were involved in the attack.⁴¹¹

412. On September 5, 2009, in Isla Mujeres, in the state of Quintana Roo, several public officials attacked and threatened the director of the newspaper *Respuesta* and prevented its circulation. According to the information received, the newspaper's director Alejandro Vargas González had arrived with the newspaper vendors to distribute it, when they were surrounded and beaten by a group of people who, according to the complaints, were employees of the town council who were protesting the publication of articles critical of the municipal government. These people destroyed the available copies, which reportedly numbered close to 500.⁴¹²

413. The Office of the Special Rapporteur also was made aware of cases of violence against journalists and communications media. According to the information received, journalist Guillermo Soto Bejarano, director of the weekly newspaper *De Opinión*, was the victim of an attack on the night of August 30, 2009, when unknown individuals shot at his house four times. These events took place in the municipality of Salina Cruz, in the state of Oaxaca. The journalist, who was unharmed, stated that there were several journalistic topics of significant public interest that could be related to this attack.⁴¹³

414. Likewise, the Office of the Special Rapporteur learned that on January 6, 2009, a group of hooded individuals fired upon and threw a grenade at the *Televisa* station in the city of Monterrey, Nuevo León. No one was killed in the attack.⁴¹⁴ In another case, in the early morning hours of September 7, 2009, unknown individuals threw a grenade at the headquarters of the newspaper *Ríodoce*, in the city of Culiacán, state of Sinaloa. No one was injured.⁴¹⁵

415. The Office of the Special Rapporteur expresses its concern regarding these events, and reminds the State that Principle 9 of the Declaration of Principles states that the "murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material

⁴¹¹ CEPET. June 15, 2009. *Sanciona la Secretaría de la Defensa a militares por agresión a periodistas*. Available at: http://libex.cepet.org/index.php?option=com_content&view=article&id=610:sanciona-la-secretaria-de-la-defensa-a-militares-por-agresion-a-periodistas&catid=36:alertas&Itemid=55; Diario La Jornada. June 6, 2009. *Militares agreden a periodistas que cubrían volcadura de una patrulla en Ciudad Juárez*. Available at: <http://www.jornada.unam.mx/2009/06/06/index.php?section=estados&article=024n3est>.

⁴¹² CEPET. September 16, 2009. *Empleados municipales impiden distribución de un diario y golpean a su director*. Available at: http://libex.cepet.org/index.php?option=com_content&view=article&id=731:empleados-municipales-impiden-distribucion-de-un-diario-y-golpean-a-su-director&catid=36:alertas&Itemid=55; Fundación para la Libertad de Expresión [Foundation for Freedom of Expression]. September 11, 2009. *La Fundación para la Libertad de Expresión manifiesta su solidaridad con la Asociación Mexicana de Editores de Periódicos y su socio activo diario 'Respuesta'*. Available at: http://www.fundalex.org/index.php?option=com_content&view=article&id=109:la-fundacion-para-la-libertad-de-expresion-manifiesta-su-solidaridad-con-la-asociacion-mexicana-de-editores-de-periodicos-ac-y-su-socio-activo-diario-respuesta&catid=4:novedades&Itemid=1.

⁴¹³ Reporters Without Borders. September 1, 2009. *Atentan contra el domicilio de un periodista del Estado de Oaxaca, obligado a esconderse*. Available at: <http://www.rsf.org/Atentan-contra-el-domicilio-de-un.html>; CEPET. August 31, 2009. *Atacan a balazos vivienda de periodista*. Available at: http://libex.cepet.org/index.php?option=com_content&view=article&id=708:atacan-a-balazos-vivienda-de-periodista&catid=36:alertas&Itemid=55.

⁴¹⁴ Reporters Without Borders. January 7, 2009. *Unos narcotraficantes atentan contra el canal Televisa en Monterrey: "Una prueba para la justicia federal"*. Available at: <http://www.rsf.org/Unos-narcotraficantes-atentan.html>; El Universal. January 7, 2009. *Atentado contra Televisa Monterrey*. <http://www.eluniversal.com.mx/primer/32292.html>.

⁴¹⁵ CENCOS. September 10, 2009. *Atentado con explosivos contra instalaciones de periódico, el cuarto en menos de 12 meses*. Available at: <http://cencos.org/es/node/21619>; CEPET. September 16, 2009. *Atacan con explosivo un semanario en Culiacán, Sinaloa*. Available at: http://www.ifex.org/mexico/2009/09/16/riodoce_explosive/es/.

destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation." The Office of the Special Rapporteur recommends that the State adopt special mechanisms that can protect at-risk media professionals effectively and expediently.

416. During the course of this year, the Office of the Special Rapporteur also continued to receive information about acts of aggression and threats in the state of Guerrero. The Office of the Special Rapporteur was aware that the authorities of the state of Guerrero continued to make stigmatizing statements against human rights organizations critical of the local government. It also received complaints that the municipal police had engaged in acts of harassment against media professionals Baldomero Hernández Cruz, José Alberto Valtierra Cancela and Obed Valtierra Pineda, members of the Ñomndaa community radio. Finally, the Office of the Special Rapporteur was informed that on November 13 and 24 of 2009, Juan Angulo, director of the newspaper *El Sur* in Acapulco, received notices from the Chilpancingo Office of the Special Prosecutor for the Investigation of Serious Crimes to appear in the criminal investigation of the August 20, 2009 murder of the former President of the Government Commission of the Guerrero State Legislature. On September 3, 2009, Angulo had published an editorial piece in *El Sur* relating to Chavarría's assassination and suggesting some lines of investigation with regard to that crime. The information submitted to the Office of the Special Rapporteur indicates that Angulo had told the authorities that he "does not have evidence to contribute to the investigation, since the article was limited to expressing a political opinion in regard to the case. As such, [his] appearance would be meaningless." Angulo had been told that his failure to appear could result in "coercive measures." The complaint received asserts that the summonses were part of a campaign of harassment against *El Sur* as a result of articles published in the newspaper that reported alleged irregularities in the allocation of public works projects for the remodeling of schools, from which the brother of the governor of the state of Guerrero had benefited. The information received further states that on November 24, 2009, Angulo asked the State Human Rights Defense Commission to issue precautionary measures for him to prevent his appearance in the criminal investigation. The precautionary measures were granted and the State Attorney General's Office of Guerrero was ordered "to issue instructions to the Office of the Special Prosecutor for the Investigation of Serious Crimes to not engage in acts that violate freedom of expression, to adhere to the principles of legality in the murder investigations [...] and to prevent the enforcement of the coercive measures." Nevertheless, on November 26, 2009, the governor of the state of Guerrero stated that he would not implement the precautionary measures granted by the State Human Rights Commission.⁴¹⁶ On this point, the Office of the Special Rapporteur acknowledges the State's duty to conduct investigations into criminal acts. However, it recalls that Article 13.3 of the American Convention provides that, "The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions."

417. In addition, the Office of the Special Rapporteur learned of some cases of unlawful arrests of journalists and members of the media. According to the information received, in January of 2009, Miguel Badillo, the director of the magazine *Contralínea*, was arrested without a court order in Mexico City by alleged members of the police. On February 11, 2009, the magazine's offices were subject to a search.⁴¹⁷

⁴¹⁶ Information sent on September 15, November 2, November 24 and November 30, 2009 via email to the Office of the Special Rapporteur.

⁴¹⁷ CENCOS. February 11, 2009. *Representantes del Grupo Zeta intentaron ingresar a las instalaciones de la revista Contralínea*. Available at: <http://cencos.org/es/node/20257>; CENCOS. February 12, 2009. *Allanan las instalaciones de*

418. On March 27, 2009, two cameramen from the *TVC Noticias* channel were detained while working in Xochimilco. The information received indicates that the reporters were detained by members of a public entity without being given any explanation of the reason. The journalists were released after the channel's news editor intervened.⁴¹⁸

419. On May 9, 2009, Simón Tiburcio Chávez, director of the newspaper *Nuevo Amanecer* in Alvarado, state of Veracruz, was detained by municipal police for no apparent reason. The journalist stated that he was covering an event when police took him into custody. He was released after 25 hours of being detained without explanation. A few hours after his release, the mayor of the city filed a criminal complaint against the reporter for defamation and libel. The newspaper had published a caricature of the mayor a few days earlier.⁴¹⁹

420. Information was also received indicating that on June 14, 2009, reporters Daniel Adrián García Villalba and Filiberto Ortiz Vázquez from the newspaper *El Observador* were detained and assaulted by members of the Municipal Public Safety Office of Chihuahua who sought to prevent them from photographing arrests in a neighborhood. The municipal police officers disposed of the photographs. The journalists were released a few hours later after paying a fine.⁴²⁰ Principle 5 of the Declaration of Principles states that: "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

421. In addition, the Office of the Special Rapporteur was aware of some cases brought against journalists and communications media for the publication of information or opinions of interest to the public. According to the information received, the journalists from the magazine *Contralínea* were sued by the state-owned petroleum company PEMEX. It was also indicated that officials from the Thirteenth Civil Court in Guadalajara, state of Jalisco, committed irregularities in the case against the journalists. The CNDH decried the "judicial harassment" of the *Contralínea* journalists and requested the investigation of the actions of the court officials and the state petroleum company officials.⁴²¹

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Contralínea. Available at: <http://cencos.org/es/node/20259>; Diario La Jornada. January 19, 2009. *Contralínea mantendrá sus investigaciones a pesar de la intimidación, advierte Badillo*. Available at: <http://www.jornada.unam.mx/2009/01/19/index.php?section=politica&article=010n1pol>.

⁴¹⁸ W Radio. March 27, 2009. *Detiene SSP a reporteros de TVC Noticias*. Available at: <http://www.wradio.com.mx/nota.aspx?id=785605>; CEPET. May 14, 2009. *Exhorta Legislatura local a parar acoso contra periodistas que siguen acciones del secretario de Seguridad Pública federal*. Available at: http://libex.cepet.org/index.php?option=com_content&view=article&id=559:exhorta-legislatura-local-a-parar-acoso-contra-periodistas-que-siguen-acciones-del-secretario-de-seguridad-publica-federal&catid=36:alertas&Itemid=55.

⁴¹⁹ CENCOS. May 12, 2009. *Liberan a periodista tras detención arbitraria y lo denuncian por difamación y calumnia*. Available at: <http://cencos.org/es/node/20760>; CEPET. May 11, 2009. *Denuncia periodista detención ilegal*. Available at: http://libex.cepet.org/index.php?option=com_content&view=article&id=553:denuncia-periodista-detencion-ilegal&catid=36:alertas&Itemid=55; Committee to Protect Journalists. June 10, 2009. *Mexican journalist held for 25 hours after criticizing mayor*. Available at: <http://cpj.org/2009/06/mexican-journalist-held-for-25-hours-after-critici.php>.

⁴²⁰ CEPET. June 16, 2009. *En aumento, las agresiones de fuerzas de seguridad pública contra periodistas en Chihuahua*. Available at: http://libex.cepet.org/index.php?option=com_content&view=article&id=613:en-aumento-las-agresiones-de-fuerzas-de-seguridad-publica-contra-periodistas-en-chihuahua&catid=36:alertas&Itemid=55; CENCOS. June 18, 2009. *Policías municipales de Chihuahua detienen arbitrariamente a reportes gráficos*. Available at: <http://cencos.org/es/node/21020/>.

⁴²¹ CEPET. September 21, 2009. *Documenta CNDH acoso judicial y bloqueo publicitario contra la revista Contralínea*. Available at:

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422. In another case, the magazine *Reporte Índico* and its director Ramón Garza were sued for defamation and slander by Mauricio Fernández Garza, the *Acción Nacional* party's candidate in the mayoral race in San Pedro Garza García, in Nuevo León. The lawsuit was filed following the June 12, 2009 publication of an article in the magazine that denounced the candidate's alleged ties to illegal activities.⁴²²

423. The Office of the Special Rapporteur reiterates Principle 10 of the Declaration of Principles, which establishes that, "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news." It also underscores Principle 11, which asserts that, "Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as '*desacato* laws,' restrict freedom of expression and the right to information."

424. With regard to community broadcasting, as mentioned, in 2009 the Ministry of Interior approved licenses for the operation of six community radio stations. Notwithstanding this fact, during 2009 the Office of the Special Rapporteur continued to receive information about the shortcomings of the legal framework with regard to community radio broadcasting and about the imposition of criminal penalties against community media directors who operate without a license, as part of operations coordinated by the Federal Crime Prevention Police.⁴²³

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http://libex.cepet.org/index.php?option=com_content&view=article&id=739:comunicado-documenta-cndh-acoso-judicial-y-bloqueo-publicitario-contra-la-revista-contralineas-&catid=36:alertas&Itemid=55; Diario La Jornada. January 29, 2009. *En aumento, acoso judicial a periodistas.* Available at: <http://www.jornada.unam.mx/2009/01/29/index.php?section=politica&article=024n2pol>.

⁴²² CENCOS. June 19, 2009. *Denuncian por difamación y calumnia a Reporte Índigo y su director Ramón Alberto Garza.* Available at: <http://cencos.org/es/node/21033>; Diario La Jornada. June 16, 2009. *Panista denuncia penalmente al periodista Ramón Alberto Garza.* Available at: <http://www.jornada.unam.mx/2009/06/16/index.php?section=estados&article=032n3est>.

⁴²³ The Office of the Special Rapporteur learned that on June 30, 2009, a federal judge decided to issue an indictment and order to stand trial against Héctor Camero for the offense of use and exploitation of the radio spectrum without prior authorization. That offense is punishable by up to 12 years in prison under Articles 149 and 150 of the General Law of National Property. According to the information received, the community radio station *Tierra y Libertad* was shut down by members of the Federal Crime Prevention Police on June 6, 2008. AMARC. June 5, 2009. *Ministerio Público inició acciones legales contra integrante de emisora comunitaria.* Available at: http://www.ifex.org/mexico/2009/06/05/camero_haro_arrest_warrant/es/; IFEX. March 27, 2009. *México: gobierno "penaliza" la libre expresión al atacar estación de radio.* Available at: http://www.ifex.org/mexico/2009/03/27/mexico_gobierno_penaliza_la_libre/es/.

In January of 2009 the radio station *Eukakua*, the only station broadcasting in Purépecha in the Michoacán region, was also closed down by agents from the Federal Crime Prevention Police. Rosa Cruz, the person in charge of this community radio, is facing the possibility of incarceration for the same offense. Milenio. June 30, 2009. *Protestan 200 personas a favor de radio comunitaria en P.J.F.* Available at: <http://www.milenio.com/node/240684>; Proceso. June 29, 2009. *Acusan al gobierno de "criminalizar" a trabajadores de radios comunitarias.* Available at: http://www.proceso.com.mx/noticias_articulo.php?articulo=70110; AMARC. June 30, 2009. *Juez dicta orden de prisión contra integrante de la radio comunitaria.* Available at: <http://legislaciones.item.org.uy/index?q=node/1024>; Article 19. July 6, 2009. *México: Radiodifusores Comunitarios Perseguidos Penalmente.* Available at: <http://www.article19.org/pdfs/press/mexico-radiodifusores-comunitarios-perseguidos-penalmente.pdf>.

425. As the Office of the Special Rapporteur has stated on other occasions, community radios must act within a framework of legality facilitated by the States. In this respect, the Office of the Special Rapporteur recognizes the importance of enforcing the law and penalizing those who act unlawfully. Nevertheless, as the Office of the Special Rapporteur has reiterated, it is essential that the States not make disproportionate use of sanctions in matters related to the right to freedom of expression, and in this regard, it is urgent that the legal frameworks be consistent with the inter-American standards on equality and nondiscrimination.⁴²⁴ As indicated in prior reports, community or social broadcasting addresses the needs, interests, problems and expectations of sectors of society traditionally discriminated against and excluded from social benefits. In this context, it should be recalled that according to Principle 12 of the Declaration of Principles, the “Concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.” The Office of the Special Rapporteur underscores that, given the potential importance of these community channels in the exercise of freedom of expression, it is necessary to ensure the establishment of nondiscriminatory legal frameworks that are applied effectively so as to guarantee the equitable allocation of frequencies for community radio stations.

426. In this respect, the State is again reminded that on May 15, 2008, this office sent a communication to the Ministry of Foreign Affairs of the State, prompted by the congressional debate on the amendment of the Federal Radio and Television Act. In its note, the Office of the Special Rapporteur stated the following:

In the 2008 Annual Report, the Office of the Special Rapporteur recommended that States: “Legislate on matters of community broadcasting, so that part of the spectrum be designated for community radio, and that the assignment of these frequencies take into consideration democratic criteria to guarantee all individuals equal opportunity of access to such frequencies.”

⁴²⁴ In this same regard, on November 10, 2009, the CNDH sent a petition to the Federal Department of Communications and Transportation, stating that “although the authority has the power to enforce the legal provisions set forth under the law, it is noted that there is no legal or regulatory system, or institutional criteria for determining in which cases it is proper to exhaust administrative proceedings and in which cases it is proper to go to court, in the case of radio stations that operate without the respective permit,” and that “the assumptions referred to by [the authority] for opting for one forum or another do not find legal support under the laws currently in force. They are not provided for in the Federal Radio and Television Act or the regulations thereto; nor in any other provisions governing the issue. As such, their enunciation and implementation by the public servants of that office is an unfounded act of authority, which is therefore discretionary, and which lacks any criterion under the law that serves as the basis for the authority to opt for the administrative or criminal alternative. This is contrary to the principles of legality and legal certainty, which entail the obligation of the authority to conduct itself at all times in strict compliance with the established legal order.” See: Comisión Nacional de Derechos Humanos [National Human Rights Commission]. November 10, 2009. A petition is sent. CNDH/5/2009/2825/Q.

The CNDH adds that, in this context, “it is necessary to consider that in cases of community radio stations operating without the respective permit, there is a less harmful administrative procedure that affects only the physical assets of the radio station. This procedure is set forth in the Federal Radio and Television Act, and the Mexican State, under equality of circumstances, is required to opt for the proceeding that causes the least prejudice to the citizen’s sphere of rights, bearing in mind the *Pro Homine* principle. When there is more than one option applicable to the same case, it must give preference to the legal interpretation or standard that is more favorable to the person whose situation is provided for under the applicable law or the law that is interpreted. It is also necessary to consider the principles of minimal intervention and subsidiarity, which state that criminal law must be the *última ratio* of the social policy of the State in safeguarding the most important legally protected interests from the most serious attacks, as well as the last resort to be used in the absence of other less harmful ones. Accordingly, the intervention of criminal law in the life of society must be reduced to the minimum possible level. Finally, it is important to note that the absence of well-defined criteria supported by the regulatory framework for the operation of community media stations—which define the scope of discretion, especially in terms of the response times, requirements and decision-making bodies, and which grant legal certainty to the radio stations that seek to obtain permission to operate legally—can discourage the initiative of the members of those stations to engage in the exercise of free expression, and consequently have adverse effects on the right of communities to information.”

In the abovementioned report, the Office of the Special Rapporteur expressed that provisions regulating community broadcasting must recognize the special characteristics of this media and must contain, as a minimum, the following elements: the existence of simple procedures for obtaining licenses; no demand of stringent technological requirements that would prevent them, in practice, from even being able to file request for space with the State; and the possibility of using advertising as a means of financing their operations. All of these elements are contained in the *Joint Declaration on Diversity in Broadcasting*, signed by the Rapporteurs on Freedom of Expression of the OAS, the UN, Africa, and Europe, on December 2007. Accordingly, the Office of the Special Rapporteur added to that annual report: "Along the same lines, it is necessary to pass legislation that appropriately defines the concept of community radio and that includes its social purpose, its non-profit character, and its operational and financial independence." (IACHR. Annual Report 2007. Volume II. Chapter III. pp. 109-10).

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

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

427. At the time this report went to press, regulations had still not been issued on the matter. Accordingly, the Office of the Special Rapporteur urges the State to take these considerations into account.

21. Nicaragua

428. On November 2, 2009, during its 137th period of sessions, the Inter-American Commission held a public hearing on the state of the right to freedom of expression in Nicaragua. The hearing included the participation of State representatives and non-governmental human rights organizations. The Office of the Special Rapporteur has used the information offered by these parties in the hearing to prepare this portion of the Annual Report 2009.⁴²⁵

429. In response to a request for information filed on December 16, 2008, the State sent communication to the Office of the Special Rapporteur on January 30, 2009, stating that the Public Prosecutor had halted the criminal investigation into alleged "irregularities discovered by the Public Prosecutor in the account balances submitted by the organization CINCO [*Centro de Investigaciones de la Comunicación*, Center for Media Research] on June 20, 2007." The State indicated, however, that the Public Prosecutor had concluded that there are still certain irregularities that need to be

⁴²⁵ The non-governmental human rights organizations that requested the public hearing were the Nicaraguan Center for Human Rights (*Centro Nicaragüense de Derechos Humanos*, CENIDH), the Center for Justice and International Law (*Centro por la Justicia y Derecho Internacional*, CEJIL), and the International Federation for Human Rights (*Federación Internacional de Derechos Humanos*, FIDH). An audio recording of the hearing is available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=117>.

investigated. For this reason, it “recommended that the Foreign Ministry’s Secretariat for Economic Relations and Foreign Aid review CINCO’s framework agreements with international donors. [It also recommended] that the Governance Ministry ‘set regulations for Law 147, the Law for the Registry and Regulation of Non-Profit Organizations, with the goal of clearly establishing and defining the rules of procedure and boundaries of operation for these organizations.’”⁴²⁶

430. In its Annual Report 2008, the Office of the Special Rapporteur reported that the Public Prosecutor had begun an investigation against “[the Center for Media Research] CINCO, its director, journalist Carlos Chamorro, and members of its board of directors [...] [w]ithout it ever being made clear what acts or offenses were [allegedly committed],” and that “[Carlos] Chamorro [had been] interrogated by the Office of the Public Prosecutor of the Republic, [that] CINCO’s bank secrecy [had been] lifted, and [that] its offices were searched by police officers who seized documents and computers that contained research and personal papers belonging to the journalist.”⁴²⁷ The Office of the Special Rapporteur appreciates the State’s reply in this case and reiterates its admonition as far as the intimidating effect that some actions can have on voices that are independent or critical of the government’s policies. In that sense, and notwithstanding the role that the State should play in enforcing the law, the Office of the Special Rapporteur emphasizes the importance of respecting Article 13(3) of the American Convention, which states that, “The right of expression may not be restricted by indirect methods or means, such as the abuse of government [...] controls.”

431. In 2009, the Office of the Special Rapporteur received information on attacks and threats allegedly carried out in retaliation against the exercise of freedom of expression. During the November 2, 2009 hearing, the petitioner organizations stated that attacks against those whose opinions differ from that of the governing party are multiple and worrisome. The groups stated that to this day, those responsible have not been punished, and neither have the authorities sent a clear message of tolerance and openness to critical speech.

432. As an example, petitioners pointed to October 22, 2009, when Leonor Martínez, a member of the Young Nicaraguan Coalition (*Coalición de Jóvenes Nicaragüenses*) was assaulted by three individuals in a vehicle who held “a flag of the governing party.” Martínez was assaulted while he was leaving a meeting of a locale of the Civil Coordinator (*Coordinador Civil*), an organization that opposes the reelection of President Daniel Ortega. According to the information received by the Office of the Special Rapporteur, Martínez received a death threat from the assailants and a broken arm from the beating. The petitioners also stated that law enforcement officials are investigating the case.⁴²⁸

433. The petitioners also reported that on February 28, 2009, groups aligned with the government attacked Congressman Luis Callejas and members of the Movement for Nicaragua

⁴²⁶ State communication with the IACHR, January 30, 2009. Annex: Resolución Fiscal Exp. No. 4805-JD-08.

⁴²⁷ It is worth noting that prior to October 13, 2008, the Office of the Special Rapporteur requested information from the State on this case, and that on October 22, 2008, the State submitted its reply. IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter II. paras. 188-192. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf> ; Committee for the Protection of Journalists. July 1, 2009. *Special Report: Daniel Ortega’s media war*. Available at: <http://cpj.org/reports/2009/07/daniel-ortegas-media-war.php>.

⁴²⁸ Information submitted by CENIDH, CEJIL, and FIDH to the Office of the Special Rapporteur for Freedom of Expression during the November 2, 2009, hearing; Information submitted by CENIDH to the Office of the Special Rapporteur for Freedom of Expression on November 14, 2009.

(*Movimiento por Nicaragua*), which was demonstrating in Chinandega against the results of the November 2008 elections.⁴²⁹

434. The petitioners also indicated that on July 2, 2009, members of the Civil Coordinator demonstrating against the coup d'état in the State of Honduras on the Rubén Darío roundabout were attacked by groups who, "armed with clubs, rocks, and mortars, attacked the demonstrators."⁴³⁰

435. On that same topic, the petitioners indicated that on August 8, 2009, during a cultural act held by the Civil Coordinator outside the Managua Cathedral, "shock troops" aligned with the government attacked journalist Mario Sánchez Paz and members of the Movement for Nicaragua (*Movimiento por Nicaragua*) with "rocks, clubs, kicks, and punches" and "in the presence of government authorities."⁴³¹

436. During the hearing, the petitioning organizations also indicated that President Daniel Ortega has frequently used "aggressive language [...] to delegitimize civil society organizations, other political parties" in the opposition, and media outlets whose editorial position is critical of the government.⁴³²

437. On this point, State representatives expressed that, "Suppressing one group or another of individuals independent of their ideology or political party entails violence [...], something which should not be allowed, neither as a policy nor as a method." The State also indicated that, "Neither can the Government be blamed for the acts of a group or of individuals who sympathize with it." Likewise, State representatives said that, "In Nicaragua, some media outlets [have] drop[ped] their role as communicators and purveyors of information to act as political parties in opposition to the government. Because of this, the people do not see them as independent media outlets, but rather as partisan, ideological instruments of the opposition." They added that, "These politicized media outlets [...] [u]se the pejorative and discriminatory expression 'mobs' to describe the population that supports the government. In contrast, they self-describe themselves as civil and democratic. If the people march in the street, they are called 'shock troops' ('*fuerza de choque*'). If they do it, it's called a civic march. This is a discriminatory attitude and an expression of intolerance against the Nicaraguans who identify with their government and support its social projects."⁴³³

⁴²⁹ Information submitted by CENIDH, CEJIL, and FIDH to the Office of the Special Rapporteur for Freedom of Expression during the November 2, 2009, hearing; Inter-American Press Association. *Country Reports: Nicaragua. 65th General Assembly, November 6-10, 2009, Buenos Aires, Argentina.* Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=24&inford=381&idioma=us.

⁴³⁰ Information submitted by CENIDH, CEJIL, and FIDH to the Office of the Special Rapporteur for Freedom of Expression during the November 2, 2009, hearing; Inter-American Press Association. *Country Reports: Nicaragua. 65th General Assembly, November 6-10, 2009, Buenos Aires, Argentina.* Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=24&inford=381&idioma=us.

⁴³¹ Information submitted by CENIDH, CEJIL, and FIDH to the Office of the Special Rapporteur for Freedom of Expression during the November 2, 2009, hearing; Inter-American Press Association. *Country Reports: Nicaragua. 65th General Assembly, November 6-10, 2009, Buenos Aires, Argentina.* Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=24&inford=381&idioma=us.

⁴³² Information submitted by CENIDH, CEJIL, and FIDH to the Office of the Special Rapporteur for Freedom of Expression during the November 2, 2009, hearing.

⁴³³ Information submitted by the State to the Office of the Special Rapporteur for Freedom of Expression during the November 2, 2009, hearing.

438. Regarding the acts of violence that took place on February 28, 2009, in Chinandega, the State indicated that law enforcement personnel were present to protect the demonstration. However, the State said that, "During [the march] [...] there was a tremendous brawl between followers of the Movement for Nicaragua and the Sandinista Front (*Frente Sandinista*). The brawl could not be controlled by the National Police as they were overwhelmed by the number of people." The State also maintains that although the National Police received a complaint from Congressman Luis Callejas, he "said that he could not identify the individuals who had assaulted him," and that on March 6, 2009, a police report was handed over to the Public Prosecutor detailing the actions taken in the investigation.⁴³⁴

439. Regarding the incidents that took place on July 2, 2009, in the Rubén Darío roundabout, the representatives of the State indicated that the National Police did not have any complaint on file referring to those incidents. Neither "was any request or permit for a demonstration or political activity requested from the National Police."⁴³⁵

440. As far as the incidents that took place on August 8, 2009, the representatives of the State indicated that the "National Police had no prior knowledge of, nor had they authorized, any demonstration in that area, for which reason they were not present there," but that, "upon learning of the incidents, a patrol car was sent, but due to the number of people, it could not control the situation." The representatives also indicated that on August 19, 2009, the Public Prosecutor responded to the complaint from journalist Mario Sánchez Paz by issuing an official letter instructing the Department of Legal Assistance to investigate the incident. The State added that on October 6, 2009, a report laying out the actions taken in the investigation was sent to the Public Prosecutor.⁴³⁶

441. On November 18, 2009, the Office of the Special Rapporteur received communication from CENIDH indicating that law enforcement personnel and groups aligned with the government had carried out new acts of physical violence and threats against journalists⁴³⁷ and members of civil society organizations⁴³⁸ critical of the government.

⁴³⁴ Information submitted by the State to the Office of the Special Rapporteur for Freedom of Expression during the November 2, 2009, hearing.

⁴³⁵ Information submitted by the State to the Office of the Special Rapporteur for Freedom of Expression during the November 2, 2009, hearing.

⁴³⁶ Information submitted by the State to the Office of the Special Rapporteur for Freedom of Expression during the November 2, 2009, hearing.

⁴³⁷ Information submitted by CENIDH to the Office of the Special Rapporteur for Freedom of Expression on November 14, 2009. CENIDH stated that on August 14, 2009, journalist María Acuña and cameraman Santos Padilla, both with *Canal 10*, were attacked by law enforcement personnel in District V of the City of Managua while covering an eviction. According to the information received, the journalists' video camera was also destroyed.

In the same communication, the Office of the Special Rapporteur was informed that on October 29, 2009, Romel Sánchez and Santos Padilla, with *Canal 10*, were assaulted by "shock troops" that attacked the vehicle in which they were riding. The communication adds that on November 8, 2009, "shock troops" armed with mortars and bricks attacked a group of demonstrators meeting in Nagarote to protest against the recent election results. The information received by the Office of the Special Rapporteur indicates, however, that law enforcement personnel were able to repel the mob and guarantee "the safety of the demonstrators." The communication also indicated that on November 9, 2009, groups aligned with the government attacked journalist Junaysi García and cameraman Fausto Fletes – both with *Canal 2* – and journalist Leonor Álvarez – with *El Nuevo Diario* – with rocks and eggs as they covered a student demonstration near the seat of the National Police. According to the information received by the Office of the Special Rapporteur, that same day, the headquarters of daily newspapers *La Prensa* and *El Nuevo Diario* were attacked with mortars and rocks by government sympathizers from a "caravan of vehicles." It also indicated that during that afternoon, a sport utility vehicle—property of television channel *100% Noticias*—was attacked by unknown assailants while one of its reporting teams was covering several incidents of violence at the Rigoberto López Pérez roundabout.

⁴³⁸ Information submitted by CENIDH to the Office of the Special Rapporteur for Freedom of Expression on November 14, 2009. CENIDH indicated that on October 30, 2009, Patricia Orozco, Lorna Norori, and Ana Eveling Orozco, all

442. In the aforementioned communication, CENIDH also stated that whereas civil society groups and opposition parties have to request and obtain permission from law enforcement to hold demonstrations, the Managua Police Commissioner, Vilma Reyes, has stated that “government groups have permanent permission to be round about” Managua.⁴³⁹

443. The Office of the Special Rapporteur appreciates the information provided by the State regarding the investigations into the violent incidents that have been reported. At the same time, the Office of the Special Rapporteur calls attention to the fact that at the time this report went to press, it was not aware of effective sentences against those responsible for the attacks. Therefore, the Office of the Special Rapporteur urges the State to investigate these serious acts of violence committed against journalists, defenders of human rights, and demonstrators and to identify, try, and duly punish those responsible. Likewise, the Office of the Special Rapporteur reminds the State, as it has repeatedly stated, that diversity, pluralism, and respect for the distribution of all ideas and opinions are essential for a democratic society to function. Government authorities should contribute conclusively to building an environment of tolerance and respect in which all individuals can express their thoughts and opinions, without fear of being assaulted, punished, or stigmatized. The State’s duty to foster conditions that allow all ideas and opinions to be distributed freely includes the obligation to investigate and duly punish those who use violence to silence social communicators or media outlets. The Office of the Special Rapporteur wishes to emphasize the fact that Principle 9 of the Declaration of Principles states that, “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

444. The Office of the Special Rapporteur received information indicating that Nicaragua’s current telecommunications regulatory framework⁴⁴⁰ “does not establish an independent regulatory body to promote the development of a public broadcast system,” nor does it “explicitly recognize community broadcast services.” However, the information also indicated that the Executive will be studying the possibility of sending a bill to Congress to replace Law No. 200.⁴⁴¹

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members of the Autonomous Women’s Movement of Nicaragua (*Movimiento Autónomo de Mujeres de Nicaragua*, MAM) were arrested by law enforcement personnel when they were traveling in a vehicle after doing a training session with representatives of civil society on the defense of women’s rights. According to the information received by the Office of the Special Rapporteur, the MAM representatives were taken to the León Police station without being informed of the reasons for their arrest. After several hours in the police station, the activists were set free on orders of the General Director of the National Police. According to CENIDH, Orozco, Norori, and Orozco later filed a complaint with the Police Internal Affairs Department.

⁴³⁹ Information submitted by CENIDH to the Office of the Special Rapporteur for Freedom of Expression on November 14, 2009. Other sources indicated that Commissioner Vilma Reyes had stated that “There have been permanent permits for the roundabouts for some time. The permits are for the groups that support the government.” See: *El Nuevo Diario*. November 12, 2009. *Rotondas tienen dueño*. Available at: <http://www.elnuevodiario.com.ni/politica/61620>; 100% Noticias. November 12, 2009. *Reyes: ‘Simpatizantes sandinistas tienen permiso a manifestarse en rotondas.’* Available at: <http://www.canal15.com.ni/videos/6984>; *La Prensa*. November 13, 2009. *Sociedad civil insiste: Marcha es pacífica*. Available at: <http://www.laprensa.com.ni/2009/11/13/politica/7703>.

⁴⁴⁰ Nicaraguan Institute for Telecommunications and Mail (*Instituto Nicaragüense de Telecomunicación y Correos*). *Ley No. 200, Ley General de Telecomunicaciones y Servicios Postales*. Available at: http://www.telcor.gob.ni/MarcoLegal.asp?Accion=VerRecurso&REC_ID=178.

⁴⁴¹ Article 19, CENIDH, CINCO, and Violeta Barrios de Chamorro Foundation (*Fundación Violeta Barrios de Chamorro*). October 2, 2009. *Nicaragua: Article 19 y socios presentan Informe para el Examen Periódico Universal de la ONU*. Available at: <http://www.article19.org/pdfs/submissions/nicaragua-upr-submission.pdf>; Center for Media Research (*Centro de Investigación de la Comunicación*). *Estado de la Libertad de Expresión en Nicaragua (2007-2008)*, p. 15. Available

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445. In this context, the Office of the Special Rapporteur wishes to remind the Nicaraguan authorities that the need for impartial, autonomous, and independent telecommunications regulatory bodies comes from the State's duty to guarantee the highest level of pluralism and diversity in media outlets involved in public discourse. The safeguards necessary to prevent the co-opting of media outlets by political or economic power constitute a functional and institutional guarantee to promote the free forming of public opinion, the flowing and depth of social communication processes, and the exchange and distribution of all variety of information and ideas. The existence of an impartial and independent regulatory body safeguards the right of all citizens to have media outlets that are not indirectly controlled by political or economic groups.⁴⁴²

446. As far as the right to access to information, the Office of the Special Rapporteur received information indicating that during 2009, "out of the 51 institutions that make up the Executive, 37 have offices for access to public information (OAPI) with an official in charge," but that "of the 37 OAPI officials, only 16 are independent. Of the 51 institutions of the Executive, 46 have a website but only two of those sites have complete information [...]. Only one entity has both an office for access to information and a complete Web site."⁴⁴³ The information also maintained that the State "has not set aside a specific budget to set up these offices."⁴⁴⁴ Principle 4 of the Declaration of Principles holds that, "Access to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right."

447. The Office of the Special Rapporteur received information regarding the possible use of state advertising "to reward pro-government media outlets and punish the critical ones." According to the information received during the November 2, 2009 hearing, "most government advertising spending goes to *Canal 4*" – whose editorial slant is pro-government and which, according to the petitioners, is wholly or partially owned by family members of the President – "which has an audience of less than 3%." Likewise, the petitioners indicated that "after a circular

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at: <http://www.cinco.org.ni/archive/146.pdf>; Confidencial. May 10-16, 2009. *Nueva Ley 200 conduce al monopolio*. Available at: <http://www.confidencial.com.ni/2009-632/enCaliente/632.html>; La Prensa. April 22, 2009. *Telcor iniciará consulta para reformar Ley 200*. Available at: http://www.laprensa.com.ni/archivo/2009/abril/22/noticias/nacionales/323197_print.shtml; Amarc. May 6, 2009. *UNIR preocupada ante la promulgación de una nueva Ley referida a Telecomunicaciones*. Available at: <http://legislaciones.item.org.uy/index?q=node/967>; Amarc. May 12, 2009. *Borrador sobre nueva ley de Telecomunicaciones plantea otorgar concesiones mediante licitación o subasta pública*. Available at: <http://legislaciones.item.org.uy/index?q=node/980>.

⁴⁴² Currently, the Nicaraguan Institute for Telecommunications and Mail (*Instituto Nicaragüense de Telecomunicación y Correos*, TELCOR) regulates telecommunications and mail services in Nicaragua. TELCOR is defined as an "autonomous entity under the supervision of the Presidency of the Republic." Nicaraguan Institute for Telecommunications and Mail. Legal Framework. Available at: http://www.telcor.gob.ni/Desplegar.asp?PAG_ID=9; IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter II. para. 200. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

⁴⁴³ Article 19, CENIDH, CINCO and the *Fundación Violeta Barrios de Chamorro*. October 2, 2009. *Nicaragua: Article 19 y socios presentan Informe para el Examen Periódico Universal de la ONU*. Available at: <http://www.article19.org/pdfs/submissions/nicaragua-upr-submission.pdf>.

⁴⁴⁴ Center for Media Research (*Centro de Investigación de la Comunicación*). "Estado de la Libertad de Expresión en Nicaragua (2007-2008)," pp. 13 and 23. Available at: <http://www.cinco.org.ni/archive/146.pdf>. The report concludes that, "the different parts of government and the State should as soon as possible create corresponding offices to guarantee the applicability of the Access to Public Information Law. Likewise, the APIL should be used as a tool by media outlets and journalists in their work. The use of the APIL is vital for informing the citizenry on the management of government. It is a valuable resource considering the hermeticism and secretism with which the State manages its affairs."

was issued by the Secretariat for the Communication and Citizenship Council [...], which was later implemented by the Finance Ministry, no governmental agency can make direct payments for advertising or publicity without the prior authorization of the coordinator of the council, First Lady Rosario Murillo.”⁴⁴⁵ Principle 13 of the Declaration of Principles states clearly that, “the arbitrary and discriminatory placement of official advertising and government loans; [...] among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

448. Finally, the Office of the Special Rapporteur wishes to mention Article 52 of the current Political Constitution of Nicaragua, the pertinent part of which states that, “Citizens have the right, individually or collectively, to [...] *make constructive criticism* of the State or any authority.”⁴⁴⁶ With respect to the article, the State should recall that the right to freedom of expression is not limited to protecting information and opinions that are favorable or pleasant. It also protects statements that are offensive, disturbing, and disruptive for the State. These are the demands of a democracy founded on diversity and pluralism.⁴⁴⁷ Principle 5 of the Declaration of Principles holds that, “Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

22. Panama

449. On January 27, 2009, the Inter-American Court of Human Rights handed down its ruling on the preliminary objections, merits, reparations and costs in the case *Tristán Donoso v. Panama*. In the ruling, the tribunal found that the Panamanian State had violated the “right to freedom of expression enshrined in Article 13 of the American Convention, in relation to Article 1(1) thereof, regarding the criminal conviction [for the crime of defamation] entered against Mr. Tristán Donoso....” According to the facts of the case, on March 26, 1999, the current Attorney General of the Republic pressed charges against Santander Tristán Donoso for the crime of defamation after Tristán Donoso held a press conference to accuse the Attorney General of intercepting and recording his phone calls. On April 1, 2005, the Second Superior Court of Justice of Panama sentenced Tristán Donoso “to a prison term of 18 months and ban[ned] [him] from exercising [his] public duties during the same time period as guilty of the crime of defamation in detriment to [the current Attorney General of the Republic, commuting the prison term in exchange for a 75-day

⁴⁴⁵ Information submitted by CENIDH, CEJIL and the FIDH to the Office of the Special Rapporteur for Freedom of Expression during the November 2, 2009, hearing; Information submitted by CENIDH to the Office of the Special Rapporteur for Freedom of Expression on November 14, 2009; Inter-American Press Association. *Country reports: Nicaragua. 65th General Assembly, November 6-10, 2009, Buenos Aires, Argentina*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=24&inford=381&idioma=us; Inter-American Press Association. *Country reports: Nicaragua. Mid-year Meeting, March 13-16, 2009, Asunción, Paraguay*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inford=354&idioma=us.

⁴⁴⁶ Nicaragua National Assembly. Political Constitution of the Republic of Nicaragua (*Constitución Política de la República de Nicaragua*). Available at: <http://www.asamblea.gob.ni/opciones/constituciones/Constitucion%20Politica%20y%20sus%20reformas.pdf>. Emphasis added.

⁴⁴⁷ I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73. para. 69; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 113.

fine.” The Inter-American Court found that the case represented a disproportional use of criminal law and ordered the state, among other measures, to “set aside the criminal conviction entered [...] and all the consequences arising therefrom, within one year of notice of the instant Judgment be served [...].” The Office of the Special Rapporteur urges the State to adopt the measures necessary for full compliance with the Inter-American Court’s decision and expects to receive information on the progress of this process.⁴⁴⁸

450. The Office of the Special Rapporteur received information indicating that on February 18, 2009, the Second Court of the Chorrera Criminal Circuit handed down a ruling that sentenced journalist Jean Marcel Chéry, director of daily newspaper *El Siglo*, to two years in prison for the crime of trespassing to the detriment of Supreme Court Justice Winston Spadafora. On March 8, 2001, Chéry published an article in daily newspaper *Panamá América* in which he revealed the construction, with public funds, of a road to property owned by then-Minister of Justice and Governance Winston Spadafora in the Chorrera district. According to Spadafora, the journalist had secretly entered his property. Chéry, on the other hand, stated that the security guards had authorized his entry onto Spadafora’s property. Later, the then-Minister of Justice and Governance brought two charges against Chéry, one for defamation and one for trespassing. He also launched a civil suit for damages against daily newspaper *Panamá América*. The criminal proceedings for defamation ended in 2003 with the court sentencing Chéry to one year in prison. In 2004, however, Panamanian President Mireya Moscoso pardoned him. According to the information received by the Office of the Special Rapporteur, Chéry has appealed the verdict that condemned him for trespassing on the property of the government official.⁴⁴⁹

451. On September 28, 2009, the Second Superior Court of Justice upheld the decision of the Seventeenth Criminal Court, handed down on May 22, 2009, that ordered the definitive dismissal of the criminal defamation case against Angélica Maytín, executive president of the Foundation for the Development of Citizen Liberty (*Fundación para el Desarrollo de la Libertad Ciudadana*). On October 7, 2008, the Minister of Justice and Governance at the time, Daniel Delgado Diamante, had brought criminal charges against Maytín after, through a press release publicized in several media outlets, she called for him to be removed from his position.⁴⁵⁰ The Office of the Special Rapporteur received information to the effect that the charges were dismissed based on Article 195 of the Criminal Code of 2007, which holds that, “Arguments, criticisms, and opinions on official acts or omissions of public servants relative to the exercise of their duties do not

⁴⁴⁸ I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193.

⁴⁴⁹ *El Siglo*. April 29, 2009. *Condena contradictoria*. Available at: <http://www.elsiglo.com/>; Committee for the Protection of Journalists. April 30, 2009. *Panamanian journalist sentenced to two years in prison*. Available at: <http://cpj.org/2009/04/panamanian-journalist-sentenced-to-two-years-in-pr.php>; Inter-American Press Association. April 29, 2009. *IAPA censures conviction of Panamanian journalist*. Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4176&idioma=us; La Estrella - Panama Star. May 1, 2009. *When Justice dons dark glasses*. Available at: <http://www.laestrella.com.pa/mensual/2009/05/01/contenido/93725.asp>; Reporters Without Borders. *Panama- World Report 2009*. Available at: http://arabia.reporters-sans-frontieres.org/article.php3?id_article=31344.

⁴⁵⁰ Prensa. October 11, 2009. *Tribunal avala sobreseimiento a favor de Angélica Maytín*. Available at: <http://mensual.prensa.com/mensual/contenido/2009/10/11/hoy/panorama/1953635.asp>; Prensa. May 30, 2009. *Sobreseen a Maytín de calumnia e injuria*. Available at: <http://mensual.prensa.com/mensual/contenido/2009/05/30/hoy/panorama/1802830.asp>; EFE/Soitu. February 5, 2009. *Una Fundación Denuncia que la libertad de expresión está amenazada en Panamá*. Available at: http://www.soitu.es/soitu/2009/02/05/info/1233790659_104896.html; EFE/El Confidencial. 17 de febrero de 2009. *Transparencia Internacional, preocupada por libertad de expresión en Panamá*. Available at: http://www.elconfidencial.com/cache/2009/02/17/10_transparencia_internacional_preocupada_libertad_expresion_panamah.html#

comprise crimes against honor. Neither do literary, artistic, historic, scientific, or professional criticisms.”⁴⁵¹

452. In this context, the Office of the Special Rapporteur received information indicating that the implementation of Article 195 of the Penal Code is causing discrepancies among court officials. Some prosecutors in the Office of the Public Prosecutor assume it necessary to let the different phases of the legal process play out before the aforementioned mechanism comes into effect as an “exception of non-criminal conduct.” Other prosecutors and representatives of the Ombudsman’s Office understand it to mean that once an exception found in Article 195 is satisfied, the investigation should be closed immediately, without regard to its current status. The Office of the Special Rapporteur considers that the procedural mechanisms for implementing the provisions of the Criminal Code should not become tools that can inhibit opinions or expressions that critique state authorities. As the IACHR and the Inter-American Court have indicated previously, in the debate on matters of public interest, the mere initiation of criminal proceedings against individuals for crimes of libel, slander, defamation or contempt can result in an undue limit on the legitimate exercise of the right to freedom of expression.⁴⁵²

453. Principle 10 of the Declaration of Principles holds that, “Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.” In the same sense, Principle 11 states that, “Public officials are subject to greater scrutiny by society.”

23. Paraguay

454. On August 6, 2008, the Inter-American Court declared that the process of monitoring compliance with the judgment in the case of *Ricardo Canese v. Paraguay* had been completed, and that, “the State has fully complied with the Judgment on the merits, reparations and costs issued [...] on August 31, 2004 [...].” In its ruling, the court indicated that the State paid the “interest on arrears resulted from the delay in the payment of compensation for the non-pecuniary damage and reimbursement of the expenses and costs,” which was “the only issue pending compliance with the Judgment.”⁴⁵³ The Office of the Special Rapporteur views positively

⁴⁵¹ In *Vista Fiscal* No. 074, the Public Prosecutor concluded that, “pursuant to Article 195 of the Penal Code currently in force, the words issued by Mrs. ANGELICA MAYTIN JUSTINIANI are lacking of a criminal or damaging character and fit within the context of the criticism and opinion that she distributes on certain situations that were taking place on the national level regarding the individual DANIEL DELGADO DIAMANTE, who was at that time serving as the Minister of Governance and Justice.” Public Prosecutor. Seventh Prosecutor of the First Judicial Circuit of Panama. *Vista Fiscal* No. 074. February 27, 2009.

⁴⁵² IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. para. 101. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf> ; I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 106.

⁴⁵³ I/A Court H.R., *Case of Ricardo Canese v. Paraguay. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of August 06, 2008. Available at: http://www.corteidh.or.cr/docs/supervisiones/canese_06_08_ing.pdf

this progress by the Paraguayan State in its compliance with the decisions issued by organs of the inter-American system.

455. The Office of the Special Rapporteur applauds President of the Republic Fernando Lugo for signing the Declaration of Chapultepec on March 15, 2009.⁴⁵⁴ The Office of the Special Rapporteur was also informed that on April 24, 2009, the State created the "Santiago Leguizamón Prize," to be awarded annually to outstanding communicators for accomplishments in investigative journalism.⁴⁵⁵

456. Notwithstanding this progress, on January 12, 2009, in an incident the Office of the Special Rapporteur condemns, Martín Ocampos Páez, director of the community radio station *Hugua Ñandú FM*, was shot to death by unknown assailants in his home. The Office of the Special Rapporteur received information indicating that Ocampos had received death threats due to the fact that the radio station frequently reported on the presence of drug traffickers in the Concepción area.⁴⁵⁶ The Office of the Special Rapporteur urges the Paraguayan authorities to investigate this crime and take all necessary measures to identify, try, and punish those responsible.

457. The Office of the Special Rapporteur also received information indicating that on February 5, 2009, journalist Richard Villasboa and cameraman Blas Salcedo, both with *Channel 13*, were assaulted by security guards of the La Esperanza Penitentiary while reporting on the prison. According to the information received, the social communicators had authorization to do the reporting from the penitentiary's director. Also, on February 8, 2009, journalist Aldo Lezcano, correspondent for daily newspaper *ABC Color*, had been physically assaulted by an individual mentioned in an article that exposed alleged irregularities in the Acahay locale of the Paraguayan Union for Veterans of the Chaco War. Later, the journalist received a death threat via telephone.⁴⁵⁷

⁴⁵⁴ *La Nación*. March 15, 2009. *Fernando Lugo estampó su firma en la Declaración de Chapultepec*. Available at: http://www.lanacion.com.py/noticias_um-235394.htm; *ABC Color*. March 15, 2009. *El Presidente firmó la Declaración de Chapultepec*. Available at: <http://archivo.abc.com.py/2009-03-15/articulos/504139/El%20Presidente%20firm%20la%20Declaracin%20de%20Chapultepec>; Inter-American Press Association. March 15, 2009. *Speech by President Lugo*. Available at: http://www.declaraciondechapultepec.org/v2/admin/upload/cronologia/483_adj_Discurso%20del%20Presidente%20Fernando%20Lugo.pdf.

⁴⁵⁵ *Radio Mburucuyá* journalist Santiago Leguizamón was murdered on April 26, 2001, in the Pedro Juan Caballero area, close to the Brazilian border. IACHR, Third Report on the Situation of Human Rights in Paraguay. OEA/Ser.L/V/II.110. Doc.52. 9 March 2001. Chapter III. paras. 14-16. Available at: <http://www.cidh.oas.org/countryrep/Paraguay01eng/chap3.htm>; See also: Viva Paraguay. April 24, 2009. *Gobierno instituye premio en homenaje a desaparecido periodista Santiago Leguizamón*. Available at: http://www.vivaparaguay.com/new/index.php?option=com_content&view=article&id=1470:gobierno-instituye-premio-en-homenaje-al-desaparecido-periodista-santiago-leguizamon&catid=4:nacionales&Itemid=7; Última Hora. April 24, 2009. *Gobierno lanza para la prensa el Premio Leguizamón*. Available at: <http://www.ultimahora.com/notas/216142-Gobierno-lanza-para-la-prensa-el-premio--Santiago-Leguizam-n->; Presidency of the Republic of Paraguay. April 24, 2009. *Gobierno instituye premio en homenaje a desaparecido periodista Santiago Leguizamón*. Available at: <http://www.presidencia.gov.py/detalle.asp?codigo=100000265>.

⁴⁵⁶ Reporters Without Borders. February 17, 2009. *Asesinan al director de una radio comunitaria*. Available at: <http://www.rsf.org/Asesinan-al-director-de-una-radio.html>; Inter-American Press Association. *Impunity- Murders. Mid-year Meeting, March 13-16, 2009, Asunción, Paraguay*. Available at: http://www.sipiapa.com/v4/index.php?page=det_resolucion&asamblea=22&resid=328&idioma=sp; Asociación Paraguaya de Comunicaciones Comunitaria. January 16, 2009. *COMUNICA repudia el asesinato de Martín Ocampos Páez*. Available at: <http://legislaciones.item.org.uy/index?q=node/883>; International Federation of Journalists. February 13, 2009. *Director de radio comunitaria Martín Ocampos Páez es asesinado*. Available at: [http://ifex.org/paraguay/2009/02/16/community radio director mart n/es/](http://ifex.org/paraguay/2009/02/16/community%20radio%20director%20mart%C3%ADn%20p%C3%A9z%20es%20asesinado); *La Nación*. February 10, 2009. *SPP condena agresiones*. Available at: <http://www.lanacion.com.py/noticias.php?not=229223>.

⁴⁵⁷ *ABC Color*. March 3, 2009. *Periodista ratifica denuncia sobre amenaza de muerte*. Available at: <http://www.abc.com.py/2009-03-03/articulos/500618/periodista-ratifica-denuncia-sobre-amenaza-de-muerte>; Paraguay

On June 21, 2009, Santiago Benítez, a journalist with *Radio Mburucuyá*, in the Pedro Juan Caballero area, was, along with his family, the subject of attempted murder when unidentified individuals fired on his home. According to the information received, the attack could be linked to Benítez's work as a journalist. He hosts a radio program that has reported on the region's crime problems.⁴⁵⁸

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

459. Finally, on March 24, 2009, oral arguments began in the criminal defamation trial of journalist Rosendo Duarte, with *ABC Color*, brought by Marciano Godoy, politician with the National Republican Association – Colorado Party (*Asociación Nacional Republicana – Partido Colorado*). According to the information received by the Office of the Special Rapporteur, Duarte had published an article that linked Godoy to alleged acts of corruption in the Salto Guairá area. In April of 2009, the judge hearing the criminal case was recused, and the criminal proceedings were ordered to be restarted.⁴⁵⁹

460. The Office of the Special Rapporteur wishes to remind the State that Principle 10 of the Declaration of Principles holds that, "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news." Likewise, Principle 11 holds that, "Public officials are subject to greater scrutiny by society."

24. Peru

461. On November 3, 2009, during the 137th period of sessions, the IACHR held a public hearing on the freedom of expression situation in Peru. Representatives of both the State and civil

...continuation

Journalists' Union. February 10, 2009. *El corresponsal Aldo Lezcano agredido, recibe amenaza de muerte; el periodista Richard Villasboa y el camarógrafo Blas Salcedo agredidos, expulsados de penitenciaría*. Available at: http://www.ifex.org/paraguay/2009/02/11/correspondent_aldolezcano_assaulted/es/.

⁴⁵⁸ Paraguay Journalists' Union. June 21, 2009. *El SSP repudia atentado contra periodista Santiago Benítez*. Available at: http://www.ifex.org/paraguay/2009/06/25/benitez_house_attacked/es/; *La Nación*. June 22, 2009. *Sicarios atentan a tiros contra la casa de un locutor de radio en Pedro Juan*. Available at: <http://www.lanacion.com.py/noticias-252592.htm>.

⁴⁵⁹ Paraguay Journalists' Union. March 26, 2009. *SPP repudia utilización de la justicia para censurar a periodistas*. Available at: http://www.ifex.org/paraguay/2009/03/27/journalists_rosendo_duarte_and/es/; *ABC Color*. March 25, 2009. *Juez allana el camino para condenar a periodista querrellado por político*. Available at: <http://www.abc.com.py/2009-03-25/articulos/506958/la-mafia-fronteriza-busca-acallar-a-corresponsal-de-abc-color>; *ABC Color*. April 23, 2009. *Nuevo Juez deberá atender juicio seguido a periodista*. Available at: <http://www.abc.com.py/2009-04-23/articulos/515185/nuevo-juez-debera-atender-juicio-seguido-a-periodista>.

society participated in the hearing. In preparing this section of the Annual Report 2009, the Office of the Special Rapporteur has used information submitted by the parties at the hearing.⁴⁶⁰

462. The Office of the Special Rapporteur received information on the progress of the legal proceedings in the murder of journalist Alberto Rivera Fernández, who was killed in 2004. In October of 2009, after some procedural delays due to the absence of the representative of the Public Prosecutor, the oral proceedings against the suspended mayor of Colonel Portillo, Luis Valdez Villacorta, were restarted. Valdez Villacorta has been charged with being the mastermind of the crime.⁴⁶¹ The Office of the Special Rapporteur also notes that in April of 2009, the Supreme Court of Justice ruled that a new trial should be held in the judicial district of Lima, due to the fact that questions had been raised about the trial taking place in Ucayali.⁴⁶²

463. During 2009, the Office of the Special Rapporteur received information about threats against journalists who had been reporting on alleged acts of corruption. On February 5, 2009, Julio Vásquez Calle, a journalist with radio broadcaster *Cutivalú*, revealed that he had received telephoned death threats after having publicized photographs implicating the Piura police and officials of Majaz (at the time a mining company) in a 2005 kidnapping and torture case.⁴⁶³

464. On March 21, 2009, Jaime Abanto Padilla, a journalist and the director of daily newspaper *Panorama Cajamarquino*, received repeated telephoned death threats for several weeks. Padilla had been reporting on acts of corruption allegedly committed by officials of the National Penitentiary Institute (*Instituto Nacional Penitenciario*, INPE) at the Huacariz prison in Cajamarca.⁴⁶⁴

465. Likewise, in August of 2009, Elías Asmat Goicochea, a journalist with daily newspaper *Últimas Noticias*, was threatened after reporting on alleged irregularities in the purchase of machinery by authorities in the city of Pacasmayo.⁴⁶⁵

⁴⁶⁰ The non-governmental human rights organization that requested the public hearing was the Legal Defense Institute (*Instituto de Defensa Legal*, IDL). An audio recording of the hearing is available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=117>.

⁴⁶¹ Inter-American Press Association. June 23, 2009. *Piden 20 años para presunto asesino de Alberto Rivera*. Available at: <http://www.impunidad.com/index.php?shownews=314&idioma=sp>; El Comercio. June 3, 2009. *El 22 comienza juicio a Luis Valdez Villacorta*. Available at: <http://elcomercio.pe/impresa/notas/22-comienza-juicio-luis-valdez-villacorta/20090603/295345>; Asociación Nacional de Periodistas del Perú. October 2009. *Este viernes reanudan juicio contra Valdez por crimen de periodista*. Available at: <http://www.anp.org.pe/noticias/nacionales/230-este-viernes-reanudan-juicio-contra-valdez-por-crimen-de-periodista>.

⁴⁶² Asociación Nacional de Periodistas del Perú. April 16, 2009. *Corte Suprema determinó el traslado a Lima del juicio por crimen de periodista Rivera Fernández*. Available at: <http://www.consejoprensaperuana.org.pe/tempo/detnoticia.php?item=NDQ>.

⁴⁶³ Amnesty International. February 11, 2009. *Amenazas de muerte, Julio César Calle, periodista. 28 miembros de comunidades campesinas de la región de Piura*. Available at: <http://www.amnesty.org/fr/library/asset/AMR46/003/2009/fr/a9358c2d-f90e-11dd-92e7-c59f81373cf2/amr460032009spa.html>; Instituto Prensa y Sociedad. February 10, 2009. *Amenazan a periodista que denunció torturas de policías a comuneros*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1731>.

⁴⁶⁴ Instituto Prensa y Sociedad. April 6, 2009. *Amenazan a director de diario tras denunciar corrupción de funcionarios penitenciarios*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1805>; Asociación Nacional de Periodistas del Perú. Unspecified date. *Periodista es amenazado a través de llamadas telefónicas anónimas*. Available at: <http://www.anp.org.pe/ofip/alertas/127-periodista-es-amenazado-a-traves-de-llamadas-telefonicas-anonimas-alerta-peru-cajamarca>.

⁴⁶⁵ Diario La Industria. September 1, 2009. *Amenazan de muerte a periodista*. Available at: http://www.laindustria.pe/index.php?option=com_content&task=view&id=6255&Itemid=7; Instituto Prensa y Sociedad. September 1, 2009. *Amenazan de muerte a periodista tras publicar denuncia sobre presunta sobrevaloración en compra de maquinaria*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1979>.

466. In 2009, the Office of the Special Rapporteur also learned that several journalists had been victims of threats and violence for reporting on protests and demonstrations. On May 20, 2009, several communicators complained of having been threatened by demonstrators belonging to the Yurimaguas Amazonian communities in Loreto. According to the information received by the Office of the Special Rapporteur, the directors of the march had accused the journalists of misinforming people about the protests.⁴⁶⁶ Also, in another case, a group of demonstrators burst into the offices of *Radio Stación X* and threatened communicator María Nancy Chasnamote, who was in the middle of broadcasting her program. The information submitted to the Office of the Special Rapporteur indicates that the unknown individuals were at the point of physically assaulting the journalist.⁴⁶⁷

467. On June 11, 2009, radio journalist Miguel Ángel Buitrón was threatened by unknown individuals who warned him not to continue reporting on a peasant protest. Otherwise, the broadcaster's license would be revoked. According to the information received by the Office of the Special Rapporteur, the protest was taking place in the municipality of Andahuaylas, in Apurímac. Three days later, several media outlets were accused by the demonstrators of being "sold out to the government" for not reporting favorably on the protest.⁴⁶⁸

468. The Office of the Special Rapporteur also expresses concern over the acts of violence that took place in 2009 against journalists covering public demonstrations. The attacks came from public officials, private security guards, and demonstrators who were supposedly unhappy with the editorial slant of a news outlet or the coverage given to a particular story.

469. On February 24, 2009, Sánchez and Reynaldo Poma, reporters with *Radio Uno*, were attacked and insulted by a group supposedly composed of employees of the regional Tacna government.⁴⁶⁹ On April 29, 2009, a group of demonstrators of the peasant patrols (*rondas campesinas*) of the Education Workers Union assaulted journalists with *RTC Canal 13*;⁴⁷⁰ and on

⁴⁶⁶ Instituto Prensa y Sociedad. May 21, 2009. *Periodistas denuncian amenazas de muerte por cubrir protesta de comunidades amazónicas*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1848>; Consejo de la Prensa Peruana. September 22, 2009. *Periodistas de Yurimaguas denuncian agresiones y amenazas de muerte contra la prensa que cubre paro indefinido*. Available at: <http://www.consejoprensaperuana.org.pe/tempo/detnoticia.php?item=NDU=>; Asociación Nacional de Periodistas del Perú. April 23, 2009. *ANP exige se investigue atropellos a periodistas en Yurimaguas*. Available at: <http://www.anp.org.pe/noticias/pronunciamientos-anp/141-anp-exige-se-investigue-atropellos-a-periodistas-en-yurimaguas>.

⁴⁶⁷ Instituto Prensa y Sociedad. April 29, 2009. *Huelguistas irrumpen en emisora y amenazan de muerte a periodista*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1825>; Diario La Región. April 21, 2009. *Comunicadora social es amenazada de muerte por huelguistas*. Available at: http://www.diariolaregion.com/index.php?option=com_content&task=view&id=14676.

⁴⁶⁸ Instituto Prensa y Sociedad. June 16, 2009. *Amenazan a periodistas y medios por informar sobre protesta campesina*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1872>; Diario La República. June 21, 2009. *La prensa en peligro*. Available at: <http://www.larepublica.pe/archive/all/domingo/20090621/4/node/201343/todos/1558>.

⁴⁶⁹ Radio Uno. February 25, 2009. *Medios de Comunicación rechazaron agresión a periodista de Radio Uno*. Available at: http://www.radiouno.com.pe/index.php?option=com_content&task=view&id=8701&Itemid=26; Instituto Prensa y Sociedad. February 27, 2009. *Regional government workers assault reporters Marco Sánchez and Reynaldo Poma; copies of bulletin that covered university corruption allegations seized by security guard*. Available at: <http://www.ifex.org/peru/2009/02/27/regional-government-workers-assault/>.

⁴⁷⁰ Instituto Prensa y Sociedad. April 30, 2009. *Campesinos y sindicalistas agreden a reporteros y se roban videogradora*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1826>; International Freedom of Expression Exchange. May 4, 2009. *Demonstrators beat reporters, steal videocamera*. Available at: <http://www.ifex.org/peru/2009/05/04/demonstrators-beat-reporters-steal/>.

May 7, 2009, in the city of Trujillo, several reporters with the channel *TV Perú* were assaulted by security personnel employed by the Comarsa mining company.⁴⁷¹

470. Likewise, the Office of the Special Rapporteur received information indicating that on April 9, 2009, in the early hours of the morning, the residence of Walter Castillo Chávez, a journalist with *Radio Libertad* in Arequipa, was attacked by unknown individuals who threw rocks and broke several windows. Castillo Chávez stated that several days prior he had received death threats apparently related to a series of criticisms of former president Alberto Fujimori.⁴⁷²

471. In March of 2009, Lillian Luna Villafuerte, a correspondent with daily newspaper *La República*, was punched in the stomach by an INPE official while taking photographs of an incident nearby. The same official tried to hit Miguel Ángel De la Cruz, with *Teve Solar*, to prevent him from filming it.⁴⁷³

472. Likewise, on September 25, 2009, José Lorenzo Fernández, a journalist with *Canal 33* as well as a correspondent with the channel *Frecuencia Latina* in the province of Pisco, in Ica, was shot at by an unknown assailant as he was leaving the offices of *Canal 33*. According to the information received by the Office of the Special Rapporteur, the hired assassin fired at him twice, but both shots missed and the journalist was unharmed.⁴⁷⁴

473. The Office of the Special Rapporteur urges the authorities to launch legal investigations into the aforementioned incidents and identify, try, and punish those responsible. Principle 9 of the Declaration of Principles states that, "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

474. The Office of the Special Rapporteur wishes to express concern regarding the alleged detention and obstruction suffered by some journalists. Public officials and candidates for public office were allegedly involved in some of these incidents. For example, according to the information received by the Office of the Special Rapporteur, on January 21, 2009, Ana Yuffra, a candidate for mayor in San Juan Bautista, in the province of Maynas, allegedly detained several journalists in her house so that they could not report on a protest against her that was taking place

⁴⁷¹ Consejo de la Prensa Peruana. May 7, 2009. *Reporteros de TV Perú agredidos por seguridad de Minera Comarsa en Trujillo*. Available at: <http://www.consejoprensaperuana.org.pe/tempo/detnoticia.php?item=NDk=>; Instituto Prensa y Sociedad. May 8, 2009. *Seguridad de minera agrade a periodistas y les arrebató equipos*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1837>.

⁴⁷² Asociación Nacional de Periodistas del Perú. Unspecified date. *Sujetos no identificados atacan vivienda de periodista radial*. Available at: <http://www.anp.org.pe/ofip/alertas/131-sujetos-no-identificados-atacan-vivienda-de-periodista-radial>; Instituto Prensa y Sociedad. April 17, 2009. *Amenazan a periodista por criticar a ex presidente Fujimori y apedrean su casa*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1818>.

⁴⁷³ Instituto Prensa y Sociedad. March 6, 2009. *Funcionario penitenciario agrade a los periodistas Lillian Luna Villafuerte y Humberto De la Cruz; el periodista Roberto Chalco denuncia acoso de policías tras criticar inseguridad ciudadana*. Available at: [http://www.ifex.org/peru/2009/03/06/journalists lillian luna villafuerte/es/](http://www.ifex.org/peru/2009/03/06/journalists%20lilian%20luna%20villafuerte/es/); Asociación Nacional de Periodistas de Perú. March 4, 2009. *Agente de seguridad de Instituto Nacional Penitenciario agrade a periodistas*. Alert sent by e-mail to the Special Rapporteur.

⁴⁷⁴ Diario Correo. September 28, 2009. *Con 2 balazos intentan asesinar a periodista*. Available at: http://www.correoperu.com.pe/correo/nota.php?txtEdi_id=27&txtSecci_parent=&txtSecci_id=69&txtNota_id=142474; Asociación Nacional de Periodistas del Perú. Unspecified date. *Corresponsal de Frecuencia Latina sufre atentado criminal*. Available at: <http://www.anp.org.pe/ofip/alertas/183-corresponsal-de-frecuencia-latina-sufre-atentado-criminal>.

in front of her house. Two collaborators also tried to take the journalists' equipment and erase the recorded material.⁴⁷⁵

475. On October 11, 2009, Roger Chávez, a journalist with weekly newspaper *Visión Regional*, based in the municipality of Florencia de Mora in La Libertad, was detained by local police personnel. According to sources consulted by the Office of the Special Rapporteur, the incident took place while Chávez was covering a meeting of the local mayor's sympathizers. Chávez was allegedly detained and transported to a station where he was held for more than three hours.⁴⁷⁶

476. The Office of the Special Rapporteur also learned of an incident which took place on March 17, 2009. Journalists from Tarapoto and Yurimaguas were not able to enter an inauguration ceremony for a public work where President Alan García was going to be in attendance. According to the information received by the Office of the Special Rapporteur, law enforcement personnel blocked the journalists from entering, saying they had orders to do so.⁴⁷⁷

477. In January of 2009 in Lima's Chosica district, a group of unknown individuals purchased every copy of daily newspaper *Perú 21* available in the area's stores and newsstands. That day, the newspaper reported on the illegal trafficking of fuel, which, according to the article, could have implicated some of the district's authorities.⁴⁷⁸

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

479. The Office of the Special Rapporteur received information on the June 8, 2009 decision of the Ministry of Transportation and Communication to cancel the authorization of radio station *La Voz* to do audio broadcasts in Utcubamba, in Bagua. According to the information submitted by the State to the Office of the Special Rapporteur, the administrative decision was made because the broadcaster had not complied with technical requirements provided for in the law currently in effect.⁴⁷⁹ The ruling to cancel the broadcasting permit was adopted after serious acts of

⁴⁷⁵ Instituto Prensa y Sociedad. January 23, 2009. *Candidata a alcaldía retiene a periodistas en su casa para que no informen sobre protesta en su contra*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1715>; Inter-American Press Association. March 16, 2009. *Mid-year Meeting, March 13-16, 2009, Asunción, Paraguay. Country: Peru*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inforid=357&idioma=us.

⁴⁷⁶ Asociación Nacional de Periodistas. Date not specified. *Arrestan a periodista cuando cubría evento público*. Available at: <http://www.anp.org.pe/noticias/nacionales/206-arrestan-a-periodista-cuando-cubria-evento-publico>; Instituto Prensa y Sociedad. October 13, 2009. *Detienen a periodista cuando cubría evento público de partidarios de alcalde*. Available at: <http://www.ipys.org/alertas/atentado.php?id=2032>.

⁴⁷⁷ Instituto Prensa y Sociedad. March 20, 2009. *Medios independientes impedidos de cubrir ceremonia de inauguración de carretera*. Available at: http://www.ifex.org/peru/2009/03/20/independent_media_outlets_barred/; Asociación Nacional de Periodistas de Perú. March 18, 2009. *Independent media outlets barred from covering opening of highway*. Alert sent by e-mail to the Special Rapporteur for Freedom of Expression.

⁴⁷⁸ Instituto Prensa y Sociedad. January 6, 2009. *Compran ejemplares de diario para impedir difusión de denuncia*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1697>; Inter-American Press Association. March 16, 2009. *Mid-year Meeting, March 13-16, 2009, Asunción, Paraguay. Country: Peru*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inforid=357&idioma=us.

violence took place in Bagua on June 5, 2009. The Office of the Special Rapporteur was also informed that some state authorities had stated that *La Voz* had incited the incidents. However, the aforementioned administrative decision refers solely to non-compliance with technical requirements not related to the violence.⁴⁸⁰ The radio station's directors feel that the cancellation was "punishment" from the authorities, and indicated that at the time of the Ministry's resolution, they were processing the license. Some freedom of expression organizations, both local and international, petitioned the government to annul the administrative resolution that cancels the broadcaster's authorization. However, as of the date of this report, the radio station remains closed and the Ministry of Transportation and Communications' resolution stands.⁴⁸¹

480. The Office of the Special Rapporteur wishes to reiterate its concern about this case and remind the State that Principle 13 of the Declaration of Principles states that, "The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression."

481. The Office of the Special Rapporteur also wishes to express its concern about the cases of journalists taken to court after reporting or opining on matters of public interest. Raúl Wiener, a journalist with daily newspaper *La Primera*, published an article revealing that the courts had called 13 leftwing Peruvian leaders to a first examination of the accused for alleged links with the Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarias de Colombia*, FARC). After having published the report, the journalist was summoned to trial to be investigated for having close links to the illegal armed group.⁴⁸²

...continuation

⁴⁷⁹ Order (*resolución*) of the Vice Minister No. 211-2009MTC/03. June 8, 2009. Information submitted on November 3, 2009, by the State to the Office of the Special Rapporteur during the 137th period of sessions of the IACHR.

⁴⁸⁰ Office of the Special Rapporteur – IACHR. Press release No. R41/09. Available at: <http://www.cidh.oas.org/Relatoria/showarticle.asp?artID=751&IID=1>; Reporters Without Borders. *Censura de una radio de la región Amazonas, por "razones técnicas" falaces*. Available at: <http://www.rsf.org/Censura-de-una-radio-de-la-region.html>; Human Rights Watch. June 24, 2009. *Peru: Radio Closure Could Undermine Press Freedom*. Available at: <http://www.hrw.org/en/news/2009/06/24/peru-radio-closure-could-undermine-press-freedom>; Information submitted on November 3, 2009, by the Instituto de Defensa Legal to the Office of the Special Rapporteur for Freedom of Expression during the 137th period of sessions of the IACHR.

⁴⁸¹ Instituto Prensa y Sociedad. June 12, 2009. *Cancelan licencia a radio. Consideran medida un castigo por cómo informaron sobre conflicto amazónico*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1869>; Reporters Without Borders. June 25, 2009. *Open letter to minister about discrimination against Amazon radio station*. Available at: <http://www.rsf.org/Open-letter-to-minister-about.html>; Reporters Without Borders. September 21, 2009. *Government maintains ban on Amazonian radio station silenced since June*. Available at: <http://www.rsf.org/Amazon-radio-taken-off-air-for.html>.

⁴⁸² El Comercio. January 14, 2009. *Consejo de la Prensa Peruana denuncia censura previa contra periodista*. Available at: <http://elcomercio.pe/ediciononline/HTML/2009-01-14/consejo-prensa-peruana-denuncia-censura-previa-contra-periodista.html>; Reporters Without Borders. January 15, 2009. *Terrorism charges laid against left-wing investigative journalist after he reports on individuals with alleged links to the FARC*. Available at: <http://www.ifex.org/peru/2009/01/15/terrorism-charges-laid-against/>.

482. On August 13, 2009, blogger José Alejandro Godoy was sued by Jorge Mufarech, a former congressman and Labor Minister during the Alberto Fujimori government. Mufarech filed the lawsuit after Godoy published information about the former public official on his Web site. The politician argued that Godoy had defamed him and demanded US\$1 million in reparation. The suit is currently in progress and no rulings have yet been made.⁴⁸³

483. The Office of the Special Rapporteur was informed that a member of Parliament, Hilaria Supa Huamán, filed a lawsuit against Lima-based daily newspaper *Correo*. According to the lawsuit, the newspaper published a photograph showing a note presumably written by her that included spelling mistakes. Supa argued that the newspaper violated her privacy.⁴⁸⁴

484. Regarding this matter, the Office of the Special Rapporteur wishes to remind the State that Principle 10 of the Declaration of Principles holds that, "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news." Likewise, Principle 11 holds that, "Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as 'desacato laws,' restrict freedom of expression and the right to information."

485. The Office of the Special Rapporteur learned that on October 20, 2009, the Justice Ministry filed a criminal complaint with the Public Prosecutor requesting the dissolution of the Interethnic Association for the Development of the Peruvian Jungle (*Asociación Interétnica de Desarrollo de la Selva Peruana*, AIDSESEP) "for promoting incidents contrary to public order." According to the Justice Ministry, "Far from directing its complaints, proposals, or protests through the normal legal channels, [AIDSESEP] [...] blocks highways, calls the population to insurrection, and justifies crimes." Civil society organizations have expressed that the measure is an act "of government hostility" toward AIDSESEP "for the work that this institution does defending the rights of the Amazonian indigenous peoples."⁴⁸⁵ On November 20, 2009, the State informed the Office of

⁴⁸³ Reportaje al Perú. August 21, 2009. *Mufarech querrela al blogger José Godoy. ¿Lo sabrá Velásquez Quesquén?* Available at: <http://www.reportajealperu.com/2009/08/mufarech-querrela-al-blogger-jose-godoy-¿lo-sabra-velasquez-quesquen.html>; Instituto Prensa y Sociedad. August 20, 2009. *Querrelan a director de blog político y piden US\$ 1 millón de reparación civil*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1960>.

⁴⁸⁴ Instituto Prensa y Sociedad. April 24, 2009. *Parlamentaria anuncia querrela contra diario que ejerció derecho de opinión*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1824>; El Comercio. April 24, 2009. *Congreso rechaza agravio contra la congresista Supa*. Available at: <http://elcomercio.pe/imprensa/notas/congreso-rechaza-agravio-contra-congresista-supu/20090424/277522>.

⁴⁸⁵ According to the Justice Ministry, on May 15, 2009, AIDSESEP "called for the population to rise up, calling it 'Amazonian insurgence'" and demanding the repeal of Legislative Decrees Nos. 994, 995, 1020, 1060, 1064, 1080, 1081, 1082, and 1089. Also, on May 19, 2009, AIDSESEP advocated a "call to insurgence" on its Web site that resulted in "road blocks in the Amazon Region and attacks on private and public property." The Justice Ministry also maintained that AIDSESEP had "been organizing the taking of highways, which is normally [the] crime [of hindering the function of public services.]" Finally, the Justice Ministry indicated that on June 6, 2009, AIDSESEP "called the mass media to a press conference to justify the crimes committed during the vandalistic attack of 2,000 natives that caused the death of two locals and eight police officers, with 24 civilians seriously injured in the area known as Devil's Curve (*Curva del Diablo*) [...] in the Utcubamba Province, Amazonas department. The group based its justification of the incident on the fact that the Congress of the Republic had postponed debate on the repealing of the Legislative Decrees that supposedly damage the interests of the native population." Information submitted on November 3, 2009 by the IDL to the Office of the Special Rapporteur for Freedom of Expression during the 137th period of sessions of the IACHR. Annex A-6: Public attorney of the Justice Ministry. June 11, 2009. Request for dissolution of Association in keeping with Article 96 of the Civil Code.

the Special Rapporteur that on November 17, 2009, the Justice Ministry filed a writ of voluntary dismissal with the Public Prosecutor, requesting that the request for dissolution be shelved.⁴⁸⁶

486. Finally, the Office of the Special Rapporteur notes the consideration of Bill No. 2971/2008-CR, which would have increased the punishment in cases related to the right of reply, before the national Congress. According to the information received by the Office of the Special Rapporteur, civil organizations and media outlets have stated to the legislature that the project would restrict freedom of expression by establishing disproportionate conditions for the right of reply. The Office of the Special Rapporteur notes the fact that this initiative has been withdrawn by its own sponsor.⁴⁸⁷

487. The Office of the Special Rapporteur was also informed that on January 23, 2009, Bill No. 2993/2008-PE was presented before the Congress of the Republic. The bill modifies Article 162 of the Penal Code. The bill's sole article proposes to, among other measures, punish "with a prison term of no less than three years or greater than five those who do harm to a third party by selling, transferring, reproducing, or acquiring directly or indirectly, for personal benefit or the benefit of a third party [...] information registries obtained inappropriately." According to the information received by the Office of the Special Rapporteur, the bill is currently under debate in the Congress of the Republic's Justice and Human Rights Commission. The Office of the Special Rapporteur brings the State's attention to the fact that, should this bill be approved, it could disproportionately restrict freedom of expression.⁴⁸⁸ In this respect, the State should recall that, according to the Declaration of Principles on Freedom of Expression, the State must respect and guarantee the right to keep sources confidential (Principle 8). Also, the State should recall that a ban on illegally obtaining classified information cannot be used as an excuse for criminalizing the mere distribution of the information when it is in the public interest.⁴⁸⁹

25. Dominican Republic

488. The Office of the Special Rapporteur observes with satisfaction the fact that on May 22, 2009, the Second Court of the Civil and Commercial Lower Circuit of the National District found in favor of a writ of amparo filed by three journalists against a senator of the San Pedro de Macoris province. The court ordered the senator to withdraw his legal actions seeking the revelation of the identity of a source who had told the journalists that the senator was going to be investigated in the United States for tax evasion. According to the information received by the Office of the Special Rapporteur, María Isabel Soldevilla, with *Listín Diario*; Margarita Cordero, with the news Web site *7días.com.do*; and Norma Sheppard, with *Radio Mil*, had previously revealed that they had been approached separately by two men claiming to be agents with the Federal Bureau of Investigation

⁴⁸⁶ Justice Minister. November 17, 2009. *Denuncia* 936-2009. Writ of voluntary dismissal. Information submitted on November 20, 2009, by the State to the Office of the Special Rapporteur.

⁴⁸⁷ Congress of the Republic of Peru. Bill (*Proyecto de Ley*) No. 2971/2008-CR. Bill that regulates the right of reply for people affected by the inexact or libelous statements in media outlets. Available at: <http://www2.congreso.gob.pe/Sicr/TraDocEstProc/CLProLey2006.nsf>; Reporters Without Borders. August 20, 2009. *Controversial bill would restrict freedom of opinion*. Available at: <http://www.rsf.org/Controversial-bill-would-restrict.html>; Instituto Prensa y Sociedad. August 19, 2009. *Pronunciamento del IPYS: Proyecto de ley de rectificación es una clara amenaza a la libertad de expresión*. Available at: <http://www.ipys.org/alertas/atentado.php?id=1955>.

⁴⁸⁸ Congress of the Republic of Peru. Bill (*Proyecto de Ley*) No. 2993/2008-PE. Bill modifying Article 162 of the Penal Code to include aggravating circumstances. Available: <http://www2.congreso.gob.pe/Sicr/TraDocEstProc/CLProLey2006.nsf>; Information submitted on November 3, 2009 by the IDL to the Office of the Special Rapporteur for Freedom of Expression during the 137th period of sessions of the IACHR.

⁴⁸⁹ IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008. OEA/Ser.L/V/II.134. Doc. 5. 25 February 2009. Chapter III. para. 19 Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20ORELE%20-%20version%20final.pdf>

(FBI) who strongly rebuked them for having written about the senator.⁴⁹⁰ Principle 8 of the Declaration of Principles states that, "Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential," while Principle 11 holds that, "Public officials are subject to greater scrutiny by society."

489. The Office of the Special Rapporteur also received information indicating that in the first half of March 2009, journalist Manuel Antonio Vega received a death threat via telephone because of his reporting on drug trafficking. The information received by the Office of the Special Rapporteur indicates that those suspected of making the threatening phone calls were in prison at the time. The Office of the Special Rapporteur views positively the authorities' quick response in providing Vega with police protection.⁴⁹¹ The Office of the Special Rapporteur wishes to express its concern at these threats. It urges the State to keep the special protection in place and move the investigation along quickly to identify, try, and punish those responsible.

490. The Office of the Special Rapporteur received information indicating that the Santo Domingo home of reporter and radio commentator Franklin Guerrero was fired on during the first week of November 2009 by an individual supposedly linked to drug trafficking. The Office of the Special Rapporteur observes with satisfaction the rapid response of the authorities, who arrested the alleged gunman on November 8, 2009.⁴⁹²

491. The Office of the Special Rapporteur received information indicating that on November 11, 2009, the country's two main journalist unions – the National Press Workers Union (*Sindicato Nacional de Trabajadores de Prensa*) and the Dominican Journalists Association (*Colegio Dominicano de Periodistas*) –expressed concern at the increase in threats and attacks targeted toward journalists in the Dominican Republic. One of their complaints indicates that on November 7, 2009, journalists and cameramen with channels 11 and 37 were beaten and threatened by group of individuals while covering an incident related to tree felling in Puerto del Plata province.⁴⁹³

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

⁴⁹⁰ El Nuevo Diario. May 22, 2009. *Acogen recurso de amparo interpuesto contra senador Alejandro Williams*. Available at: <http://www.elnuevodiario.com.do/app/article.aspx?id=152932>; La Nación Dominicana. May 22, 2009. *Juez acoge recurso de amparo contra senador Alejandro Williams*. Available at: http://www.lanaciondominicana.com/ver_noticia.php?id_noticia=8952; Inter-American Press Association. April 2, 2009. *Periodistas intimidados tras informar que un senador está bajo investigación por supuesto fraude*. Available at: http://www.ifex.org/dominican_republic/2009/04/02/three_journalists_harassed_after/es/.

⁴⁹¹ Knight Center for Journalism. March 16, 2009. *Narcotraficantes encarcelados amenazan a reportero dominicano*. Available at: <http://www.knightcenter.utexas.edu/blog/?q=en/node/3341>; Reporters Without Borders. March 13, 2009. *Narcotraficantes encarcelados amenazan a un periodista*. Available at: <http://www.rsf.org/Narcotraficantes-encarcelados.html>.

⁴⁹² Agencia Antena. November 8, 2009. *PN apresa autor de atentado contra fotorreportero Franklin Guerrero*. Available at: <http://www.antenaenlinea.com/index.php/pedrocaba/5801-pn-apresa-autor-de-atentado-contra-fotorreportero-franklin-guerrero>; Inter-American Press Association. *65th General Assembly, November 6-10, 2009, Buenos Aires. Dominican Republic*. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=24&inforid=386&idioma=us.

⁴⁹³ Cable from EFE News Agency, published on the homepage of Web site Noticias MSN Latino. November 11, 2009. *Denuncian aumento de agresiones a periodistas dominicanos*. Available at: <http://noticias.latino.msn.com/latinoamerica/dominicana/articulos.aspx?cp-documentid=22570356>; El Caribe. November 9, 2009. *Comunicadores y Jefe PN condenan agresión a prensa*. Available at: http://www.elcaribe.com.do/site/index.php?option=com_content&view=article&id=227083:comunicadores-y-pn-condenan-agresion-a-equipo-de-prensa&catid=104:nacionales&Itemid=115.

26. Saint Lucia

493. The Office of the Special Rapporteur received information indicating that on August 12, 2009, Novita Emmanuel, a journalist with *Think Caribbean Television (TCT)*, was attacked by an individual whom she had photographed parking his vehicle in an area reserved for people with disabilities. According to the information received by the Office of the Special Rapporteur, while Emmanuel was engaged in another journalistic assignment, the same individual took her camera and struck her in the face. The incident was witnessed by the local police who, according to the information received, did not try to stop the individual from striking the journalist.⁴⁹⁴ The Office of the Special Rapporteur reminds the State that Principle 9 of the Declaration of Principles indicates that, "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

27. Suriname

494. The Office of the Special Rapporteur notes the January 2009 ruling by a military tribunal rejecting a request to block the media from covering public hearings in the legal proceedings against former dictator Desi Bouterse. Bouterse is on trial for the 1982 murder of 15 people, among them four journalists. According to the information received by the Office of the Special Rapporteur, the request had argued that the press felt "profound animosity" toward Bouterse, for which reason it was requested that the media be denied access to the trial.⁴⁹⁵ The Office of the Special Rapporteur recalls that Principle 5 of the Declaration of Principles clearly holds that, "Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

495. The Office of the Special Rapporteur received information indicating that in November of 2009, Ivan Cairo, a journalist with daily newspaper *De Ware Tijd*, was threatened by telephone after publishing several articles on the disappearance of more than 90 kilograms of cocaine from a police vault.⁴⁹⁶ Principle 9 of the Declaration of Principles indicates that, "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

⁴⁹⁴ Caribbean Net News. August 12, 2009. Media worker attacked in Saint Lucia. Available at: http://www.caribbeanetnews.com/stlucia/stlucia.php?news_id=18179&start=40&category_id=20; Nation News. *Photographer attacked on job*. Available at: <http://www.nationnews.com/print/tv-assault-copy-for-web>.

⁴⁹⁵ Caribbean Net News. January 26, 2009. *Suriname* Court dismisses request to ban media from murder trial. Available at: <http://www.caribbeanetnews.com/news-13750--36-36--.html>; World News This Week. February 3, 2009. *Suriname Court Dismisses Request to Ban Media from Murder Trial*. Available at: <http://8thworldnews.blogspot.com/2009/02/suriname-court-dismisses-request-to-ban.html>.

⁴⁹⁶ Knight Center for Journalism in the Americas. *Reportero en Suriname es amenazado luego de denunciar pérdida de cocaína decomisada por la policía*. November 17, 2009. Available at: <http://knightcenter.utexas.edu/blog/?q=es/node/5821>; Association of Caribbean Media Workers. November 13, 2009. *Journalist threatened after reporting on cocaine missing from police vault*. Available at: http://www.ifex.org/suriname/2009/11/13/cairo_threatened/.

28. Uruguay

496. The Office of the Special Rapporteur views positively the fact that the Uruguayan State has taken legislative measures to incorporate the freedom of expression standards of the inter-American system into its domestic legal system. In June of 2009, the General Assembly of the Legislature passed Law No. 18.515, which adopts important reforms to the Penal Code and the Press Law. The new legal framework eliminates sanctions for the dissemination of information about or opinions on state officials and matters of public interest, except for when the person presumably affected is able to demonstrate the existence of “actual malice.” Likewise, although this legislation does not repeal all forms of *desacato*, it substantially reduces its application and expressly holds that no one will be punished for disagreeing with or questioning authority. Law No. 18.515 also repeals sanctions for insulting patriotic symbols or for attacking the honor of foreign authorities. Finally, the reform adds that human rights treaties form the principal guides for the interpretation, application, and integration of civil, procedural, and criminal law on freedom of expression, recognizing as well the relevance of the rulings and recommendations of the Inter-American Court of Human Rights and the IACHR in this matter.⁴⁹⁷

497. The Office of the Special Rapporteur applauds the fact that on September 18, 2009, the State and journalist Carlos Dogliani signed a friendly settlement, closing the case brought before the IACHR under petition P-228/07. On March 25 and April 1, 2005, Dogliani published two articles in weekly newspaper *El Regional* accusing the then mayor of the department of Paysandú, Álvaro Lamas, of abuse of power. The journalist was subject to a criminal trial and sentenced to three months in prison as guilty of four counts of defamation according to the Penal Code and the Press Law. With internal legal remedies exhausted, in February of 2007, the reporter turned to the IACHR, invoking Article 13 of the American Convention. After analyzing the case, the State expressed to the IACHR its willingness to start a dialogue with the petitioner to reach a friendly settlement. In this context, in June of 2009, the State approved the aforementioned Law No. 18.515, which repealed the criminal regulation that had given rise to the journalist’s conviction. The State also recognized its responsibility in the case and committed itself to paying Dogliani damages.⁴⁹⁸

498. Despite this progress, during 2009 the Office of the Special Rapporteur continued to receive information on legal procedures brought against social communicators for publishing information in the public interest. On May 6, 2009, journalist Álvaro Alfonso was convicted for the crime of defamation after a Montevideo city councilman brought him to trial. The state official believed himself to have suffered damages because of the information that Alfonso had published about him in the book, *Secrets of the Uruguayan Communist Party (Secretos del Partido Comunista del Uruguay)*. The information received by the Office of the Special Rapporteur adds that the sentence was suspended and that Alfonso’s defense has appealed the ruling making reference to

⁴⁹⁷ Legislative Power of the Oriental Republic of Uruguay. July 15, 2009. Law Number 18.515. *Media Outlets*. Available at: <http://www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=18515&Anchor=>; Office of the Special Rapporteur – IACHR. Press Release No. R38/09. June 22, 2009. Office of the Special Rapporteur for Freedom of Expression Expresses its Satisfaction with the Recent Legislative Reforms in Uruguay and in Quebec, Canada, and with the Decisions by the Highest Courts of Brazil and Mexico Concerning Freedom of Expression. Available at: <http://www.cidh.oas.org/Relatoria/showarticle.asp?artID=750&IID=1>; Committee for the Protection of Journalists. June 11, 2009. *CPJ hails approval of press law by Uruguayan Congress*. Available at: <http://www.cpj.org/2009/06/cpj-hails-approval-of-press-law-by-uruguayan-congr.php>; Reporters Without Borders. July 12, 2009. *La despenalización de los delitos de prensa ha sido promulgada por el Jefe del Estado*. Available at: <http://www.rsf.org/La-despenalizacion-de-los-delitos.html>; Federación Internacional de Periodistas. June 24, 2009. *La FIP da la bienvenida a la eliminación de los delitos de prensa*. Available at: http://www.ifex.org/uruguay/2009/06/26/press_crimes_eliminated/es/.

⁴⁹⁸ Presidency of the Oriental Republic of Uruguay. September 22, 2009. *Estado uruguayo derogó norma relativa a delitos de comunicación*. Available at: <http://www.presidencia.gub.uy/web/noticias/2009/09/2009092202.htm>; Asociación de la Prensa Uruguaya. September 15, 2009. Available at: <http://www.apu.org.uy/noticias/reconocimiento-historico-del-estado-uruguayo-sobre-caso-libertad-de-expresion>.

the aforementioned legal reform.⁴⁹⁹ Principle 11 of the Declaration of Principles indicates that, “Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as ‘desacato laws,’ restrict freedom of expression and the right to information.”

499. Likewise, the Office of the Special Rapporteur received information indicating that in August of 2009, Celeste Álvarez, niece of former Uruguayan military dictator Gregorio Álvarez, brought a civil suit against public television journalist Ana María Mizrahi based on an interview that the reporter did with a former *Tupamaro* guerilla who had allegedly admitted to being behind the murder of Colonel Artigas Álvarez (the plaintiff’s father) at the beginning of the 1970s.⁵⁰⁰ The Office of the Special Rapporteur reminds the State that Principle 10 of the Declaration of Principles holds that, “Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

500. In April of 2009, Eduardo Barreneche, a journalist with the daily newspaper *El País*, was threatened by an advisor with the Ministry of the Interior while on the job. The information adds that the official tried to throw the journalist out of the ministry’s main offices.⁵⁰¹ Principle 9 of the Declaration of Principles states that, “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

501. The Office of the Special Rapporteur expresses satisfaction at judgment 381-545/2009, handed down by the Court of Governmental Peace on September 11, 2009, regarding a journalist’s request for information from the Soriano Departmental Council to learn the amount spent on official advertising during different periods. Given that the information was produced and held by a public body, and “with a view to guaranteeing the principles of publicity and transparency,” the judge hearing the case ruled that the Soriano Departmental Council should turn over the requested information to the journalist in a period of 10 days, as counting from the notification of the

⁴⁹⁹ El País. May 7, 2009. *Procesan a Alfonso por libro del PCU*. Available at: <http://www.elpais.com.uy/090507/pnacio-415502/nacional/procesan-a-alfonso-por-libro-del-pcu>; Inter-American Press Association. May 21, 2009. *IAPA Condemns New Conviction of a Journalist in Uruguay*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4190&idioma=us.

⁵⁰⁰ Inter-American Press Association. *65th General Assembly, November 6-10, 2009, Buenos Aires. Uruguay*. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=24&inford=387&idioma=us. Asociación de la Prensa Uruguaya. July 31, 2009. *APU rechaza juicio civil contra la periodista Ana María Mizrahi*. Available at: <http://www.apu.org.uy/institucional/comunicados-apu/apu-rechaza-juicio-civil-contra-la-periodista-ana-maria-mizrahi>; El País. September 25, 2009. *Demanda de la sobrina del ex dictador Álvarez*. Available at: <http://www.elpais.com.uy/080925/pnacio-371867/nacional/demanda-de-la-sobrina-del-ex-dictador-alvarez>; *La República*. August 4, 2009. *Comienza hoy juicio a periodista*. Available at: <http://www.larepublica.com.uy/politica/375328-comienza-hoy-juicio-a-periodista>.

⁵⁰¹ Asociación de la Prensa Uruguaya. April 20, 2009. *APU rechaza amenaza a periodista Eduardo Barreneche*. Available at: <http://www.apu.org.uy/institucional/comunicados-apu/comunicado-090420-apu-rechaza-amenaza-a-periodista-eduardo-barreneche>; Inter-American Press Association. *65th General Assembly, November 6-10, 2009, Buenos Aires. Uruguay*. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=24&inford=387&idioma=us.

sentence.⁵⁰² Principle 4 of the Declaration of Principles states that “Access to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right [...].”

502. The Office of the Special Rapporteur also notes the decree, signed on October 7, 2009, by Uruguayan President Tabaré Vázquez Rosas, urging Executive-branch public entities to comply with Access to Public Information Law No. 18.831, passed toward the end of 2008.⁵⁰³

503. The Office of the Special Rapporteur was informed of a bill regulating official advertising, presented in September of 2009 before the Constitution, Codes, General Legislation, and Administration Commission of the Uruguayan Chamber of Deputies. The bill establishes the creation of a “decentralized entity of the Comptroller of the Republic (*Tribunal de Cuentas de la República*), the Advisory Unit for the Allocation of Official Advertising (*Unidad de Asesoramiento para la Asignación de Publicidad Oficial*, UAPO), an entity that will enjoy the broadest of technical autonomy [...].” Subsection B of Article 4 of the project holds that, “the discriminatory use of official advertising with the goal of pressuring and punishing or rewarding and privileging social communicators and media outlets based on their editorial slant is prohibited as a threat to freedom of expression.” Subsection C of the same article states that, “The use of official advertising as covert subsidies that benefit, directly or indirectly, media outlets is prohibited.”⁵⁰⁴ The Office of the Special Rapporteur reminds the State that Principle 13 of the Declaration of Principles holds that, “the arbitrary and discriminatory placement of official advertising and government loans; [...] among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

504. Finally, the Office of the Special Rapporteur notes the bill sent by the executive to the General Assembly of the Legislature on November 23, 2009. The bill seeks to guarantee “access to cultural diversity as an essential human right” and spread “the multiple and particular values of the Uruguayan people.”⁵⁰⁵ In this respect, the Office of the Special Rapporteur reiterates to the State its obligation to respect inter-American standards when regulating aspects related to radio and television. In particular, the Office of the Special Rapporteur wishes to remind the State that Principle 5 of the Declaration of Principles states that, “Restrictions to the free circulation of

⁵⁰² Access to Public Information Unit. Oriental Republic of Uruguay. Judgement N° 48 of the Second Turn Federal Court of Mercedes, September 11, 2009. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/jurisprudencia-nacional/sentencia-juzgado-letrado-de-2do-turno-de-mercedes.pdf>.

⁵⁰³ Presidency of the Oriental Republic of Uruguay. October 17, 2009. Urging public state and non-state entities to comply with the obligations of active transparency established in Article 5 of Law 18.381. DEC. N° 484/009. Available at: <http://www.presidencia.gub.uy/web/decretos/2009/10/847.pdf>.

⁵⁰⁴ Legislative Power of the Oriental Republic of Uruguay. September 2009. Bill on the Regulation of publicity purchased by public state and non-state entities. Available at: <http://www.parlamento.gub.uy/indexdb/Repartidos/ListarRepartido.asp?Id=5724>; Grupo Medios y Sociedad. *Freedom of Expression and Official Advertising*. October 2009. Available at: <http://legislaciones.amarc.org/GMS/Libro-Libertad de expresion y publicidad oficial.pdf>.

⁵⁰⁵ Presidency of the Oriental Republic of Uruguay. November 23, 2009. *Guaranteeing access to cultural diversity as an essential human right and promoting the multiple and particular values of the Uruguayan people*. Available at: <http://www.presidencia.gub.uy/web/proyectos/2009/11/EC1423.pdf>; Inter-American Press Association. *65th General Assembly, November 6-10, 2009, Buenos Aires, Uruguay*. Available at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=24&inforid=387&idioma=us.

ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

29. Venezuela⁵⁰⁶

505. The present [section] describes some of the most recent issues related to the situation of the right to freedom of expression in Venezuela and formulates viable and feasible recommendations based on the American Convention, the American Declaration of the Rights and Duties of Man, and the Declaration of Principles on Freedom of Expression (hereinafter, “Declaration of Principles”).⁵⁰⁷

506. Freedom of expression is essential for the development and strengthening of democracy and for the full exercise of human rights. The recognition of freedom of expression is a fundamental guarantee to ensure the rule of law and democratic institutions. The Inter-American Court has repeatedly emphasized the importance of this right by affirming that:

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a *conditio sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.⁵⁰⁸

507. Freedom of expression includes the right of every person to seek, receive, and disseminate information and ideas of any kind. In this respect, this right has a two dimensions, individual as well as social. This dual nature:

requires, on the one hand, that no one be arbitrarily limited or impeded in expressing his own thoughts. In that sense, it is a right that belongs to each individual. Its second aspect, on the other hand, implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others.⁵⁰⁹

508. The Venezuelan State has recognized its obligation to protect, guarantee, and promote the right to freedom of expression in Article 57 of its Constitution and, in a paradigmatic example, has decided to honor its international obligations indicating in Article 23 of its constitutional text that: “Treaties, pacts and conventions relating to human rights, signed and ratified by Venezuela have constitutional rank and prevail over domestic legislation, insofar as they contain provisions for the enjoyment and exercise of such rights that are more favorable than those established by this Constitution and the laws of the Republic, and shall be immediately and directly applied by courts and the organs of public power.” Additionally, the protection of freedom of

⁵⁰⁶ The IACHR has prepared a special report on the human rights situation in Venezuela, titled “Democracy and Human Rights.” The Office of the Special Rapporteur was assigned the preparation of the chapter on freedom of expression in said report; the full text of which is included below.

⁵⁰⁷ The IACHR approved the Declaration of Principles on Freedom of Expression during its 108th Ordinary Period of Sessions in October of 2000. IACHR. Declaration of Principles on Freedom of Expression, available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=26&IID=1>.

⁵⁰⁸ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 70.

⁵⁰⁹ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 30.

information is recognized and protected in the Constitution at the highest level, by establishing it in its Article 337 as one of the untouchable rights that cannot be restricted even under exceptional circumstances. Additionally, as the State indicated in its observations on the present report, Article 58 of the Constitution establishes that, "Communication is free and plural, and carries with it the duties and responsibilities provided by law. Every person has the right to timely, truthful, and impartial information, without censorship, in accordance with the principles of this Constitution, as well as the right to reply and rectification when s/he is directly affected by inexact or offensive information. Children and adolescents have the right to receive information adequate for their comprehensive development."⁵¹⁰

509. In recent years, the IACHR and the Office of the Special Rapporteur for Freedom of Expression (hereinafter, "Special Rapporteurship") have followed the situation of freedom of expression in Venezuela closely.⁵¹¹ In the *Report on the Situation of Human Rights in Venezuela* (2003), prepared based on information received during the last on-site visit to that country, the IACHR issued the following recommendations to the State in relation to the right to freedom of expression:

1. Urgently take specific steps to put a halt to attacks on journalists, camera operators, and photographers, opposition politicians and human rights defenders, and all citizens who wish to exercise their right of free expression.
2. Conduct serious, impartial, and effective investigations into murders of, attacks on, threats against, and intimidation of journalists and other media workers.
3. Publicly condemn, from the highest levels of government, attacks on media workers, in order to prevent actions that might encourage such crimes.
4. Scrupulously respect the standards of the inter-American system for the protection of freedom of expression in both the enactment of new laws and in the administrative and judicial proceedings in which it issues judgments.
5. Work for the repeal of laws that contain *desacato* provisions, since such precepts curtail public debate, which is an essential element in a functioning democracy, and are also in breach of the American Convention on Human Rights.
6. Effectively guarantee the right of access to information held by the State in order to promote transparency in the public administration and consolidate democracy.

⁵¹⁰ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 55.

⁵¹¹ The Annual Reports of the IACHR corresponding to the period of 2002-2008 have addressed the situation of freedom of expression in Venezuela in detail. IACHR. *Annual Report 2002*. Chapter IV: Human Rights Developments in the Region. OEA/Ser.L/V/II.117. Doc. 1 rev. 1. March 7, 2003. Available at: <http://www.cidh.oas.org/annualrep/2002eng/toc.htm>; IACHR. *Annual Report 2003*. Chapter IV: Human Rights Developments in the Region. OEA/Ser.L/V/II.118. Doc. 5 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/annualrep/2003eng/toc.htm>; IACHR. *Annual Report 2004*. Chapter V: Follow-up of the Recommendations Formulated by the Inter-American Commission on Human Rights in its Reports on the Situation of Human Rights in Member States. OEA/Ser.L/V/II.122. Doc. 5 rev. 1. February 23, 2005. Available at: <http://www.cidh.oas.org/annualrep/2004eng/toc.htm>; IACHR. *Annual Report 2005*. Chapter IV: Human Rights Developments in the Region. OEA/Ser.L/V/II.124. Doc. 5. February 27, 2006. Available at: <http://www.cidh.oas.org/annualrep/2005eng/toc.htm>; IACHR. *Annual Report 2006*. Chapter IV: Human Rights Developments in the Region. OEA/Ser.L/V/II.127. Doc. 4 rev. 1. March 3, 2007. Available at: <http://www.cidh.oas.org/annualrep/2006eng/TOC.htm>; IACHR. *Annual Report 2007*. Chapter IV: Human Rights Developments in the Region. OEA/Ser.L/V/II.130. Doc. 22 rev. 1. December 29, 2007. Available at: <http://www.cidh.oas.org/annualrep/2007eng/TOC.htm>; IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm>.

7. Adapt its domestic laws to comply with the parameters established in the American Convention on Human Rights and fully comply with the terms of Article IV of the American Declaration of the Rights and Duties of Man and the IACHR's Declaration of Principles on Freedom of Expression, particularly as regards the demand for truthful, impartial and objective information contained in Article 58 of the Venezuelan Constitution.⁵¹²

510. In the chapter on Follow-up of the Recommendations Formulated by the IACHR in its Reports on the Situation of Human Rights in Member States in its 2004 Annual Report, the IACHR concluded "that the recommendations contained in its report on Venezuela [...] ha[d] not been fulfilled[" and it therefore ["]call[ed] upon the State to take the necessary actions to comply with them."⁵¹³

511. Recently, in its 2008 Annual Report, the IACHR affirmed that in Venezuela:

[a] climate of tolerance that is conducive to active participation and the free flow of ideas among the various sectors of [...] society [is not being fostered]. The numerous violent acts of intimidation by private groups against journalists and media outlets, in addition to the discrediting statements of high officials, and the systematic institution of administrative actions based on legal provisions the application of which is highly discretionary and that allow for drastic penalties, together with other facts, create a restrictive climate that dampens the exercise of freedom of expression that is one of the essential preconditions for a vigorous democracy built upon pluralism and public discourse.⁵¹⁴

512. Additionally, in its pronouncement on August 3, 2009, the IACHR stated that since 2000 it "has observed a gradual deterioration and restriction on the exercise of [the right to freedom of expression] in Venezuela, as well as a rising intolerance of critical expression."⁵¹⁵

513. In this chapter, the IACHR analyzes the following areas of special interest in relation to freedom of expression in Venezuela: the compatibility of the current legal framework on the subject of freedom of expression with the obligations of the State under the American Convention; the use of blanket presidential broadcasts (*cadena presidencial*); the statements by high-ranking authorities of the State against communications media and journalists based on their editorial line; the disciplinary, administrative, and criminal proceedings against communications media and journalists; the regulation of the broadcasting spectrum and the application of the provisions on broadcasting; and the violations of the rights to life and personal integrity. Finally, it formulates

⁵¹² In the same report, the IACHR concluded that "much of the Venezuelan media is critical of the government. However, for journalists, the consequences of expressing such opinions include acts of intimidation, some serious. The uninterrupted continuation of those actions could restrict free speech by fostering a climate unfavorable to the pursuit of journalistic endeavors. The IACHR understands that since criticisms of the government are in fact made, it is difficult to speak of widespread self-censorship within the mass media; however, the emergence of potential self-censorship on the part of reporters can, in some cases, be seen, with journalists required to change the tasks they undertake. The protection of free speech cannot be measured solely by the absence of censorship, newspaper shutdowns, or arbitrary arrests of those who freely express their ideas; it also entails the existence of a climate of security and guarantees for communication workers as they discharge their function of informing the public." IACHR, *Report on the Situation of Human Rights in Venezuela*, para. 372. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

⁵¹³ IACHR. *Annual Report 2004*. Chapter V: Follow-up of the Recommendations Formulated by the Inter-American Commission on Human Rights in its Reports on the Situation of Human Rights in Member States. OEA/Ser.L/V/II.122. Doc. 5 rev. 1. February 23, 2005. Available at: <http://www.cidh.oas.org/annualrep/2004eng/toc.htm>.

⁵¹⁴ IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, para 388. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm>.

⁵¹⁵ IACHR. August 3, 2009. *Press Release No. 55/09*. Available at: <http://www.cidh.oas.org/Comunicados/English/2009/55-09eng.htm>.

recommendations to the State regarding freedom of expression. It should be noted that the issue of restrictions on the right to freedom of expression in the context of social protest in Venezuela was addressed by the IACHR in Chapter II of the present report. Chapter V of the present report will address the issue of access to information in Venezuela.

514. On this chapter, in its observations on the present report, the State indicated that “[t]he Commission with its Special Rapporteurship has an obsession against Venezuela and wants the Venezuelan State to refrain from taking any legal measures against the media owners and some journalists who do not respect their Code of Ethics. According to the Commission, the communications media cannot be contradicted, nor touched with a rose petal, because it is immediately considered a violation of the sacred right to freedom of expression [...]”⁵¹⁶ (Emphasis in original). It concluded by affirming that “[f]or the previously expressed reasons, and because it considers that these have been sufficiently addressed and debated during the last [seven] years by the Venezuelan State, the occurrences indicated by the Commission, we will not respond to the Commission’s allegations contained in paragraphs three hundred thirty-two through five hundred forty-two.”⁵¹⁷ (corresponding to the chapter on Freedom of Thought and Expression in the Draft Report)

a. The compatibility of the current legal framework in relation to freedom of expression with the obligations of the State under the American Convention

i. The Law on Social Responsibility in Radio and Television

515. In December 2004, the Law on Social Responsibility in Radio and Television (hereinafter, “Law on Social Responsibility”), also known as the “*Ley Resorte*,”⁵¹⁸ entered into force. In a communication of August 13, 2009, the State declared that the objective of this norm is:

to confer upon the national production, and especially the independent national production, a leadership role in [the] new communications order, [which] previously [...] was concentrated in the large communications media, limiting the development of a participative and proactive democracy. [...] The *Ley Resorte* democratizes the radio spectrum [...] [and] has permitted citizen participation in the production of the content of communications media, democratizing and breaking down the barriers to freedom of expression that are established by the communications media themselves by concentrating the production of the content they transmit and that in some circumstances are subject to obscure economic and power interests that do not correspond to the common interest. Currently, there is a plurality of content in radio and television that guarantees and promotes freedom of expression in Venezuela. Far from seeking to be an exclusionary law, it is a necessary legal instrument to guarantee social inclusion and promote the development of radio and television content by Venezuelans.⁵¹⁹

⁵¹⁶ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 56.

⁵¹⁷ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, pp. 56 and 57.

⁵¹⁸ Updated text of the Law on Social Responsibility in Radio and Television. Official Gazette No. 38.333 of December 12, 2005. Available in Spanish at: http://www.conatel.gob.ve/download/marco_legal/Ley%20Responsabilidad%20Reforma.pdf.

⁵¹⁹ Bolivarian Republic of Venezuela. August 13, 2009. Questionnaire on human rights presented at the request of the Inter-American Commission on Human Rights. Office of the State Agent for Human Rights before the Inter-American and International Systems, pp. 118-120.

516. The IACHR and its Special Rapporteurship have constantly promoted the principles of pluralism and diversity in the communicative process, especially with respect to the implementation of policies of inclusion of groups traditionally excluded from public debate. On this point, it is important to recall that whatever policy is adopted to promote inclusion and diversity, it must respect the international standards on freedom of expression. For this reason, since November 2002, when the presentation of the then-draft Law on Social Responsibility to the National Assembly was announced, the IACHR and the Special Rapporteurship expressed their serious concern about the vague and imprecise drafting of various provisions, especially those that establish the types of conduct that are prohibited and the corresponding sanctions. The IACHR and the Special Rapporteurship expressed their concern about the provisions referring to offenses of incitement, the severity of the penalties prescribed for these offenses, and that their application is the responsibility of the National Telecommunications Commission (hereinafter “Conatel”), an agency that directly depends on the Executive Branch.⁵²⁰

517. The above-mentioned provisions of the Law on Social Responsibility remain in force and the interpretation of them by Conatel has expanded the scope of these norms, instead of limiting them. This issue will be explained in detail in the following paragraphs.

a) Article 29 of the Law on Social Responsibility in Radio and Television

518. According to Article 29 of the Law on Social Responsibility, providers of television and radio services that “promote, advocate, or incite to war; promote, advocate, or incite alterations of the public order; promote, advocate, or incite crime; are discriminatory; promote religious intolerance; [or] are contrary to the security of the Nation” can be sanctioned with the suspension of their qualifications for 72 hours or their revocation for a period of up to five years in the case of recidivism.⁵²¹

519. In previous opportunities, the IACHR had already pronounced on the risks of “provisions like Article 29(1) [which] set very punitive sanctions for violating restrictions that are defined in vague or generic language.”⁵²² In particular, in its 2008 Annual Report, the Special Rapporteurship recalled that vague or imprecise penal norms which, by their ambiguity, result in granting broad discretionary powers to administrative authorities are incompatible with the American Convention. Such provisions, due to their extreme vagueness, could support arbitrary decisions that censor or impose disproportionate subsequent liability upon persons or media for the simple

⁵²⁰ IACHR. *Report on the Situation of Human Rights in Venezuela*, paras. 394-405. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>. Office of the Special Rapporteur for Freedom of Expression—IACHR. October 26, 2004. Press Release No. 111/04. Available in Spanish at: <http://www.cidh.org/relatoria/showarticle.asp?artID=287&IID=2>; IACHR. November 30, 2004. Press Release 25/04. Available at: <http://www.cidh.oas.org/Comunicados/English/2004/25.04.htm>.

⁵²¹ Article 29 of the Law on Social Responsibility in Radio and Television establishes: “Article 29. Television and radio service providers will be sanctioned with: (1) Suspension for up to 72 continuous hours when the messages broadcast: promote, advocate for, or incite to war; promote, advocate for, or incite to alterations of the public order; promote, advocate for, or incite to crime; are discriminatory; promote religious intolerance; are contrary to national security; are anonymous; or when the providers of radio, television, or subscription services have been sanctioned twice, within the three years following the date of the imposition of the first sanctions. (2) Revocation of the permit, for up to five years, and revocation of the concession, when there is a recurrence of the sanction in clause 1 of this article, within the five years following the occurrence of the first sanction. The sanction provided for in clause 2, when it deals with the revocation of permit or concession, will be applied by the governing organ in the area of telecommunications, in both cases the decision shall be issued within thirty business days of the reception of the file by the competent organ. In any case, it will correspond to the Legal Consultancy of the National Telecommunications Commission to substantiate the administrative file and to apply, supplementally, the procedural norms set forth in the Organic Law on Telecommunications.”

⁵²² IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, para. 381. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm>.

expression of critical or dissenting discourse that could be disturbing to the public functionaries that transitorily exercise the authority to apply them.

520. On the other hand, in the area of freedom of expression, vague, ambiguous, broad, or imprecise punitive norms, by their mere existence, discourage the dissemination of information and opinions that could be bothersome or disturbing. Therefore, the State should clarify which types of conduct can be the object of subsequent liability, to avoid affecting free expression especially when it could affect the authorities themselves.⁵²³

521. The IACHR considers that Article 29 of the Law on Social Responsibility contains vague and imprecise language that increases the possibility that the norm will be applied in an arbitrary manner by the competent authorities. With respect to this, it is important to note that the State affirmed before the IACHR that the “[Venezuelan] legal order does not define [these terms], being [...] indeterminate juridical concept[s].”⁵²⁴ On this point, the IACHR observes with concern that the ambiguity of the legal standards compromises the principle of legality, which obliges the states to define in express, precise, and clear terms each type of conduct that could be the object of sanctions.

522. The broadness of these dispositions is a special concern to the IACHR, given the constant declarations by high-ranking governmental authorities who characterize those who dissent, criticize, or offend the authorities or generate political opposition of “journalistic terrorism,” “coup mentality,” “incitement to violence,” or “instigation of crime.” On this point, on August 13, 2009, the State affirmed that in the country,

no information media is subject to prior censorship (either direct or indirect); but there are subject matters in which certain prohibitions are applied and it is precisely such propaganda, ideas, and concepts that can lead to the creation of destabilizing atmosphere[s] in the country. [...] In our country, the participation of the communications media in the events surrounding the Coup d’État of April of 2002 and the National Strike that occurred between December of 2002 and January of 2003 evidenced the free transmission of constant and permanent messages inciting the population to disobedience of authority and the government, tax evasion, as well as messages which incited authorities to alter the peace and public order; it must be noted that these messages advocated in their content the barring or blockage of streets and other passageways; in good measure, they incited disregard for authority and other public powers, messages of hate that many times stimulated violence or social unrest. [...] [T]he dissemination of messages that foment hate, racism, and discrimination is evident from the continuous and systematic attacks that are expressed against the public authorities, with epithets that go beyond or exceed that which can be criticism of the exercise of public functions, and contain suggestions aimed at affecting the image and personal life of persons who hold or exercise some public function, degrading their personal and family morale, honor, and reputation.⁵²⁵

523. In the same document, the State recalled the lamentable facts related to the 2002 *coup d’état* to justify some possible restrictions on communications media. In this respect, in its observations on the present report, the State indicated: “In light of this reality [referring to the

⁵²³ IACHR. *Annual Report 2008*. Volume II. Chapter III, paras. 65-66. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>.

⁵²⁴ The State referred specifically to the definition “hate speech” and “incitement to violence.” Bolivarian Republic of Venezuela. August 13, 2009. Questionnaire on human rights presented at the request of the Inter-American Commission on Human Rights. Office of the State Agent for Human Rights before the Inter-American and International Systems, p. 116.

⁵²⁵ Bolivarian Republic of Venezuela. August 13, 2009. Questionnaire on human rights presented at the request of the Inter-American Commission on Human Rights. Office of the State Agent for Human Rights before the Inter-American and International Systems, p. 117.

events of the coup d'état], the communications media opted to violate the Venezuelans' right to freedom of expression, by not reporting information relating to these events and limiting themselves to broadcasting films and cartoons. As stated in its report 'the Commission learned during this period of the actions of some private communications media that impeded access to information that was vital to Venezuelan society during these tragic events.' As the journalist Andrés Izarra stated, the order from the directors of RCTV was clear: 'Zero *chavismo* (support for Chávez) on the screen.'"⁵²⁶ With respect to these occurrences, it is important to remember that the IACHR condemned the rupture of the institutional order and the tendentious attitude of the communications media in the following terms:

In addition, the Commission notes the bias found in some Venezuelan media outlets, which reflects the extreme polarization that characterizes the country. As one example of this, at the end of its visit, the Commission stated that: "The IACHR has been concerned by the scant information, or at times total lack of information, available to Venezuelan society during the days of the institutional crisis of April. Although there may be any number of justifications to explain this lack of information, to the extent that the suppression of information resulted from politically-motivated editorial decisions, this should be the subject of an essential process of reflection by the Venezuelan media about their role at that moment." In this regard, the IACHR defends the right to follow any editorial line; this does not imply, however, that it shares the position chosen or that it does not regret the loss of objectivity.⁵²⁷

524. Currently, Venezuela enjoys a political regime that successfully overcame the lamentable acts related to the coup d'état of 2002. As a result, having overcome this condemnable episode, the Venezuelan state, as well as the rest of the states of the Americas, must respect the totality of the rights and freedoms consecrated in the inter-American juridical framework. In this regard, and taking into account the argumentation of the State transcribed above as the interpretation that the competent authorities have made of the norms of the Law on Social Responsibility, it is essential to recall that in no case may freedom of expression be limited by invoking mere conjectures about eventual effects on order, nor hypothetical circumstances derived from subjective interpretations by authorities of facts that do not clearly demonstrate an actual, certain, objective, and imminent threat of serious disturbances or anarchic violence.⁵²⁸

525. The IACHR indicates, following the reiterated international doctrine and jurisprudence in the subject area, that the imposition of sanctions for the abuse of freedom of expression under the charge of incitement to violence (understood as the incitation to the commission of crimes, the rupture of public order, or of national security) must have as a prerequisite actual, certain, objective, and convincing proof that the person was not simply expressing an opinion (however harsh, unjust, or disturbing it may be), but rather that he or she had the clear intention to commit a crime and the actual, real, and effective possibility of achieving that objective.⁵²⁹ If this were not the case, it

⁵²⁶ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, pp. 5 and 6.

⁵²⁷ IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 373. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

⁵²⁸ I/A Court H.R., *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008. Series C No. 177, para. 63; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, paras. 63-69.

⁵²⁹ In this respect, see the following cases of the European Court of Human Rights: *Karatas v. Turkey* [GC], no. 23168/94. ECHR 1999-IV; *Gerger v. Turkey* [GC], no. 24919/94, July 8, 1999; *Okçuoglu v. Turkey* [GC], no. 24246/94, July 8, 1999; *Arslan v. Turkey* [GC], no. 23462/94, July 8, 1999; *Erdogdu v. Turkey*, no. 25723/94, § 69, ECHR 2000 – VI. Additionally, I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*

would allow the possibility of sanctioning opinions and all the states would be able to suppress any thought or expression critical of the authorities that, like anarchism or radical opinions contrary to the established order, question even the very existence of current institutions. In a democracy, the legitimacy and strength of institutions take root and strengthen due to the vigor of public debate about their functioning and not by its suppression.

526. Additionally, the inter-American jurisprudence has clearly indicated that, in order to impose any sanction based on public order (understood as security, health, and public morals), it is necessary to show that the concept of “order” that is being defended is not an authoritarian or autocratic one, but rather a democratic order, understood as the existence of structural conditions that would allow all persons, without discrimination, to exercise their rights in freedom, with vigor and without fear of being sanctioned for this. In effect, for the Inter-American Court, in general terms, the “public order” cannot be invoked to suppress a right guaranteed by the American Convention, to adulterate it, or to deprive it of real content. If this concept is invoked as a basis for limitations on human rights, it must be interpreted in a manner that is strictly tailored to the just demands of a democratic society, which takes into account the equilibrium between the different interests in play, and the necessity of preserving the object and end of the American Convention.⁵³⁰

527. The forgoing considerations must be taken into account by the Venezuelan state when interpreting any norm that restricts the human right to think and express oneself freely, in particular, the above-cited provisions of the Law on Social Responsibility.

b) The authorities applying the Law on Social Responsibility: Conatel and the Social Responsibility Board

528. In relation to this point, the State indicated that,

The law provides for different organs to be responsible for [the] application [of the Law on Social Responsibility], one of these being the National Telecommunications Commission (Conatel), regulatory body for the telecommunications sector in Venezuela, with legal capacity, its own budget independent of the National Treasury, and technical, financial, organizational, regulatory, and administrative autonomy. [...] The Social Responsibility Board is the second organ charged with overseeing the correct application of the “*Ley Resorte*,” in its composition it reflects the democratic and participative character of the various sectors of society, as well as the political power, and has among its functions the establishment of sanctions in accordance with this Law, as well as the issuance of recommendations regarding the revocation of permits or the non-renewal of concessions.⁵³¹

529. Conatel, the governing body on telecommunications in Venezuela, is defined in Article 35 of the Organic Law on Telecommunications as “an autonomous institute, endowed with legal capacity and its own budget independent of the National Treasury, with technical, financial,

...continuation

(Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 77.

⁵³⁰ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 67.

⁵³¹ Bolivarian Republic of Venezuela. August 13, 2009. Questionnaire on human rights presented at the request of the Inter-American Commission on Human Rights. Office of the State Agent for Human Rights before the Inter-American and International Systems, pp. 120-121.

organizational, and administrative autonomy in conformity with this Law and other applicable provisions.”⁵³²

530. Currently, by virtue of Decree 6.707 of the Presidency of the Republic (Official Gazette No. 39.178 of May 14, 2009), Conatel is assigned to the Ministry of Popular Power for Public Works and Housing.⁵³³

531. According to Article 40 of the Organic Law on Telecommunications, the directorship of Conatel is made up of a director general and four members, all designated by the President of the Republic, who can also dismiss them at will.⁵³⁴

532. Conatel is an organ empowered to initiate administrative proceedings for violations of the provisions of the Law on Social Responsibility. It is also charged with applying the sanctions decided upon by the Social Responsibility Board. Article 19.11 of the Law on Social Responsibility provides therefore that Conatel may “[o]pen on its own motion or at the request of a party, administrative proceedings derived from this Law, as well as apply sanctions and prescribe other actions that are in conformity with that provided in this Law.”⁵³⁵

533. On the other hand, Article 20 of the Law on Social Responsibility created the Social Responsibility Board, which has the competence to “establish and impose sanctions that are in conformity with this Law.” Article 35 of the same law provides that the Social Responsibility Board will “carry out the actions that will bring to a conclusion the punitive administrative proceedings” initiated by Conatel. The Social Responsibility Board is headed by the director general of Conatel and includes six functionaries elected by the ministers and state institutions, two representatives of groups of users organized by Conatel, a representative of the university, and *one representative of the church*.⁵³⁶

⁵³² Conatel was created on September 5, 1991 through Decree 1.828 (Official Gazette No. 34.801 of September 18, 1991) and was originally assigned to the then-Ministry of Transportation and Communication. Available in Spanish at: <http://www.conatel.gob.ve/conatel.asp>; Organic Law on Telecommunications. Official Gazette No. 36.970 of June 12, 2000. Available in Spanish at: http://www.tsj.gov.ve/legislacion/LT_ley.htm.

⁵³³ Article 3.24 of Decree 6.707 establishes as a new competency of the Ministry of Popular Power for Public Works and Housing, “[t]o authorize, revoke, renew, and suspend the administrative permits and concessions in relation to radio and television broadcasting and not-for-profit public service community radio and television broadcasting, according to the regulations governing this issue.” Article 6 formally assigns Conatel to the Ministry of Popular Power for Public Works and Housing. National Assembly of the Bolivarian Republic of Venezuela. Decree 6.707 of the Presidency of the Republic (Official Gazette No. 39.178 of May 14, 2009). Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=cat_view&gid=121&dir=DESC&order=date&limit=190&limitstart=100.

⁵³⁴ Article 40 of the Organic Law on Telecommunications establishes the following: “The Board of Directors will be made up of the Director General of the National Telecommunications Commission who will preside and four Directors, who will be freely appointed and removed by the President of the Republic, each of these will have an alternate, designated in the same way, who will fill in during temporary absences. The temporary absences of the President shall be covered by the Principal Director s/he designates. The Director General or whoever is acting on his or her behalf and two Directors shall constitute a quorum. Decisions will be made by majority vote of the directors present. In case of a tie, the Director General will have the deciding vote. The Director General of the National Telecommunications Commission, as well as the members of the Board of Directors and their substitutes, may be removed at the will of the President of the Republic. The members of the Board of Directors, unlike the Director General, shall not have the status of officials of the National Telecommunications Commission.” Organic Law on Telecommunications. Official Gazette No. 36.970 of June 12, 2000. Available in Spanish at: http://www.tsj.gov.ve/legislacion/LT_ley.htm.

⁵³⁵ Updated text of the Law on Social Responsibility in Radio and Television. Official Gazette No. 38.333 of December 12, 2005. Available in Spanish at: http://www.conatel.gob.ve/download/marco_legal/Ley%20Responsabilidad%20Reforma.pdf.

⁵³⁶ Updated text of the Law on Social Responsibility in Radio and Television. Official Gazette No. 38.333 of December 12, 2005. Available in Spanish at: http://www.conatel.gob.ve/download/marco_legal/Ley%20Responsabilidad%20Reforma.pdf. Emphasis added.

534. In the 2005 Annual Report, the IACHR expressed its concern “over the establishment of the Social Responsibility Board [...] (Directorio [...] de Responsabilidad Social), which ha[s] broad powers to issue sanctions, without the limits that any organization of this type needs. It is worrisome, among other things, that the Board can meet with the presence of only those members who represent the State, and that they can adopt decisions by simple majority. [...] The Commission and the Office of the Special Rapporteur are of the view that the operation of [this agency], as provided for in the Law, facilitates the practice of prior and subsequent censorship by the State.”⁵³⁷

535. In the present report, the IACHR reiterates its concern over this matter. The IACHR recalls that the search for a significant degree of impartiality, autonomy, and independence for the organs charged with regulating telecommunications in a country arises from the duty of the states to guarantee the highest degree of pluralism and diversity of communications media in the public debate. The necessary safeguards for avoiding the cooptation of the communications media by the political and economic powers are nothing other than a functional and institutional guarantee to promote the formation of free public opinion, fluidity and depth in social communication processes, and the exchange and publication of information and ideas of all kinds.⁵³⁸ The guarantees of impartiality and independence of the enforcement entity ensure the right of all inhabitants that the communications media will not be, by indirect means, controlled by political or economic groups.

536. The IACHR observes that the members of the board of Conatel can be freely appointed and dismissed by the President of the Republic without the existence of any safeguards aimed at ensuring their independence and impartiality. Additionally, is important to note that seven of the eleven members of the Social Responsibility Board are selected by the Executive Power, and that the Law on Social Responsibility does not establish any criteria for the designation of the members of the Social Responsibility Board, nor does it define a fixed term for the exercise of their duties or establish precise reasons for their removal. Therefore, there are no institutional, organic, or functional guarantees of the independence of these organs.

537. In the context of the problems that have been outlined, the IACHR and its Special Rapporteurship take note of the various pronouncements by the highest authorities of the State making reference to the possible sanctions that could be adopted against those who have followed an editorial line that is opposed to or critical of the policies of the government. As will be seen subsequently, the initiations of various administrative proceedings described in this chapter were preceded by declarations by the highest public authorities which exhorted Conatel and the Social Responsibility Board to impose exemplary sanctions against communications media labeled as “*golpistas*” (favoring the overthrow of the government). For example, in the program *Aló Presidente* on May 10, 2009, in which the transfer of Conatel to the Ministry of Public Works and Housing was announced, President Hugo Chavez, in referring to a [media outlet], stated:

We all know who I am talking about. [...] In a dictatorship it would already have been shut down, but in Venezuela there is democracy because of which the corresponding organs will act on this case. [...] We will do what is necessary, and here we will wait for them. Impunity must end in Venezuela. [...] They are playing with fire, manipulating, inciting to hatred, every day [...]. I only say to them, and to the Venezuelan people, that this will not continue like this.

⁵³⁷ IACHR. *Annual Report 2005*. Chapter IV: Human Rights Developments in the Region, para. 356. Available at: <http://www.cidh.oas.org/annualrep/2005eng/toc.htm>.

⁵³⁸ IACHR. *Annual Report 2008*. Volume II: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III: Inter-American Legal Framework of the Right to Freedom of Expression, para. 200. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>.

[...] There is your responsibility, Diosdado, to carry on the battle with dignity [...], [we cannot] tolerate more journalistic terrorism from the private channels.⁵³⁹

538. Therefore, taking into account the standards described in this section, the IACHR exhorts the State to modify the text of Article 29 of the Law on Social Responsibility, to subject the interpretation of the provisions on sanctions to the mentioned regional standards, and to establish institutional, organic, and functional guarantees to ensure the independence of the authorities applying the laws on broadcasting with the aim of ensuring that the opening of administrative proceedings and the eventual imposition of sanctions in the framework of this instrument are the responsibility of impartial organs that are independent of the Executive Branch.

ii. The Organic Law on Education and the limitations on freedom of expression

539. On August 13, 2009, the National Assembly approved the Organic Law on Education (Official Gazette No. 5.929 of August 15, 2009). The IACHR calls the State's attention to the provisions contained in Articles 9, 10, and 11 of this law.⁵⁴⁰

540. The IACHR observes that the cited provisions establish that communications media (including private media) are "public services." Additionally, they consecrate a series of limitations that not only exceed the legitimate limitations derived from Article 13 of the American Convention, but also are described with enormous broadness, imprecision, and vagueness. Finally, the norms in question provide for the future establishment of regulations to implement the system of sanctions for the violation of the above-mentioned precepts.

541. In light of these dispositions, the IACHR is concerned that the classification or use of the category of "public services" for private communications media in Venezuela could be used to restrict the right to freedom of expression in a manner incompatible with Article 13 of the American Convention. The IACHR reminds the State that any restriction on freedom of expression must necessarily arise from causes clearly and expressly defined by the law and not from regulatory or administrative decisions; and that in all cases, the restrictions imposed on freedom of expression must be necessary to preserve the conditions that characterize a democratic society, consecrated in

⁵³⁹ Aló Presidente. May 10, 2009. "*Se acabará en Venezuela transmisión de mensajes de odio y conspiración*" (The transmission of messages of hate and conspiracy in Venezuela will end). Available in Spanish at: <http://alopresidente.gob.ve/noticia/se-acabara-en-venezuela-transmision-de-mensajes-de-odio-y-conspiracion.html>.

⁵⁴⁰ Article 9 provides the following: "Education and communications media. Social communications media, as public services, are essential instruments of the development of the educational process and, as such, they must carry out informative, educational, and recreational functions that contribute to the values and principles established in the Constitution of the Republic and the present Law, with knowledge, development of critical thought and attitudes to strengthen the collective life of the citizenry, territoriality, and nationality. [...] In the subsystems of the Educational System educational units have been created to contribute to the knowledge, understanding, use, and critical analysis of the content of social communications media. Additionally, the law and the regulations will regulate propaganda in defense of the mental and physical health of the population."

For its part, Article 10 states: "Prohibition of incitement to hatred. It is prohibited in all the educational institutions and centers in the country to publish and divulge programs, messages, publicity, propaganda, and promotions of any type, through print, audiovisual, or other media, that incite hatred, violence, insecurity, intolerance, deformation of the language; that attack values, peace, morals, ethics, customs, health, human coexistence, human rights, and respect for the rights of indigenous and afro-descendent peoples and communities; and that promote terror, discrimination of any type, the deterioration of the environment, and harm to democratic principles, national sovereignty, and national, regional, and local identity."

Finally, Article 11 establishes the following: "Prohibition of messages contrary to the national sovereignty. It is prohibited for educational institutions and centers to disseminate ideas and doctrines that are contrary to the national sovereignty and the principles and values consecrated in the Constitution of the Republic."

the American Convention. In this regard, it is essential to modify the above-mentioned provisions in those aspects that threaten the inter-American standards.

542. The IACHR takes into account that Article 13.5 of the American Convention expressly provides that: "Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law."

543. The norms cited from the Organic Law on Education establish grounds for the restriction of freedom of expression that are different from those established in Article 13 of the American Convention, such as that which prohibits, for example, revealing information that promotes the "deformation of the language" or that commits outrage against "values." Additionally, these dispositions contain ambiguous and imprecise descriptions that make it difficult to distinguish between prohibited conduct and conduct that is not prohibited. To summarize, these constitute norms that, on the one hand, go against the principle of strict legality applicable to restrictions on freedom of expression and, on the other hand, establish restrictions that hypothetically are not authorized by the American Convention.

544. Additionally, with respect to the norms that prohibit incitement to violence, as previously explained, these must have as a prerequisite strong, objective evidence that the person was not simply expressing an opinion, but also had the clear intention to commit an unlawful act and the real, present, and effective possibility of achieving his or her objectives. As a result, any regulation must not consider it sufficient to invoke as a reason to limit freedom of expression mere conjectures about eventual effects on the public order, or hypothetical circumstances derived from subjective interpretations by authorities of facts that do not clearly present a present, certain, objective, and imminent risk of violence.

545. For the forgoing reasons, the IACHR exhorts the State to adapt its legislation to the standards described herein.

iii. The classification of crimes against honor

a) The Penal Code

546. In March of 2005, the Penal Code was reformed to broaden the scope of the norms protecting the honor and reputation of state officials from the broadcasting of critical expressions that may be considered offensive.⁵⁴¹ Before the 2005 reform, the President of the Republic, the

⁵⁴¹ In the 2005 Annual Report, the IACHR stated: "The Commission and the Office of the Special Rapporteur also express their concern over the March 2005 amendment to the Criminal Code. The Office of the Special Rapporteur believes that this amendment strengthens and expands a legal framework that criminalizes forms of expression protected by the American Convention, by both journalists and private citizens. The Office of the Special Rapporteur observes that the amendment expands the reach of *desacato* laws in terms of the number of public officials protected, and in terms of content. It also observes that the new provisions increase the penalties for *desacato* and other forms of defamation, libel, instigation, outrage, and slander, among other criminal offenses. In [sic] also criminalizes new types of protest against the government, in both the public and private spheres, and increases the penalties for violating these laws." *IACHR. Annual Report 2005*. Chapter IV: Human Rights Developments in the Region, para. 353. Available at: <http://www.cidh.oas.org/annualrep/2005eng/toc.htm>. See also *IACHR. Annual Report 2005*. Volume III: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II, para. 227. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=662&IID=1>; Office of the Special Rapporteur—IACHR. March 28, 2005. *Press Release 118/05*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=402&IID=1>; *IACHR. Report on the Situation of Human Rights in Venezuela*, para. 451-467. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

Executive Vice President, the ministers of the government, the governors, the Mayor of the Metropolitan District of Caracas, the judges of the Supreme Court, the presidents of the Legislative Councils, and the superior judges could initiate penal proceedings for the crime of *desacato* (disrespect). The modification added to this list members of the National Assembly, functionaries of the National Electoral Council, the Attorney General, the Solicitor General, the Human Rights Ombudsman, the Comptroller General, and members of the High Military Command.

547. The text of Articles 147 and 148 of the Penal Code currently in force establishes the following:

Article 147. One who offends by word or in writing, or in any other manner disrespects the President of the Republic or whoever is taking his or her place, shall be punished with imprisonment of six to thirty months if the offense was grave, and with half of that if it was minor.

The penalty will be increased by one-third if the offense was committed publicly.

Article 148. When the acts specified in the previous article are carried out against the person of the Executive Vice President of the Nation, one of the Judges of the Supreme Court of Justice, a Cabinet Minister, a Governor of a state, a deputy of the National Assembly, the Metropolitan Mayor, a rector of the National Electoral Council, the Human Rights Ombudsman, the Solicitor General, the Attorney General, the Comptroller General of the Republic, or some members [sic] of the High Military Command, the penalty indicated in that article will be reduced to one half, and to one third when it relate[s] to mayors of municipalities.⁵⁴²

548. It should be noted that the reform of March of 2005 maintained the article related to the penal offense known as "*vilipendio*" (contempt), which consecrates a kind of *desacato* against the institutions of the State. The text of Article 149 of the Penal Code currently in force states:

Article 149. Whoever publicly denigrates the National Assembly, the Supreme Court of Justice, or the Cabinet, or the Council of Ministers, as well as one of the legislative councils of the states or one of the superior courts, shall be punished with imprisonment of fifteen days to ten months.

Half of this penalty will be applied against those who commit the acts referred to in this article with respect to municipal councils.

The penalty will be increased by half if the offense was committed while one of the enumerated bodies was exercising its official functions.⁵⁴³

549. In a communication of August 13, 2009, the State indicated that these norms, "seek to require personal responsibility on the part of those who incite illegal actions against the subjects of these norms, who affect the respect that they deserve as persons (human beings), which in turn agrees with respect for institutions, to avoid affecting public morale; because some institutions are headed by individuals against whom hate is encouraged, without factual basis to sustain it, which socially impedes the work of the institutions they direct or to which they belong. For example, Articles [147] and [148] of the Penal Code deal with a double protection, of the human being and of the position, with the aim of not weakening the State." It added that "publicly denigrating institutions (*vilipendio*) can seek to weaken them by discrediting them, to arrive at a

⁵⁴² Penal Code of Venezuela. Official Gazette No. 5768E of August 13, 2005. Available in Spanish at: <http://www.fiscalia.gov.ve/leyes/6-CODIGOPENAL.pdf>.

⁵⁴³ Penal Code of Venezuela. Official Gazette No. 5768E of August 13, 2005. Available in Spanish at: <http://www.fiscalia.gov.ve/leyes/6-CODIGOPENAL.pdf>.

collective contempt of that which they –according to the law–must carry out or accomplish.” Finally, it indicated that this type of speech, “as part of a plan or movement towards public disobedience, chaos, disturbing the public order or morale, cannot be tolerated by the State, since, with such tolerance it could be playing with its [survival].”⁵⁴⁴

550. In this respect, the justifications expressed by the State not only contribute to justify the existence and legitimacy of such provisions in a democratic order, but also, on the contrary, they provide reasons to impugn their compatibility with the American Convention. In effect, in contrast to what the State asserts, the organs of the inter-American system for the protection of human rights have been emphatic in maintaining that the vigor of a democracy is strengthened, among other things, due to the intensity of its debates over public issues and not due to the suppression of such debates. As a result, the States must commit themselves to a regulatory framework that promotes free, open, pluralistic, and uninhibited debate about all issues of public relevance, which requires designing institutions that permit discussion, rather than inhibiting it or making it difficult. As maintained by the Inter-American Court, this defense of freedom of expression includes the protection of affirmations that could be offensive, disturbing, or unpleasant for the State, since this is the requirement of a democratic order founded on diversity and pluralism. Additionally, the doctrine and jurisprudence have been coherent, consistent, and repetitive in indicating that critical expressions that question public authorities or institutions deserve a greater – not lesser–protection in the inter-American system. This has been affirmed by the Inter-American Court in each and every case resolved in the area of freedom of expression. The arguments presented by the State for applying the norms of the criminal law to criticism or dissidence clearly deviate from the considerations expressed here.

551. The application to the institutions themselves of the criminal law to limit or inhibit public discussions of great relevance is of particular concern. This is the case with the figures of *desacato* and *vilipendio* as they are consecrated in the above-cited norms of the Venezuelan Penal Code.

552. The IACHR and its Special Rapporteurship have repeatedly expressed their objections to the existence of criminal *desacato* laws like those that have just been discussed. In their estimation, *desacato* laws “conflict with the belief that freedom of expression and opinion is the ‘touchstone of all the freedoms to which the United Nations is consecrated’ and ‘one of the soundest guarantees of modern democracy.’”⁵⁴⁵ In this respect, *desacato* laws are an illegitimate restriction on freedom of expression, because: (a) they do not respond to a legitimate objective under the American Convention, and (b) they are not necessary in a democratic society. The IACHR has established that:

The use of *desacato* laws to protect the honor of public functionaries acting in their official capacities unjustifiably grants a right to protection to public officials that is not available to other members of society. This distinction inverts the fundamental principle in a democratic system that holds the Government subject to controls, such as public scrutiny, in order to preclude or control abuse of its coercive powers. If we consider that public functionaries acting in their official capacity are the Government for all intents and purposes, then it must be the individual and the

⁵⁴⁴ Bolivarian Republic of Venezuela. August 13, 2009. Questionnaire on human rights presented at the request of the Inter-American Commission on Human Rights. Office of the State Agent for Human Rights before the Inter-American and International Systems, pp. 114-115.

⁵⁴⁵ IACHR. *Annual Report 1994*. Chapter V: Report on the Compatibility of “*Desacato*” Laws with the American Convention on Human Rights. Title I: Introduction. OEA/Ser.L/V/II.88. Doc. 9 rev. 1. February, 17, 1995. Available at: <http://www.cidh.oas.org/annualrep/94eng/TOC.htm>.

public's right to criticize and scrutinize the officials' actions and attitudes in so far as they relate to the public office.⁵⁴⁶

553. For the IACHR, the application of the criminal standards on *desacato* against those who divulge expressions that are critical of public functionaries is *per se* contrary to the American Convention, given that it constitutes the application of subsequent penalties for the exercise of freedom of expression that are not necessary in a democratic society, and are disproportionate because of the serious effects on the broadcaster and on the free flow of information in society. *Desacato* laws are a means of silencing unpopular ideas and opinions, and they dissuade criticism by generating fear of judicial actions, criminal sanctions, and monetary sanctions. The legislation on *desacato* is disproportionate because of the sanctions it establishes for criticism of state institutions and their members, by which it suppresses the debate that is essential for the functioning of a democratic society, restricting freedom of expression unnecessarily.

554. On the other hand, the IACHR has explained its objections to the norms of defamation, insult, and slander particularly when these are used to prosecute those who have made critical statements about issues of public interest, about public persons, or about the functioning of institutions.

555. Additionally, the IACHR and its Special Rapporteurship have questioned the use of criminal law to protect the "honor" or "reputation" of ideas or institutions. In their opinion, public institutions do not have a right to honor; rather, they have the duty to maintain their legitimacy. This is achieved not through the suppression of public debate, but through the triumph of arguments in favor of institutions that respect the rule of law.

556. Contrary to what the State has asserted, critical expressions, information, and opinions about issues of public interest, about the functioning of the state and its institutions, or about public functionaries enjoy a greater level of protection under the American Convention, which means that the state must abstain more strictly from establishing limitations to these forms of expression.⁵⁴⁷ In effect, as has already been indicated, the legitimacy and strength of institutions is built as a result of public debate and not as a result of its suppression.

557. As the IACHR has repeatedly stated, the free circulation of ideas or expressions that are critical of public functionaries merits a special protection for the reasons that are summarized here: in the first place, because expressions or information that could offend public authorities are subject to a higher risk of censorship; in the second place, because deliberation about public issues or public functionaries is one of the essential conditions for society to be able to obtain information or hear points of view that are relevant to make collective decisions that are conscientious and well-informed; thirdly, because the functionaries that act in the name of the State, by virtue of the public nature of the functions they carry out and the resources they employ, must be subject to a greater degree of scrutiny and, for this reason, to a higher threshold of tolerance for criticism; and finally, because public functionaries have more and better possibilities to defend themselves in a public debate than persons who do not have official positions or functions.

⁵⁴⁶ IACHR. *Annual Report 1994*. Chapter V: Report on the Compatibility of "*Desacato*" Laws with the American Convention on Human Rights. Title IV: *Desacato* Laws are incompatible with Article 13 of the American Convention on Human Rights because they suppress the freedom of expression necessary for the proper functioning of a democratic society. Section B. OEA/Ser.L/V/II.88. Doc. 9 rev. 1. February 17, 1995. Available at: <http://www.cidh.oas.org/annualrep/94eng/TOC.htm>.

⁵⁴⁷ I/A Court H.R., *Case of Palamara-Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, paras. 83-84; I/A Court H.R., *Case of Herrera-Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, paras. 125 and 128.

558. On the other hand, the cited norms on *desacato* and *vilipendio* seriously compromise the principle of strict legality. In effect, the wording of these norms is so vague that it is simply impossible to distinguish between protected criticism and sanctionable conduct.

559. On this point, it is not superfluous to recall that there currently exists a valuable process in the entire region, through which the legislative powers and, in their case, the highest tribunals of justice, have been repealing or ordering the non-application of *desacato* laws, norms on *vilipendio*, and dispositions on insult and slander when they have been applied to sanction those who have referred to the behavior of public functionaries.⁵⁴⁸

560. In the *Report on the Situation of Human Rights in Venezuela* (2003), the IACHR has already stated that “a penalty that obstructs or restricts the dialogue necessary between a country’s inhabitants and those in public office cannot be legitimately imposed. Disproportionate penalties may silence criticism that is necessary to the public administration. By restricting freedom of expression to this degree, democracy is transformed into a system where authoritarianism will thrive, forcing its own will over society’s.”⁵⁴⁹

561. During recent years, the IACHR has received information that indicates that various journalists that worked for opposition communications media in Venezuela were subjected to criminal proceedings under the provisions on *desacato* and defamation. The IACHR recognizes that in Venezuela there is no systematic application of these provisions, however, it expresses its concern because in many of these cases, the proceedings remain open in the courts for many years, which produces an effect of intimidation and self-censorship among journalists and communications media.⁵⁵⁰ On the other hand, for reasons that have already been explained, the mere existence of these norms produces an intimidating effect that disproportionately affects the right to freedom of expression.

562. Therefore, as it did in the *Report on the Situation of Human Rights in Venezuela* (2003), the IACHR again concludes that the criminal legislation in Venezuela contains norms that are incompatible with Article 13 of the American Convention.⁵⁵¹ In consequence, the IACHR exhorts the Venezuelan State to act urgently to bring its criminal legislation into conformity with the standards described here with reference to the norms that regulate *desacato* and *vilipendio*.

⁵⁴⁸ Office of the Special Rapporteur—IACHR. June 22, 2009. *Press Release R38/09*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=750&IID=1>.

⁵⁴⁹ IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 462. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

⁵⁵⁰ IACHR. *Annual Report 2007*. Chapter IV: Human Rights Developments in the Region, para. 252. Available at: <http://www.cidh.oas.org/annualrep/2007eng/TOC.htm>; IACHR. *Annual Report 2006*. Volume II: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II, paras. 211-213. Available at: <http://www.cidh.oas.org/annualrep/2006eng/Rapporteurship%20for%20Freedom%20of%20Expression.pdf>; IACHR. *Annual Report 2005*. Chapter IV: Human Rights Developments in the Region, para. 363. Available at: <http://www.cidh.oas.org/annualrep/2005eng/toc.htm>; IACHR. *Annual Report 2005*. Volume III: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II, paras. 228-232. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=662&IID=1>.

⁵⁵¹ IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 452. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

b) The Organic Code of Military Justice

563. Article 505 of the Organic Code of Military Justice establishes that: “One who in some way injures, offends, or shows contempt for the National Armed Forces or one of its units will incur a sentence of three to eight years in prison.”⁵⁵²

564. As has already been explained, criminal sanctions against someone who expresses opinions that could “offend” or “show contempt for” institutions is contrary to the international standards on freedom of expression, given that it does not constitute a necessary restriction in a democratic society.

565. On the other hand, as in the cases of the criminal norms on *desacato*, *vilipendio*, defamation, insult, and slander, the wording of [article] 505 is so imprecise that it is impossible to foresee with certainty what conduct could give rise to criminal sanctions. In the opinion of the IACHR, the text of the norm blurs the line between the permissible exercise of freedom of expression with respect to the military institution and the realm of application of the legal prohibition. Given that there is no certainty about which behavior is considered illicit, any expression that could be interpreted by any person as a criticism of the Armed Forces could subsumed in the description of the offense in the article in question.

566. On this point, the Inter-American Court has stated clearly that any limitation consecrated in the criminal legal order must respond to the principle of strict legality or precision. In other words, any penal restriction must be expressly, precisely, and previously formulated, so that all persons know clearly what are the precise types of conduct that, if committed, would give rise to a penal sanction. Therefore,

crimes must be classified and described in precise and unambiguous language that narrowly defines the criminalized conduct, establishing its elements, and the factors that distinguish it from behaviors that are either not punishable or punishable but not with imprisonment. Ambiguity in describing crimes creates doubts and the opportunity for abuse of power, which is particularly undesirable when it comes to ascertaining the criminal liability of individuals and punishing their criminal behavior with penalties that exact their toll on fundamental rights such as life or liberty.⁵⁵³

567. The IACHR considers that this criminal law norm, as well as the referenced articles of the Penal Code, due to their vague and imprecise structure, go against the principle of strict legality (*nullum crimen sine lege*) that has been required by the Inter-American Court as a condition to accept a restriction on freedom of expression, and therefore, they are incompatible with Article 13 of the American Convention. As a result, the IACHR exhorts the State to bring its ordinary and military criminal legislation into conformity with the standards described here.

⁵⁵² It should be recalled that this is the norm under which Francisco Usón Ramírez was sentenced to six years and five months in prison. IACHR. *Application to the Inter-American Court of Human Rights in the case of Francisco Usón Ramírez (Case 12.554) versus the Bolivarian Republic of Venezuela*. Available at: http://www.cidh.org/demandas/12.554%20Francisco%20Uson%20Ramirez%20Venezuela%2025%20julio%202008%20EN_G.pdf.

⁵⁵³ I/A Court H.R., *Case of Lori Berenson-Mejía v. Peru*. Judgment of November 25, 2004. Series C No. 119, para. 125. Additionally, the Inter-American Court emphasized that the laws that provide for restrictions “must utilize precise criteria and not confer unlimited discretion upon the authorities responsible for their application.” See also: I/A Court H.R., *Case of Tristán-Donoso v. Panama*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, para. 116-117; I/A Court H.R., *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008. Series C No. 177, para. 63; I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, para. 124.

b. The use of blanket presidential broadcasts (cadenas presidenciales)

568. Article 192 of the Organic Law on Telecommunications provides the following:

Without prejudice to the legal provisions applicable to matters of security and defense, the President of the Republic may, either directly or through the National Telecommunications Commission, order operators of subscription television services, using their customer information channel, and the operators of open-to-air radio television broadcasters, to carry, free of charge, messages and official addresses made by the President or Vice-President of the Republic or cabinet ministers. Regulations shall be established to determine the mechanisms, limitations, and other features of these transmissions and broadcasts. Publicity by public entities is not subject to the obligation established in this article.⁵⁵⁴

569. For its part, Article 10 of the Law on Social Responsibility provides that the State:

[...] may broadcast its messages through radio and television services. To this end it may order providers of such services to provide free transmission of: [...] Messages contemplated in the Organic Law on Telecommunications. The order for free and obligatory transmission of official messages or addresses may be validly issued, among other ways, through the broadcasting of the message or address through the radio and television services administrated by the National Executive. [...] The providers of radio and television services and broadcasting by subscription may not interfere, in any manner, with the messages and addresses of the State that are broadcast within the terms of this article, and must conserve the same quality and aspect of the image and sound of the original format or broadcast.⁵⁵⁵

570. In virtue of the interpretation that the authorities have made of these dispositions, the President of the Republic is authorized to transmit all his speeches and presentations simultaneously, through all the communications media mentioned in the preceding norms, without any time limit. In this phenomenon, known as "blanket presidential broadcasts" (*cadenas presidenciales*), public and private broadcast media in Venezuela are obligated to connect to the frequency of the principal state channel, *Venezolana de Televisión* (VTV), and transmit the declarations of the President whenever he deems it necessary or expedient.

571. In its *Report on the Situation of Human Rights in Venezuela* (2003), the IACHR [verified]:

the large number of blanket government broadcasts in the media. Blanket broadcasts force media stations to cancel their regular programming and transmit information as ordered by the government. Many of them were of a duration and frequency that could be considered abusive in light of the information they conveyed, not always intended to serve the public interest.⁵⁵⁶

572. The IACHR received information from civil society organizations and the academic sector that indicates that between February 1999 and July 2009, the Venezuelan communications media transmitted a total of 1,923 blanket presidential broadcasts, equivalent to 1,252 hours and

⁵⁵⁴ Organic Law on Telecommunications. Official Gazette No. 36.970 of June 12, 2000. Available in Spanish at: http://www.tsj.gov.ve/legislacion/LT_ley.htm.

⁵⁵⁵ Updated text of the Law on Social Responsibility in Radio and Television. Official Gazette No. 38.333 of December 12, 2005. Available in Spanish at: http://www.conatel.gob.ve/download/marco_legal/Ley%20Responsabilidad%20Reforma.pdf.

⁵⁵⁶ IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 487. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

41 minutes, or in other words 52 days of uninterrupted broadcasting of presidential messages. Additionally, the information received indicates that in 2008, communications media had transmitted 186 blanket broadcasts (172 hours and 55 minutes), while in July of 2009, there were 75 messages broadcast (88 hours and 19 minutes). The information also shows that on January 13, 2009, the longest blanket broadcast of the period of 1999-2009 was aired, equivalent to 7 hours and 34 minutes. Such figures do not include the transmission of the program *Aló Presidente*, the ten minutes daily for governmental messages imposed by the Law on Social Responsibility in Radio and Television, or the official publicity that is typical in television or radio.⁵⁵⁷

573. Currently, international satellite and cable television are not linked to the obligation to transmit blanket broadcasts. However, on July 9, 2009, the Minister of Popular Power for Public Works, Diosdado Cabello, announced that a new administrative provision would be issued with the result that any cable broadcast that is more than 30 per cent “Venezuelan programming” (understood as any program that includes professional, financial, or technical participation of Venezuelan origin, including publicity) must have the same obligations that the laws impose on broadcast television. In this manner, some cable channels that are currently classified as foreign channels (given the narrowest interpretation possible of “Venezuelan programming”), must adapt to the new framework and comply not only with the obligation to transmit blanket broadcasts but also with the totality of the dispositions of the Law on Social Responsibility in Radio and Television.⁵⁵⁸

574. The IACHR recognizes the power of the President of the Republic and the high authorities of the State to use the communications media with the aim of informing the population about economic, social, or political issues of national relevance, that is to say, about those questions of preponderant public interest that they must be urgently informed of through independent communications media. In effect, as the Inter-American Court has stated, “making a statement on public-interest matters is not only legitimate but, at times, it is also a duty of the state authorities.”⁵⁵⁹

⁵⁵⁷ Communication of August 14, 2009 from the Center for Communications Studies of the Andrés Bello Catholic University to the Special Rapporteurship on Freedom of Expression. It also indicated, in relation to the referendum that took place in February of 2009, that: “The ‘blanket presidential broadcasts,’ sometimes dedicated to commemorations, with greater frequency to propaganda, and almost always to invective against the enemies of the Bolivarian Revolution were produced, on the average, every two days at the end of 2008. During this period the campaign was started by the Head of State for popular ratification of unlimited reelection. And it was also in this quarter that Hugo Chávez responded to the criticisms of the ‘blanket broadcasts.’ ‘Whoever wants to make ‘blanket broadcasts,’ let him become president! Why am I to blame for the fact that the presidents of the Fourth Republic did not make ‘blanket broadcasts?’ he said in a speech at the Teatro Teresa Carreño in Caracas. Between February 2, 1999, the date of his inauguration, and December 19, 2008, the Venezuelan Head of State spoke on the air 1,816 times with a total duration of 1,179 hours; that is to say, the equivalent of 49 days without interruption. Evidently, the extremely personal nature of the challenge posed by the referendum explains the great disequilibrium of the treatment he has given to communications media, public or private. As shown by the results of the study, presented on February 6, 2009 in the National Journalists’ Association (CNP, by its Spanish acronym) of Caracas, by the Media Monitoring Group (GMM, by its Spanish acronym), which includes investigators from the Andrés Bello Catholic University (UCAB, by its Spanish acronym) and the University of Gothenburg (Sweden). The analysis by GMM was based on 803 pieces of information from seven television channels and 477 from four radio stations in the period between January 22 and February 4, 2009. The part of the study referring to television is particularly enlightening.” Reporters without Borders. February 13, 2009. *Constitutional vote held in climate of polarised media and surfeit of presidential speeches*. Available at: <http://www.rsf.org/Constitutional-vote-held-in.html>.

⁵⁵⁸ National Assembly of the Bolivarian Republic of Venezuela. July 9, 2009. *Punto de información del ciudadano Ministro del Poder Popular para las Obras Públicas y Vivienda Diosdado Cabello para referirse a la situación actual de los servicios de radiodifusión sonora, televisión abierta y difusión por suscripción* (Point of information from citizen Minister of Popular Power for Public Works and Housing Diosdado Cabello to refer to the current situation of radio, broadcast television, and subscription services), pp. 12-15. Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=cat_view&gid=41&Itemid=124; Conatel. Draft Administrative Provision. Technical Norm on National Audiovisual Production Services. Available in Spanish at: <http://www.conatel.gob.ve/download/consulta/Proyecto%20PNA%20Cp.pdf>.

⁵⁵⁹ I/A Court H.R., *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 131; IACHR. *Annual Report* Continued...

575. The exercise of this power, however, is not absolute. The fact that the President of the Republic can, by virtue of the powers conferred by Venezuelan laws, interrupt the regular programming of the public and private communications media in the country does not authorize him to exercise this power without limits: the information that the president transmits to the public through blanket broadcasts should be that which is strictly necessary to serve urgent informational needs on subjects of clear and genuine public interest and during the time that is strictly necessary to transmit such information. In effect, as previously mentioned, freedom of expression protects not only the right of the media to disseminate information and their own and others' opinions freely, but also the right to be free from having content imposed upon them. Principle 5 of the Declaration of Principles on Freedom of Expression explicitly establishes that: "[r]estrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

576. In this sense, both the IACHR and its Special Rapporteurship,⁵⁶⁰ and some national organs of States party to the American Convention, applying international standards, have indicated that "it is not just any information that legitimizes the President of the Republic to interrupt regular programming; rather, it is that which deals with a collective interest in the knowledge of facts of importance to the public that are truly necessary for the real participation of citizens in the collective life. [...] [A]n intervention, even by the President of the Republic, without any type of limitation, restricts the right of citizens to inform themselves about other issues that interest them."⁵⁶¹

577. On the other hand, the IACHR considers that the lack of precision with respect to the establishment of limits for the use of blanket broadcasts in the Law on Social Responsibility and the Organic Law on Telecommunications could affect the informational equilibrium that the high-ranking state authorities are obligated to preserve, precisely by their position as guarantors of the fundamental rights of those under their jurisdiction.

578. The lack of control in the exercise of this power could degrade the legitimate purpose of this mechanism, converting it into a tool for propaganda. Already in the Joint Declaration of 2003 of the Special Rapporteurs for Freedom of Expression, it was clearly established that "[m]edia outlets should not be required by law to carry messages from specified political figures, such as the president."⁵⁶²

579. In summary, any intervention by the president using this mechanism must be strictly necessary to satisfy urgent requirements in matters of evident public interest. Permitting governments the unlimited use of independent communications media, under the justification of informing citizens about every issue related to the functioning of the state or about different issues

...continuation

2008. Volume II: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III: Inter-American Legal Framework of the Right to Freedom of Expression, para. 202. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>.

⁵⁶⁰ IACHR. *Report on the Situation of Human Rights in Venezuela*. OEA/Ser.L/V/II.118. Doc. 4 rev. 2., para. 487. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

⁵⁶¹ Constitutional Court of Colombia. November 8, 2001. Judgment C-1172/01. Presiding Judge: Alfredo Beltrán Sierra. See also Constitutional Court of Colombia. November 11, 2005. Judgment C-1153/05. Presiding Judge: Marco Gerardo Monroy Cabra.

⁵⁶² Joint Declaration of 2003 by the Special Rapporteur on Freedom of Opinion and Expression of the UN, the Representative on the Freedom of the Press of the OSCE, and the Special Rapporteur for Freedom of Expression of the OAS. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=88&IID=1>.

that are not urgent or necessary and that the citizenry can obtain information about from other sources, leads to, in practice, the acceptance of the right of governments to impose upon the communications media the content that they must broadcast. Any obligation to broadcast content not chosen by the media itself must conform strictly to the requirements imposed by Article 13 of the American Convention to be considered as an acceptable limitation on the right to freedom of expression.

580. As has been indicated by the Inter-American Court, “in a democratic society [it is necessary to] guarantee [...] the widest possible circulation of news, ideas and opinions as well as the widest access to information by society as a whole. Freedom of expression constitutes the primary and basic element of the public order of a democratic society, which is not conceivable without free debate and the possibility that dissenting voices be fully heard.”⁵⁶³ The Venezuelan State itself, in a communication of August 13, 2009, emphasized that it “has an interest in the development of pluralistic, diverse, and independent communications media.”⁵⁶⁴

581. Due to the foregoing considerations, the IACHR exhorts the State to bring its legislation regarding blanket presidential broadcasts into agreement with the standards described.

c. Statements by high-ranking state authorities against communications media and journalists based on their editorial line

582. In its *Report on the Situation of Human Rights in Venezuela* (2003), the IACHR warned that “President Hugo Chávez Frías made certain speeches against the media, which could have been interpreted by his followers as calling for aggression against the press. The IACHR, [...] was able to note that on occasions, President Chávez’s speeches were followed by acts of physical violence. President Chávez, like all the inhabitants of Venezuela, has the right to express himself freely and to offer his opinions about those he believes to be his opponents. Nevertheless, his speeches should take care to avoid being interpreted as incitements to violence.”⁵⁶⁵

583. In a particular manner, during 2008 and 2009 high-ranking authorities of the State discredited the work of journalists and the role of some independent communications media, accusing them of practicing “journalistic terrorism” and of fomenting a “discourse of hate” that affects the “mental health” of the Venezuelan population.⁵⁶⁶ As will be analyzed below, in some cases, these declarations have been followed by the opening of punitive administrative proceedings by Conatel, an entity that is dependent on the Executive Branch.

584. This type of statements led the Rapporteur of the United Nations for Freedom of Opinion and Expression and the Special Rapporteur for Freedom of Expression of the IACHR to issue a joint press release on May 22, 2009, in which they stated that the declarations of high-ranking state authorities against *Globovisión* and other private communications media in Venezuela contributed to generating “an atmosphere of intimidation” that seriously limited the right to freedom

⁵⁶³ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 69.

⁵⁶⁴ Bolivarian Republic of Venezuela. August 13, 2009. Questionnaire on human rights presented at the request of the Inter-American Commission on Human Rights. Office of the State Agent for Human Rights before the Inter-American and International Systems, p. 107.

⁵⁶⁵ IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 392. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

⁵⁶⁶ As will be seen later, after some of these declarations, there were increases in acts of violence against several of these communications media by groups of private individuals aligned with the government.

of expression in Venezuela. The special rapporteurs emphasized that “in a democracy, criticism, opposition, and contradiction must be tolerated as a condition of the principle of pluralism protected by the right to freedom of expression” and that, as a result, “[t]he job of authorities is to create a climate in which anyone can express his or her ideas without fear of being persecuted, punished, or stigmatized.”⁵⁶⁷ Below, there will be a summary of some of these pronouncements, with a brief reference to the facts that gave rise to them.

585. On October 13, 2008, the journalist Rafael Poleo, editor of the newspaper *El Nuevo País*, was invited to the program *Aló Ciudadano*, directed by Leopoldo Castillo and transmitted live on *Globovisión*. During the program Rafael Poleo stated the following: “One follows the trajectory of Benito Mussolini and the trajectory of Chávez and they are the same, and therefore I say with concern that Hugo is going to end up like Mussolini, hanging with his head down.” Immediately, Leopoldo Castillo warned the interviewee that “this cannot be said,” since his words could be interpreted as “advocacy of crime” or as “instigation,” and urged him to be prudent.⁵⁶⁸

586. On October 15, 2008, Andres Izarra, then-Minister of Popular Power for Communication and Information, declared that Rafael Poleo had carried out “a call to assassination,” “advocacy of crime” that aimed to continue “driving the matrix of fear” in the Venezuelan population. Minister Izarra also stated the following: “We call on the Social Responsibility Board on Radio and Television: please, do something, take a hand in this affair. This is a body of professional colleagues; there are various agents that must be able to pronounce against this type of attacks on freedom of expression.”⁵⁶⁹

587. On October 16, 2008, Conatel ordered on its own motion the opening of punitive administrative proceedings against [the] channel for the supposed violation of Article 29.1 of the Law on Social Responsibility for “broadcasting messages in its programming that [...] could promote, advocate for, or incite the commission of crimes, promote, advocate for, or incite alterations of the public order, [...] contrary to the security of the nation.”⁵⁷⁰

⁵⁶⁷ Office of the Special Rapporteur—IACHR. May 22, 2009. *Press Release R33/09*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=747&IID=1>; Ministry of Popular Power for Communication and Information of the Bolivarian Republic of Venezuela. May 22, 2009. *Venezuela considera inadmisibile uso de instancias de ONU y OEA para atacar a Estados miembros* (Venezuela considers it inadmissible to use the OAS and UN entities to attack Member States). Available in Spanish at: http://www.minci.gob.ve/noticias/1/189268/venezuela_considera_inadmisibile.html; Venezolana de Televisión. May 22, 2009. *Venezuela considera inadmisibile uso de instancias de ONU y OEA para atacar a Estados miembros* (Venezuela considers it inadmissible to use the OAS and UN entities to attack Member States). Available in Spanish at: <http://www.vtv.gob.ve/noticias-internacionales/18411>; Globovisión. May 22, 2009. *Jorge Valero: Es inadmisibile uso de instancias de la ONU y OEA para atacar a Venezuela* (Jorge Valero: It is inadmissible to use the OAS and UN entities to attack Member States). Available in Spanish at: <http://globovision.com/news.php?nid=117513>; Venezolana de Televisión. May 23, 2009. *Comunicado de OEA y ONU responde a los intereses de los medios privados* (Press Release by the OAS and UN responds to the interests of private media). Available in Spanish at: <http://www.vtv.gob.ve/noticias-nacionales/18430>.

⁵⁶⁸ Communication of December 18, [2008] from the State of Venezuela to the Office of the Special Rapporteur for Freedom of Expression.

⁵⁶⁹ El Universal. October 15, 2009. *Solicitan a CONATEL y Fiscalía actuar en caso de Rafael Poleo* (Conatel and the Attorney General’s Office requested to act in the case of Rafael Poleo). Available in Spanish at: http://www.eluniversal.com/2008/10/15/pol_art_solicitan-a-conatel_1093233.shtml.

⁵⁷⁰ As will be explained in detail later, on the morning of this same day, unidentified individuals threw a teargas bomb at the building where Leopoldo Castillo, host of *Aló Ciudadano*, resides. Communication of December 18, 2008 by the State of Venezuela to the Office of the Special Rapporteur for Freedom of Expression, p.4. Additionally, in its 2008 Annual Report, the IACHR stated that “the present environment of hostility and polarization has been prompted by the institution of administrative actions seeking to attach responsibility to media outlets independent of the government for views expressed on live programs by persons not belonging to the channel.” IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, para. 376. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm>.

588. On October 20, 2008, Minister Andrés Izarra declared during an interview that in Venezuela there was an “excess of freedom of expression.” Minister Izarra stated that opposition communications media were “active factors in [a] conspiracy [against the government that] belong[ed] to a political class that dominate[d] and continue[d] dominating [the] country.” He added that they were “tools for destabilization” and that therefore “he did not have sympathy for them.”⁵⁷¹

589. Another of the events that motivated declarations by high-ranking public authorities against private independent channels took place after the broadcasting, on May, 4, 2009, of news about an earthquake that had affected some Venezuelan localities. That morning, the producers of the television channel *Globovisión* tried without success to communicate with Francisco Garcés, president of the Venezuelan Foundation for Seismic Investigations (Funvisis), so he could explain the range of the seismic activity. Around 5:20 am, the general director of *Globovisión*, Alberto Federico Ravell, went on the air to inform about what had happened and stated that according to the United States Geological Survey, the earthquake had registered 5.4 on the Richter scale. He also indicated that the population should remain calm since no serious damages had been reported. Around 5:45 am, the Minister of Popular Power for Internal Relations and Justice, Tarek El Aissami, called Ravell’s presentation “inadequate” and “irresponsible” and stated that information of this type should only be broadcast following “a pronouncement by official authorities.”⁵⁷²

590. On May 5, 2009, [congresswoman] Cilia Flores, President of the National Assembly, asserted that Alberto Federico Ravell sought to “create anxiety to accuse the government.” At the conclusion of her presentation, the National Assembly voted to solicit [that] Conatel “[apply] the Law on Social Responsibility in Radio and Television to the channel *Globovisión* for the irresponsible declarations made by its owner [...], for having usurped functions inherent to national bodies.”⁵⁷³

⁵⁷¹ Hoy. October 20, 2008. *En Venezuela hay “exceso de libertad de expresión” según gobierno* (In Venezuela there is “an excess of freedom of expression” according to the government). Available in Spanish at: <http://www.hoy.com.ec/noticias-ecuador/en-venezuela-hay-exceso-de-libertad-de-expresion-segun-gobierno-313168.html>; Espacio Público. *Situación del derecho a la libertad de expresión e información en Venezuela 2008* (Situation of the right to freedom of expression and information in Venezuela), pp. 165-166. Available in Spanish at: <http://www.espaciopublico.info/images/documentos/informe%202008.pdf>.

⁵⁷² Communication of May 12, 2009, sent by *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression, pp. 6-11; YVKE Mundial. *Fuerte temblor sacudió región central del país esta madrugada sin causar daños* (Strong earthquake shook the central region of the country early this morning without causing damages). Available in Spanish at: <http://www.radiomundial.com.ve/yvke/noticia.php?23910>; Agencia Bolivariana de Noticias. May 4, 2009. *Venezolanos retoman sus actividades con normalidad* (Venezuelans return to their normal activities). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=180371&lee=10>; Tal cual. May 4, 2009. *El sismo de Globovisión* (The earthquake of *Globovisión*). Available in Spanish at: <http://www.talcualdigital.com/Avances/Viewer.aspx?id=20106&secid=29>; Agencia Bolivariana de Noticias. May 7, 2009. *Conatel abre procedimiento administrativo contra Globovisión* (Conatel opens administrative proceedings against *Globovisión*). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=180950&lee=1>; *Globovisión*. May 7, 2009. *Conatel abre procedimiento sancionatorio contra Globovisión por divulgación del sismo* (Conatel opens punitive proceeding against *Globovisión* for reporting on the earthquake). Available in Spanish at: <http://www.globovision.com/news.php?nid=116427>; CONATEL. May 7, 2009. *La Comisión Nacional de Telecomunicaciones inicia procedimiento administrativo sancionatorio al prestador de servicio de televisión abierta Corpomedios GV Inversiones, C.A., “GLOBOVISIÓN”* (The National Telecommunications Commission initiates punitive administrative against broadcast television provider Corpomedios GV Inversiones, C.A., “GLOBOVISIÓN”). Available in Spanish at: http://www.conatel.gov.ve/noticia_comp.asp?numn=2625.

⁵⁷³ El Universal. May 6, 2009. *AN solicita castigar a Globovisión por palabras de Ravell* (AN [National Assembly] requests sanctions against *Globovisión* for Ravell’s words). Available in Spanish at: http://www.eluniversal.com/2009/05/06/pol_art_an-solicita-castigar_1375632.shtml; Venezolana Televisión. May 6, 2009. *AN exhorta a Conatel para que sancione a Globovisión* (AN [National Assembly] exhorts Conatel to sanction *Globovisión*). Available in Spanish at: <http://www.vtv.gov.ve/noticias-nacionales/17707>; National Assembly of the Bolivarian Republic of Venezuela. May 5, 2009. *Exhortan a Conatel a aplicar la Ley Resorte a Globovisión* (Conatel urged to apply the *Ley Resorte* to *Globovisión*). Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_content&task=view&id=21859&Itemid=63.

591. On May 7, 2009, Conatel notified *Globovisión* of the opening, on its own motion, of punitive administrative proceedings “for the transmission, since the early morning [...] in a continuous and repetitious manner, [...], of messages alluding to the earthquake registered in Venezuela [...], given that those messages could have generated a sensation of anxiety and fear in the population, in an unjustifiable manner, unleashing a possible incitation to alterations of the public order.”⁵⁷⁴

592. Later, during the transmission of *Aló Presidente* on May 10, 2009, President Hugo Chavez announced that “the transmission of messages of hate and conspiracy by private communications media in Venezuela” would come to an end. In the program the Venezuelan President addressed “the enemies of the Fatherland” and warned them of the following:

Bourgeois and *pitiyanquis*, make yourselves believe the road stories, believe that I wouldn't dare: You could soon get a surprise, you are playing with fire, you are manipulating, inciting to hatred [...], and much more, every day; do not be mistaken, I am only telling you that things will not continue in this way. [...] First, I have confidence in the organs of the State responsible for initiating all the steps. I have confidence that the other corresponding powers will carry out all measures that they can. [...] I only want to remind you that those who are transmitting messages of hate, inciting the military to speak out, stating that the President must die—in a direct or subliminal manner--, that criticism is one thing and that conspiracy is another. [...] This country requires responsibility and transparency, these airwaves that the private companies use are public property, they are social property, do not believe you are the owners of the broadcasting spectrum, nobody is. [...] Not long ago there was a strong earthquake. I immediately called the Vice President, he was awake; I called Funvisis, they informed me and I gave instructions; I called the mayor of Los Teques, the governor of Aragua; and then comes one of those crazies with a gun, he is a crazy with a gun, this is going to stop, [...] or I will no longer call myself Hugo Rafael Chávez Frías. If a strike comes, we will be waiting for it, but this is a country that must respect itself, here we all have to respect each other.⁵⁷⁵

593. On May 11, 2009, the Minister of Popular Power for Foreign Affairs, Nicolás Maduro, accused *Globovisión* of “terrorism,” and its director Alberto Ravell of practicing “journalistic terrorism” and generating “anxiety and terror” in the Venezuelan population through the transmission of information about the earthquake. Minister Maduro maintained that the “broadcasting spectrum must not be used to generate terrorism,” and that one “thing [was] to inform about the seismic activity or about the rains and another thing [was] to use a natural occurrence to try to generate anxiety or terror in the population in order to try to gain political advantage for purposes inconsistent with the Constitution and public peace.”⁵⁷⁶

⁵⁷⁴ Communication of May 20, 2009 by the State of Venezuela to the Office of the Special Rapporteur for Freedom of Expression, pp. 2-3.

⁵⁷⁵ Aló Presidente. May 10, 2009. “*Se acabará en Venezuela transmisión de mensajes de odio y conspiración*” (“The transmission of messages of hate and conspiracy will end in Venezuela”). Available in Spanish at: <http://alopresidente.gob.ve/noticia/se-acabara-en-venezuela-transmision-de-mensajes-de-odio-y-conspiracion.html>; Noticiero Digital. May 10, 2009. *Ese loco con un cañón se va a acabar o me dejo de llamar Hugo Chávez* (This crazy with a gun will stop or I will stop calling myself Hugo Chávez). Available in Spanish at: <http://www.noticierodigital.com/?p=30397>. Venezolana de Televisión. May 10, 2009. *Presidente advierte a televisoras y emisoras radiales que violan las leyes y retan al Estado* (President warns television and radio stations that violate the laws and challenge the State). Available in Spanish at: <http://www.vtv.gov.ve/noticias-nacionales/17883>.

⁵⁷⁶ La Verdad. May 11, 2009. *PSUV acusa a Globovisión y Ravell de “terrorismo mediático”* (PSUV accuses Globovisión and Ravell of “media terrorism”). Available in Spanish at: <http://www.laverdad.com/detnotic.php?CodNotic=12412>; ADN. May 11, 2009. *Nicolás Maduro acusa de “terrorismo” al canal privado Globovisión* (Nicolás [Maduro] accuses the private channel Globovisión of “terrorism”). Available in Spanish at: <http://www.adn.es/sociedad/20090511/NWS-3054-Globovision-Nicolas-Maduro-terrorismo-privado.html>.

594. In the blanket presidential broadcast of May 14, 2009, the President Hugo Chávez affirmed:

We are in the presence of a terrorist attack from within: we must tell them, the white-collar terrorists, bourgeois terrorists wearing ties that do not wear hoods nor are they in the mountains. They have radio stations, television stations, and newspapers. [...] We cannot allow four bourgeois going crazy with hate to continue to fire the shrapnel that they fire every day against the public morale. This cannot be permitted. [...] Daily terrorism, daily violation of the Constitution, daily violation of the laws, aggression against persons, the national collective, in many cases with name and surname. [...] We all know who I am talking about. [...] In a dictatorship they would already have been shut down, but there is democracy in Venezuela so the corresponding organs will act on this case. [...] We will do what we have to do, and here we will wait for them. Impunity must end in Venezuela. [...] They are playing with fire, manipulating, inciting to hatred, every day [...]. I only tell them, and the Venezuelan people, that this will not continue.⁵⁷⁷

595. In the same broadcast, President Hugo Chávez announced the transfer of Conatel to the Ministry of Popular Power for Public Works and Housing and, as previously stated, ordered the head of this department, Diosdado Cabello, to be in charge of investigations in the case of the complaints against *Globovisión*. "Here is your responsibility Diosdado, to continue the battle with dignity," to tolerate no more "journalistic terrorism by private channels," added the Venezuelan president.⁵⁷⁸

596. On May 15, 2009, while making a protocolary visit to Argentina, President Hugo Chávez stated in a press conference that no one should be surprised when the State makes "decisions about some communications media" that "practice terrorism." The leader added that in Venezuela, "some communications media, [...] continue[d] to practice terrorism, not criticism, [but] terrorism."⁵⁷⁹

597. On May 17, 2009, the Minister of Popular Power for Public Works and Housing, Diosdado Cabello, assured that he would not allow himself to be "blackmailed" by the communications media, and that "at the moment of making decisions they would make them conscientiously" and it would not "affect their pulse." Additionally, the Minister emphasized that in

⁵⁷⁷ Venezolana de Televisión. May 15, 2009. *En Venezuela no hay dictadura, y no se tolerará la impunidad* (In Venezuela there is no dictatorship and impunity is not tolerated). Available in Spanish at: <http://www.vtv.gov.ve/noticias-nacionales/18097>; Communication of May 15, 2009 from *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression, pp. 6-11; Telesur. May 14, 2009. *Chávez: Globovisión está jugando con fuego* (Chávez: Globovisión is playing with fire). Available in Spanish at: <http://www.telesurtv.net/noticias/secciones/nota/49925-NN/chavez-globovision-esta-jugando-con-fuego/>; Globovisión. May 14, 2009. *Presidente Chávez: "No me sigan retando"* (President Chávez: Do not continue to challenge me). Available in Spanish at: <http://www.globovision.com/news.php?nid=116922>.

⁵⁷⁸ Venezolana de Televisión. May 15, 2009. *En Venezuela no hay dictadura, y no se tolerará la impunidad* (In Venezuela there is no dictatorship and impunity is not tolerated). Available in Spanish at: <http://www.vtv.gov.ve/noticias-nacionales/18097>; Noticias 24. May 15, 2009. *Diosdado Cabello será el encargado de investigar a Globovisión* (Diosdado Cabello will be in charge of investigating Globovisión). Available in Spanish at: <http://www.noticias24.com/actualidad/noticia/46944/diosdado-cabello-sera-el-encargado-de-investigar-a-globovision/comment-page-6/>; National Assembly of the Bolivarian Republic of Venezuela. Decree 6.707 of the Presidency of the Republic (Official Gazette No. 39.178 de 14 de mayo de 2009). Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&Itemid=190.

⁵⁷⁹ Globovisión. May 15, 2009. *Presidente Chávez: "No se extraña nadie" cuando se tomen decisiones sobre algunos medios de comunicación* (President Chávez: "No one is surprised" when decisions are made about some communications media). Available in Spanish at: <http://www.globovision.com/news.php?nid=116931>.

Venezuela there “existe[d] social communications media that represent a public health problem,” and that “they were going to work to put an end to the broadcasting oligopoly.”⁵⁸⁰

598. On May 19, 2009, the Agent of the State for cases before the IACHR, Germán Saltrón, stated that if *Globovisión's* concession were revoked “they themselves [would be] to blame for the situation.” Germán Saltrón emphasized that:

Media owners [had to] understand that freedom of expression [had] [...] limitations and [that] if *Globovisión* continue[d] with this attitude that threaten[ed] human rights it would simply be necessary to revoke its concession for violating the law. [...] We will wait to see what will be the sanction. Wait until Conatel indicates what is the sanction and based on that they can go to the Court and we will defend ourselves and demonstrate that they are the ones who have violated freedom of expression. [...] *Globovisión* alone has this attitude and it is necessary to apply the Law to it.⁵⁸¹

599. In the June 25, 2009 edition of *Aló Presidente*, the Venezuelan Head of State indicated the following:

[T]he conspiracy continues, and above all, they are playing at something that has to do with a communications media and the possibility that exists, because it exists, it is in the laws and it is part of the daily evaluation, the possibility that exists that the concession they have will end, this is a possibility and I will say that it could be ended early, because this [concession] has an end, it has a term. But it is possible that it could be earlier, that it could be before the stipulated time period ends, this is possible for violation of laws, challenging the government, spreading rumors, inciting to assassination, civil war, hatred, etc. Therefore, they are preparing themselves for this, they believe that if this occurs the government will fall and they are going to try to do it. Fine, we will prepare ourselves because it is probable that this will happen, and if this happens and the opposition takes to the streets [and] calls for a coup

⁵⁸⁰ Globovisión. May 18, 2009. *Diosdado Cabello: Nosotros no vamos a caer en chantajes* (Diosdado Cabello: We will not be blackmailed). Available in Spanish at: <http://www.globovision.com/news.php?nid=117074>; Diario La Verdad. May 17, 2009. *Cabello asegura que “no le temblará el pulso” para actuar contra los medios* (Cabello assures that “his pulse will not waver” in acting against the media). Available in Spanish at: <http://laverdad.com/detnotic.php?CodNotic=12673>; Globovisión. May 17, 2009. *Diosdado Cabello: “Nosotros no vamos a caer en chantaje”* (Diosdado Cabello: “We will not be blackmailed”). Available in Spanish at: <http://www.globovision.com/news.php?nid=117074>. El Universal. May 18, 2009. *Cabello actuará contra medios sin “chantaje” por las denuncias* (Cabello will act against the media without “blackmail” for the denunciations). Available in Spanish at: http://politica.eluniversal.com/2009/05/18/pol_art_cabello-actuara-cont_1392627.shtml. On the same day, the deputy Cilia Flores assured that the closure of *Globovisión* “was due to public clamoring because they were continuing their policy of journalistic terrorism, they do not reflect and here there are laws and institutions that have to carry out procedures and, in accordance with the law, apply sanctions.” The parliamentarian added the following: “The fish dies by its mouth. They continue acting with this terrorism, with these calls to destabilization, to overthrow of the government, to violence. This is why we have denounced *Globovisión*, which maintains this conduct of disrespect, of violation of the Constitution, of abuse of the people and this is good that the people see it, what they are and that they do not reflect and do not rectify their conduct.” El Universal. May 17, 2009. *Cilia Flores aseguró que cierre de Globovisión es un clamor del Pueblo* (Cilia Flores assures that the closure of *Globovisión* is a cry from the People). Available in Spanish at: http://www.eluniversal.com/2009/05/17/pol_ava_cilia-flores-aseguro_17A2333325.shtml; Globovisión. May 17, 2009. *Cilia Flores: “Instancias internacionales” de oposición no tienen credibilidad* (Cilia Flores: “International instances” of opposition do not have credibility). Available in Spanish at: <http://www.globovision.com/news.php?nid=117081>; El Universal. May 18, 2009. *Cabello actuará contra medios sin “chantaje” por las denuncias* (Cabello will act against the media without “blackmail” for the denunciations). Available in Spanish at: http://politica.eluniversal.com/2009/05/18/pol_art_cabello-actuara-cont_1392627.shtml.

⁵⁸¹ Globovisión. May 19, 2009. *German Saltrón: “Los dueños de medios deben comprender que la libertad de expresión tiene sus limitaciones”* (German Saltrón: “Media owners must understand that freedom of expression has its limitations”). Available in Spanish at: <http://globovision.com/news.php?nid=117241>. Agencia Bolivariana de Noticias. May 19, 2009. *La CIDH está parcializada en contra del Gobierno venezolano* (The IACHR is biased against the Venezuelan Government). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=182539&lee=16>; Agencia Bolivariana de Noticias. May 19, 2009. *En Venezuela existe un monopolio del espectro radioléctrico* (In Venezuela there is a monopoly of the radio broadcasting spectrum). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=182550&lee=16>.

[d'état], [...], fine, we will also go into the streets and we will sweep them away. We will be disciplined in this, we will do what they want, what they order, if they go into the streets, we will be in the streets waiting, the street belongs to the people, not to the bourgeoisie, therefore it is necessary to be always in the streets, mobilized, if they take their guns we will [fight] with our guns too, they will see.⁵⁸²

600. On July 9, 2009, Minister Diosdado Cabello stated, in a presentation to the National Assembly, the following:

And we sought and received the Commander's instruction: Democratize the use of the broadcasting spectrum, and we are going to do that, to end the broadcasting oligopoly, media oligopoly, and we are going to do that. We are not going to succumb to blackmail, they are not going to provoke us, we are not going to give in on anything because we owe absolutely nothing to the oligarchy in this country. [...] And as the father Camilo Torres said: If the dominant class, the oligarchy, does not give up its privileges willingly, the people will obligate them by force. And in this case in Venezuela, the people are the Government and we are going to do it. [...] What we cannot permit to occur in Venezuela is that which is occurring in Honduras, in spite of and 7 years after what happened here in 2002, to follow the same format as in Honduras and have success. How sad that is, how sad! Are we going to wait for this to happen? We must not, colleagues, I believe we must make a reflection, we will truly give the power to the people so they will be able to communicate, to broadcast what they are doing, and one who is not guilty does not have to fear it. The truth will set us free. The truth that is in the streets, not *Globovisión's* truth, not the insurrectionist media's truth.⁵⁸³

601. The IACHR considers that pronouncements like those made by the Venezuelan president and other high-ranking state officials could have the effect of polarizing society and influencing through arbitrary pressures the content that journalists and communications media transmit, which according to Article 13.2 of the American Convention, can only be the object, when necessary, of subsequent penalties imposed following a due legal process.

602. In this context, the IACHR reminds the State that, in the framework of the American Convention, the right to freedom of expression must be guaranteed not only with respect to the ideas and information received favorably or considered inoffensive or indifferent, but also with respect to those that offend, shock, worry, or are unwelcome to public functionaries or some sector of the population. These are precisely the exigencies of the pluralism, tolerance, and spirit of openness without which there is no truly democratic society.⁵⁸⁴ As the Special Rapporteurship stated in its pronouncement of May 22, 2009, "public officials, especially those in the highest positions of the State, have a duty to respect the circulation of information and opinions, even when these are contrary to its interests and positions."⁵⁸⁵

⁵⁸² The speech is part of the series called *Aló Presidente Teórico*. Communication of July 3, 2009 from *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression.

⁵⁸³ National Assembly of the Bolivarian Republic of Venezuela. July 9, 2009. *Punto de información del ciudadano Ministro del Poder Popular para las Obras Públicas y Vivienda Diosdado Cabello para referirse a la situación actual de los servicios de radiodifusión sonora, televisión abierta y difusión por suscripción* (Point of information from citizen Minister of Popular Power for Public Works and Housing Diosdado Cabello to refer to the current situation of the radio, broadcast television, and subscription services), pp. 9 and 17. Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=cat_view&gid=41&Itemid=124.

⁵⁸⁴ I/A Court H.R., *Case of Herrera-Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, para. 113; I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile*. Judgment of February 5, 2001. Series C No. 73, para. 69.

⁵⁸⁵ Office of the Special Rapporteur—IACHR. May 22, 2009. *Press Release R33/09*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=747&IID=1>.

603. Additionally, as the Inter-American Court stated, the Venezuelan authorities must take into account that “the people who work for a specific social communication firm can see the situations of risk they would normally face exacerbated if that firm is the object of an official discourse that may cause, suggest actions, or be interpreted by public officials or sectors of the society as instructions, instigations, or any form of authorization or support for the commission of acts that may put at risk or violate the life, personal safety, or other rights of people who exercise journalistic tasks or whoever exercises that freedom of expression.”⁵⁸⁶

604. It is fundamental to remind the State that public functionaries who exercise their right to freedom of expression are also “submitted to certain limitations since they must verify in a reasonable, but not necessarily exhaustive, manner the facts on which they base their opinions, and they should do so with a diligence even greater to the one employed by individuals due to their high investiture, the ample scope and possible effects their expressions may have on certain sectors of the population, and in order to avoid that citizens and other interested people receive a manipulated version of specific facts.”⁵⁸⁷

605. The IACHR recognizes that the Venezuelan authorities have the duty to enforce the law and the right to respond to criticism they consider unjust or misleading. However, it is essential to take into account, as the Inter-American Court has indicated, with respect to public functionaries, that “they are in a position of guarantors of the fundamental rights of the individual and, therefore, their statements cannot be such that they disregard said rights.”⁵⁸⁸ Additionally, the Inter-American Court has indicated that “public officials, particularly the top Government authorities, need to be especially careful so that their public statements do not [...] induce or invite other authorities to engage in activities that may abridge the independence or affect the judge’s freedom of action.”⁵⁸⁹

606. In light of the declarations cited above, the IACHR urges the authorities of the State to provide the most simple and effective of protections: the public and categorical recognition of the legitimacy of criticism and dissidence in a constitutional democracy like the Venezuelan democracy. As a result, it exhorts the authorities to abstain from formulating stigmatizing declarations that could lead to acts of violence or arbitrary decisions by public officials.

⁵⁸⁶ I/A Court H.R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 194, para. 143. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_194_ing.pdf; I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195, para. 155. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_195_ing.pdf.

⁵⁸⁷ I/A Court H.R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 194, para. 139. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_194_ing.pdf; I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195, para. 151. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_195_ing.pdf.

⁵⁸⁸ I/A Court H.R., *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 131; IACHR. *Annual Report 2008*. Volume II: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III: Inter-American Legal Framework of the Right to Freedom of Expression, paras. 202-205. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>.

⁵⁸⁹ I/A Court H.R., *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 131; IACHR. *Annual Report 2008*. Volume II: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III: Inter-American Legal Framework of the Right to Freedom of Expression, paras. 202-205. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>.

d. Disciplinary, administrative and criminal proceedings against communications media and journalists

607. The IACHR observes that in recent months, there has been an increase in punitive administrative proceedings against communications media critical of the government. In particular, it concerns the IACHR that in a number of these cases, investigations and administrative proceedings were initiated after the highest-ranking state authorities called upon public entities, especially Conatel, "to act" against *Globovisión* and other independent media that are critical of the government.

608. Previously, in its 2008 Annual Report, the IACHR warned that "the present environment of hostility and polarization has been prompted by the institution of administrative actions seeking to attach responsibility to media outlets independent of the government for views expressed on live programs by persons not belonging to the channel."⁵⁹⁰

i. The case of *Globovisión*

609. In the past twelve months, the IACHR has become aware of the opening by Conatel, on its own motion, of at least six administrative proceedings against *Globovisión* for the presumed violation of Article 29.1 of the Law on Social Responsibility in Radio and Television, and Articles 171.6 and 172 of the Organic Law on Telecommunications.⁵⁹¹

610. As has already been mentioned, the first administrative proceeding was opened on October 16, 2008. On October 13, 2008, Rafael Poleo, a guest on a television program that the channel transmits live, stated the following: "One follows the trajectory of Benito Mussolini and the trajectory of Chávez and they are the same, and for this reason I say with concern that Hugo is going to end up like Mussolini, hanging with his head down." The journalist who was interviewing him immediately called on him to be prudent.

611. According to the State, Conatel ordered the opening of an administrative file against the channel "considering that this television company disseminated in its programming messages that, presumably, could promote, advocate for, or incite the commission of crimes, promote, advocate for, or incite alterations of the public order, and could be contrary to national security."⁵⁹² According to the State, "[i]n the analysis of the facts that gave rise to the initiation of these

⁵⁹⁰ IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, para. 376. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm>.

⁵⁹¹ Article 171.6 of the Organic Law on Telecommunications provides: "Article 171. Without prejudice to the fines that are to be applied in accordance with the provisions in this Law, [one] will be sanctioned with revocation of the administrative permit or the concession, according to the case: [...] (6) One who utilizes or allows the use of telecommunications services for those who are qualified, as a means of assisting in the commission of crimes."

Article 172 of the Organic Law on Telecommunications states: "Article 172. The revocation of the administrative permit or concession of natural or legal persons will cause them to be unable to obtain another one, either directly or indirectly, for a period of five years. This period will be counted starting at the moment the administrative decision becomes final. In the case of legal persons, the disqualification will extend to administrators or other organs responsible for the management and direction of the sanctioned operator that were carrying out these functions during the time of the infraction, if they had knowledge of the situation that led to the revocation and did not notify the National Telecommunications Commission in writing before the opening of the punitive proceedings. The violation of the disqualifications and incompatibilities established in this Law will cause natural persons responsible for such a transgression to receive a special disqualification from participating in the financing, or being administrators or managers, of telecommunications companies, either directly or indirectly, for a period of five years."

⁵⁹² Communication of December 18, 2008 by the State of Venezuela to the Office of the Special Rapporteur for Freedom of Expression, pp. 2-5.

punitive administrative proceedings, it impossible not to recall that Benito Mussolini was an Italian dictator, who, after he was overthrown, was executed by partisan militants and later his body was exhibited, in humiliating conditions, hanging by the feet in an Italian gas station.”⁵⁹³

612. In relation to this occurrence, the representatives of *Globovisión* have also stated that the Attorney General’s Office has initiated two criminal investigations “identified by the codes ‘01-F20-0678-08’ and ‘01-F20-0362-09.’” The representatives of the communications media emphasized that they were “now getting into criminal territory with this issue in which there is already an open administrative investigation, aiming with this at criminalizing journalistic work and making press workers responsible for the political opinions of a guest who, in addition, expressed himself live and was interrupted by the moderator of the program.”⁵⁹⁴

613. The second administrative proceeding was initiated on November 27, 2008. On November 24, 2008, after the close of an electoral event, the channel transmitted live the declarations of the then-candidate for the governorship of the state of Carabobo, Henrique Salas Feo, in which he stated that “From here in Carabobo we want to demand immediate results from the National Electoral Council, but as they continue delaying the process, I want to ask all the people of Carabobo to accompany me, we will go to the Electoral Council to reclaim the triumph of Carabobo.”

614. Conatel considered that the transmission of the transcribed declarations could “promote, make apology for, or incite alterations of the public order.” In this respect, the State indicated: “the referenced citizen issued a call in front of a concentration of persons—transmitted by *Globovisión*—to accompany him to the Regional Electoral Council, with the aim of ‘reclaiming the triumph of Carabobo.’ It should be emphasized that the declarations referred to were disseminated while the state of Carabobo was experiencing a moment of great political and social tension, because the small difference in the number of votes for the two principal candidates for the governorship of the state prevented the National Electoral Council from issuing official results about the development of the electoral process in this region. In this context, the declarations made by the citizen Henrique Salas Feo could unleash highly conflictive acts in this entity.”⁵⁹⁵

615. It is important to remember that in its 2008 Annual Report, the IACHR stated that it viewed with concern that the application of Article 29 of the Law on Social Responsibility “could result in the attachment of responsibility to a media outlet for an activity of a third party, not employed by the channel, in a program broadcast live, or for the broadcast of the speech of a politician.”⁵⁹⁶

616. The third administrative proceeding was initiated on May 7, 2009. As was already stated, in the early morning of May 4, 2009, the channel reported on the occurrence of an earthquake in the state of Miranda. At 5:20 am, the channel broadcast live a telephone call from its general director Alberto Federico Ravell, which informed about the earthquake and called for calm and tranquility. As of that moment, the state media had not reported on the tellurian movement.

⁵⁹³ Communication of December 18, 2008 by the State of Venezuela to the Office of the Special Rapporteur for Freedom of Expression, pp. 2-5.

⁵⁹⁴ Communication of July 3, 2009 by *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression.

⁵⁹⁵ Communication of December 18, 2008 by the State of Venezuela to the Office of the Special Rapporteur for Freedom of Expression, pp. 6-7.

⁵⁹⁶ IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, para. 381. Available at: <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm>.

Messages about the earthquake were transmitted all that day. Conatel considered that the news coverage of the earthquake could “generate a sensation of anxiety and fear in the population, in an unjustified manner, unleashing a possible incitation to alterations of the public order.”⁵⁹⁷

617. On December 2, 2008 and May 15, 2009, the Special Rapporteurship sent communications to the State requesting information about the three punitive administrative proceedings mentioned. The State responded to the requests for information in communications dated December 18, 2008 and May 20, 2009. In the letters, the State explained the reasons for which the proceedings had been opened and indicated that the first two administrative proceedings were almost complete and that the files were “in the hands of the Social Responsibility Board, which is the professional body in charge, in accordance with the Law on Social Responsibility in Radio and Television, of pronouncing the judgment that would put an end to the punitive administrative proceedings.” With respect to the third proceeding, the State specified that this was “in the Phase of Substantiation by the Juridical Consultancy of the National Telecommunications Commission, and [that] once the Phase of Substantiation is complete, it would be remitted to the Social Responsibility Board so that they can decide what is appropriate.” It is important to note that as of the date of this report, the IACHR has not received additional information indicating that these proceedings have been concluded.

618. On June 16, 2009, Conatel initiated a fourth punitive administrative proceeding against *Globovisión*, this time for the presumed violation of Article 171.6 of the Organic Law on Telecommunications. Conatel considered that *Globovisión* had “transmitted messages that could have been linked to acts which could be classified in the Venezuelan Penal Code as crimes, among them those transmitted on these dates: (i) October 13, 2008, on the program *Aló Ciudadano*; (ii) March 22, 2009, on *Globovisión* programs and segments such as: *Noticias Globovisión* and *Aló Ciudadano*, among others; (iii) April 3 to April 6, 2009, in programs and segments such as: *Usted Lo Vio*, *Tres para las Nueve*, *Entretelones del Jucio*, *Noticias Globovisión*, among others; (iv) May 19, 2009, during the program *Buenas Noches*; and (v) May 10, 2009, on the program *Aló Venezuela*.” According to Conatel, “*Globovisión*, as a provider of broadcast television services, could have contributed to the commission of crimes, making or permitting use of its service for this [...], [which] [could] lead to the determination of criminal responsibility for *Globovisión*.”⁵⁹⁸

619. The Special Rapporteurship received information that indicates that the fourth administrative proceeding has been suspended until the Attorney General’s Office can determine the criminal responsibility *Globovisión* could have incurred. According to Conatel: “for the sake of guaranteeing the constitutional rights that may correspond to [...] *Globovisión*, [it is] necessary to suspend the present proceeding until the corresponding criminal responsibilities can be determined within the framework of the investigations being carried out by the Attorney General’s Office. In this manner, once the existence or non-existence of criminal responsibilities has been determined, and in consequence, the commission or non-commission of crimes, the present proceeding will be restarted, initiating its substantiation in order to determine the propriety of the cause of action for revocation invoked, for which the corresponding notification will be made to the presumed transgressor.”⁵⁹⁹

⁵⁹⁷ Communication of May 20, 2009 by the State of Venezuela to the Office of the Special Rapporteur for Freedom of Expression, pp. 2-3.

⁵⁹⁸ Communication of July 3, 2009 by *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression. In the opinion of the representatives of the communications media, the actions of the Attorney General’s Office “show the coordination of actions by the Venezuelan state through the penal system with the object of now supporting the ‘revocation’ of the license that *Globovisión* uses to transmit information to the public every day, creating an additional risk of penalties including the deprivation of liberty for the managers, journalists, and other workers of *Globovisión*.”

⁵⁹⁹ Communication of October 5, 2009 by *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression.

620. On July 3, 2009, Conatel initiated, upon its own motion, a fifth punitive administrative proceeding against *Globovisión*. The proceeding, which also involves three other television channels and two radio stations, was started because of a publicity campaign prepared by two civil society organizations that criticized the "Proposed law on social property." Through a precautionary measure, Conatel also ordered the immediate cancellation of the publicity notices arguing that they contained "messages that presumably cause[d] distress, fear, and anxiety in the population that could foment collective conduct having a tendency to alter the public order and that could be contrary to national security," and also prohibited the dissemination of similar messages. (See below).

621. It should be noted that on July 3, 2009, the Attorney General's Office also placed a precautionary measure before a criminal court against one of the organizations that prepared the campaign and against the newspaper *Últimas Noticias*, after it published two graphic notices showing nude women, covering their breasts, with the message: "The law on social property will take away what it is yours; no to the Cuban law." The public prosecutors requested the suspension of the publication of these notices, arguing that it dealt with a case of violence against women. According to the information received, the request by the Attorney General's Office was granted and the publicity notices were removed, by judicial order, from the pages of the newspaper.

622. Lastly, on September 7, [2009], Conatel initiated a sixth punitive administrative proceeding against *Globovisión* and an independent producer, with the aim of determining "if the conduct carried out by the same incurred in the actions described in Articles [sic] 28 number 4 literal 'x' and in number 1 of Article 29 of the Law on Social Responsibility."⁶⁰⁰

623. According to Conatel, without stating precisely the content of the messages, "on September 3, 2009, in the program called *Buenas Noches* produced by KIKO COMUNICACIONES AL REVES, C.A. [...], which is transmitted by *Globovisión* [...], in its character as a provider of broadcast television services, disseminated messages that appeared through a character generator as messages supposedly sent by users via text message. [...] [By] disseminating messages like those referred to [...], one can observe that they could violate that which is provided under the Law on Social Responsibility [...], given that the mentioned messages could be inciting to disregard for institutions, to the realization of a coup d'état, and to the generation of alterations of the public order, presumably attacking the national security. It should be emphasized that the messages were transmitted in a context in which they promoted public demonstrations, with which a climate of tension and anxiety could be generated in the population, through implicit and explicit messages that presumably allude to acts of violence and the realization of a *coup d'état* in the country."⁶⁰¹

624. On the same day, Minister Diosdado Cabello affirmed that he had also requested the Office of the Attorney General of the Republic to open a criminal investigation against *Globovisión* for the transmission of this content. According to the state official, the messages incited to "coup

⁶⁰⁰ Article 28 of the Law on Social Responsibility provides: "Article 28. Sanctions. Without prejudice to the civil and criminal penalties, it is possible to impose sanctions of cession of airtime for the dissemination of cultural and educational messages, fines, suspension of the administrative permit, and revocation of the administrative permit or of the concession. [...] 4. A provider of radio, television, or subscription services will be sanctioned, in cases in which it is applicable, with a fine of one per cent to two percent of the gross income earned in the fiscal year immediately prior to the one in which the infraction was committed, as well as the cession of airtime for the dissemination of cultural and educational messages when: [...] x) S/he disseminates messages that incite to noncompliance with the current legal norms."

⁶⁰¹ Communication of October 5, 2009 from *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression.

d'état and assassination."⁶⁰² However, the content of each of these messages was not concretely clarified or specified.

625. In relation to the opening of these investigations, the IACHR reaffirms, as does the Special Rapporteurship in its pronouncement of June 26, 2009, that the states have the authority to regulate the broadcasting spectrum and carry out punitive administrative proceedings to ensure compliance with the legal dispositions.⁶⁰³ Nevertheless, the IACHR reminds the Venezuelan state that in the exercise of that power, it must promote pluralism and diversity, as well as guarantee access to the broadcasting spectrum under conditions of equality and non-discrimination.⁶⁰⁴

626. The forgoing implies that any administrative investigation that could lead to the application of sanctions against communications media must comply with, at a minimum, the following requirements: (1) it must be completely subject to the most favorable law in force; (2) the applicable law must not contain vague and imprecise terms that could lead to the arbitrary application of sanctions that limit freedom of expression; (3) any legal restriction on freedom of expression must pursue ends that are compatible with the American Convention; (4) any sanction must be proportionate and strictly necessary for the satisfaction of the legitimate goals that the law establishes; (5) in any case due process of the law must be fully guaranteed; and (6) the organ of application of the law must offer guarantees of autonomy, independence, and impartiality.

627. In summary, the decision to sanction a communications media, and especially to revoke its license or permit, must be strictly legal, reasonable, and proportionate to the offense committed and be governed by the universal principal of good faith. Therefore, it will not be acceptable and it will corrupt the entire proceeding if the functionaries responsible for applying the law had in consideration discriminatory reasons, such as the editorial line of a communications media, to adopt the mentioned decisions.

628. The affirmations of the highest-ranking authorities against the investigated media, the facts which gave rise to the opening of the administrative proceedings, the broadness with which the Law on Social Responsibility seems to be interpreted by the competent authorities in the cited cases, the lack of autonomy that Conatel appears to have with respect to the interests of the Executive Branch, among other factors, suggests that the editorial line of the investigated media was the motivation to initiate the punitive proceedings that have just been described.

629. For the reasons that have been expressed, the IACHR expresses its profound concern about these acts and urges the State, as it did in the *Report on the Situation of Human*

⁶⁰² Conatel. September 7, 2009. *Diosdado Cabello: Procedimiento administrativo sancionatorio contra Globovisión no intenta regular la libertad de expresión sino hacer cumplir la ley* (Diosdado Cabello: Punitive administrative proceedings against Globovisión do not seek to regulate freedom of expression but rather to enforce the law). Available in Spanish at: http://www.conatel.gob.ve/noticia_comp.asp?numn=2678; Globovisión. September 9, 2009. *Fiscalía investiga denuncia de Diosdado Cabello contra Globovisión* (Attorney General's Office investigates denunciation by Diosdado Cabello against Globovisión). Available in Spanish at: <http://www.globovision.com/news.php?nid=126903>; Globovisión. September 7, 2009. *Conatel notifica nuevo procedimiento sancionatorio a Globovisión* (Conatel announces new punitive proceedings against Globovisión). Available in Spanish at: <http://www.globovision.com/news.php?nid=126696>; Globovisión. September 5, 2009. *Ministro Cabello anuncia apertura de procedimiento sancionatorio contra Globovisión* (Minister Cabello announces the opening of punitive proceedings against Globovisión). Available in Spanish at: <http://www.globovision.com/news.php?nid=126535>.

⁶⁰³ Office of the Special Rapporteur—IACHR. June 26, 2009. *Press Release R41/09*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=751&IID=1>.

⁶⁰⁴ IACHR. *Annual Report 2002*. Volume III, Chapter IV: Freedom of Expression and Poverty. Available at: <http://www.cidh.oas.org/relatoria/docListCat.asp?catID=32&IID=1>.

Rights in Venezuela (2003), to respect scrupulously the standards of the inter-American system for the protection of human rights in the administrative or judicial proceedings that they decide.

ii. **Prohibition of broadcasting publicity contrary to a proposed law of interest to the government: The case of Cedice and Asoesfuerzo**

630. As was stated in the previous section, on July 3, 2009 Conatel initiated a punitive administrative proceeding against *Venevisión, Meridiano TV, Televen, Globovisión, Onda 107.9 FM, and Fiesta 106.5 FM*, for the transmission of notices of a publicity campaign of the Centro de Divulgación del Conocimiento Económico para la Libertad (hereinafter, “Cedice”) and the Asociación Civil para el Fomento y Promoción del Esfuerzo (hereinafter, “Asoesfuerzo”) called “In Defense of the Right to Property.” In the same resolution, Conatel issued a precautionary measure against *Venevisión, Meridiano TV, Televen, Globovisión, Onda 107.9 FM, and Fiesta 106.5 FM*, so that they would abstain “immediately from disseminating any propaganda that is part of the campaign ‘In Defense of Property’ offered by the advertisers CEDICE and ASOESFUERZO, in their various versions, both on radio and on television.”⁶⁰⁵

631. The pieces that that were prohibited from dissemination were advertisements contracted by Cedice and Asoesfuerzo as part of a campaign against the so-called “Proposed law on social property” under consideration by the National Assembly. In these pieces, various characters (such as one representing the granddaughter of a baker, the son of a driver, a farmer, a housewife, among others) affirmed that they and their parents “had worked very hard for what they had” and closed saying: “If they try to take it from me, I will defend it.” At the end of the ads the off-camera announcer indicated: “Property is your pride, defend private property. [...]. For a country of property owners.”⁶⁰⁶

632. According to Conatel, “these advertisements contained messages that presumably cause anguish, fear, and anxiety in the population that could foment conduct by the collective that tends to alter the public order and could be contrary to the national security [...]. [G]iven that the

⁶⁰⁵ It should be noted that the opening of the administrative proceedings also affects Cedice and Asoesfuerzo. Conatel. July 3, 2009. Administrative Provision No. PADSR-1.427 of July 2, 2009.

⁶⁰⁶ Specifically, Conatel indicated that the publicity spots suspended that were part of the mentioned campaign are the following: Asoesfuerzo: (1) What does private property mean to you?; (2) Why is it important to defend private property?; (3) Do you feel that your private property is threatened in today’s Venezuela? Available in Spanish at: <http://www.asoesfuerzo.com>; Cedice: (4) Don’t mess with my parents. Shop version; (5) Don’t mess with my parents. Bakery version; and (6) Don’t mess with my parents. Driver version. Available in Spanish at: <http://www.cedice.org.ve>. Conatel also affirmed the creation of “versions of ‘the propaganda’ to be transmitted by radio, including the version ‘No to the Cuban law’ [...] announced by CEDICE.” Conatel. July 3, 2009. Administrative Provision No. PADSR-1.427 of July 2, 2009. See also: Conatel. July 3, 2009. *Por presuntas infracciones a la Ley RSRTV Conatel inicia procedimiento administrativo sancionatorio a medios radioeléctricos que difundieron propagandas de CEDICE y ASOESFUERZO que presuntamente podrían alterar el orden público* (For presumed infractions of the Law RSRTV [Law on Social Responsibility in Radio and Television] Conatel initiates punitive administrative proceedings against broadcast media that distributed advertisements of CEDICE and ASOESFUERZO that could presumably alter public order). Available in Spanish at: http://www.conatel.gob.ve/noticia_comp.asp?numn=2653; Globovisión. July 6, 2009. *Gobierno venezolano dicta medida de censura previa, prohibiendo la difusión en radio y TV de una campaña a favor de la propiedad privada y abre un nuevo procedimiento contra Globovisión* (Venezuelan government issues a measure of prior censorship, prohibiting the transmission by radio and television of a campaign in favor of private property and opens a new proceeding against Globovisión). Communication of July 5, 2009 from *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression. Available in Spanish at: <http://www.globovision.com/news.php?nid=121136&clave=a%3A1%3A%7Bi%3A0%3Bs%3A7%3A%22cedice+%22%3B%7D>; Globovisión. July 3, 2009. *Conatel abrió quinto procedimiento contra Globovisión en seis meses* (Conatel opens fifth proceeding against Globovisión in six months). Available in Spanish at: <http://www.globovision.com/news.php?nid=120854&clave=a%3A1%3A%7Bi%3A0%3Bs%3A7%3A%22cedice+%22%3B%7D>; CEDICE. August 6, 2009. *Video censurado por procedimiento administrativo de Conatel* (Video censored by administrative proceedings of Conatel). Available in Spanish at: <http://www.cedice.org.ve/detalle.asp?id=2993>.

advertisements urge the defense of private property, the intended receivers of the message could adopt various types of conduct, including aggressive ones, with the aim of defending themselves from a supposed threat, which could lead to alterations of the public order, especially taking into consideration that it does not appear in 'the advertisements' that they express the idea of resorting to legal means to exercise that defense."⁶⁰⁷

633. On the other hand, on the same date, the Attorney General's Office presented a request for precautionary measures before the Second Tribunal on Violence against Women in the Metropolitan Area of Caracas to ask that the newspaper *Últimas Noticias* suspend the publication of two notices by Cedice that showed the image of a nude pregnant woman, and a nude woman in a defenseless state, covering their breasts, with the message: "The law on social property will take away what is yours; no to the Cuban law."

634. The Attorney General's Office requested the suspension of the publications because it considered that they could go against Articles 15.15 and 53 of the Organic Law on the Right of Women to a Life Free of Violence. According to Article 15.15 of that law, "media violence" is "the exposition, through any communications media, of a woman, girl, or adolescent that, directly or indirectly exploits, discriminates, dishonors, humiliates, or attacks her dignity for economic, social, or power reasons. It is also understood as media violence the use and abuse by communications media of women's, girls', or adolescents' bodies." For its part, Article 53 of this instrument defines "public offense for reason of gender" with the following text: "The communications professional, or a non-professional who carries out work related to this discipline, and in the exercise of this occupation offends, injures, or denigrates a woman for reasons of gender through a media of communication, must indemnify the woman who is the victim of violence with the payment of a sum not less than two hundred (200 U.T.) nor greater than five hundred tributary units (500 U.T.) and make a public apology by the same media used to commit the offense and with same extension of time and space." On July 6, 2009, the Second Tribunal on Violence against Women of the Metropolitan Area of Caracas rejected the request from the Attorney General's Office.⁶⁰⁸

635. On July 10, 2009, the Attorney General's Office appealed the measure and on August 14, 2009, the Court of Appeals on Violence Against Women of the Metropolitan Area of Caracas resolved to order the newspaper *Últimas Noticias* and Cedice to suspend publication of the publicity notices, with the aim of preventing "new acts of violence, allowing for the safeguarding of the physical and psychological integrity and the environment of women expeditiously and

⁶⁰⁷ Conatel. July 3, 2009. *Por presuntas infracciones a la Ley RSRTV Conatel inicia procedimiento administrativo sancionatorio a medios radioeléctricos que difundieron propagandas de CEDICE y ASOESFUERZO que presuntamente podrían alterar el orden público* (For presumed infractions of the Law RSRTV [Law on Social Responsibility in Radio and Television] Conatel initiates punitive administrative proceedings against broadcast media that distributed advertisements of CEDICE and ASOESFUERZO that could presumably alter public order). Available in Spanish at: http://www.conatel.gob.ve/noticia_comp.asp?numn=2653.

⁶⁰⁸ Second Tribunal on Violence against Women in function of Control, Hearing, and Measures of the Criminal Judicial Circuit of the Judicial District of the Metropolitan Area of Caracas. Judicial resolution of July 6, 2009. Issue AP01-S-2009-013642; Globovisión. July 6, 2009. *Ministerio Público solicitó a Tribunal suspender dos avisos publicitarios de Cedice* (Attorney General's Office requests Tribunal to suspend two publicity notices by Cedice). Available in Spanish at: <http://www.globovision.com/news.php?nid=121142&clave=a%3A1%3A%7Bi%3A0%3Bs%3A7%3A%22cedice+%22%3B%7D>; Globovisión. July 12, 2009. *Ministerio Público apeló decisión de tribunal que negó suspensión de avisos publicitarios de Cedice* (Attorney General's Office appealed decision of tribunal that denied suspension of Cedice publicity notices). Available in Spanish at: <http://www.globovision.com/news.php?nid=121641&clave=a%3A1%3A%7Bi%3A0%3Bs%3A7%3A%22cedice+%22%3B%7D>.

effectively.” The decision of the Court of Appeals also established the prohibition of the mentioned advertisement “in all the social communications media in the country.”⁶⁰⁹

636. It should be stated that on July 9, 2009, the Minister Diosdado Cabello made a presentation before the National Assembly in which he suggested that these decisions had been adopted to protect the “mental health” of the Venezuelan population, and that investigations would be launched into the source of the funding for these campaigns.⁶¹⁰

637. Subsequently, the IACHR received information indicating that on October 6, 2009, the National Office for Intelligence and Prevention Services (DISIP, by its Spanish acronym) of the Ministry of Popular Power for Interior Relations and Justice cited directors and personnel of Cedice as witnesses in the framework of the penal investigation FN20NN-038-2009, which is being carried out by the 20th Public Prosecutor of the Attorney General’s Office of the Metropolitan Area of Caracas.

638. The IACHR also learned that on September 17, 2009, the DISIP, through the Superintendency of Banks and Other Financial Institutions, requested all the banks and financial institutions in the country to inform it, in the context of case No. F66-NN-0027-09 assigned to the Sixty-Sixth Public Prosecutor of the Attorney General’s Office of the Metropolitan Area of Caracas, if Cedice had accounts in those entities. Additionally, on September 29, 2009, the Office for Investigations against Terrorism of the Corps on Scientific Penal and Criminal Investigations, through the Superintendency of Banks and Other Financial Institutions, requested information, in the framework of case No. G-137.026, from all the banks and financial institutions in the country about the accounts and other financial instruments in the name of Cedice and Asoesfuerzo. Finally, on September 30, 2009, the Division of Investigations and Protection in the Matter of Children, Adolescents, Women, and Families of the Corps on Scientific Penal and Criminal Investigations of the Ministry of Popular Power for Interior Relations and Justice, through the Superintendency of Banks and Other Financial Institutions, requested information, in the framework of case No. G-

⁶⁰⁹ Court of Appeals of the Criminal Judicial Circuit of the Judicial District of the Metropolitan Area of Caracas on Violence against Women. Judicial Resolution No. 135-09 of August 14, 2009. Issue No. CA-803-09-VCM; Office of the Attorney General of the Bolivarian Republic of Venezuela. August 15, 2009. *Prohíben difusión en medios de comunicación de publicidad de Cedice que denigra a la mujer* (Dissemination by communications media of Cedice publicity denigrating women prohibited). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa1508.htm>; El Universal. August 15, 2009. *Tribunal vuelve a prohibir la difusión de los avisos de Cedice* (Tribunal prohibits dissemination of Cedice notices). Available in Spanish at: http://deportes.eluniversal.com/2009/08/16/pol_art_tribunal-vuelve-a-pr_1526642.shtml; El Nacional. August 15, 2009. *Prohíben difusión de publicidad de Cedice* (Dissemination of Cedice publicity prohibited). Available in Spanish at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/94573/Honduras/Proh%C3%ADben-difusi%C3%B3n-de-publicidad-de-Cedice; Globovisión. August 15, 2009. *Prohíben difusión de publicidad de Cedice por considerar que “denigra” a la mujer* (Dissemination of Cedice publicity considered to “denigrate” women prohibited). Available in Spanish at: <http://www.globovision.com/news.php?nid=124518>.

⁶¹⁰ In the speech, Minister Diosdado Cabello stated: “Last week we made the decision to suspend the publicity notices of Asoesfuerzo and Cedice, on television and radio. And I want to say it here, in the National Assembly. I said something there that is the root of the issue, where do the resources to finance this campaign come from? They made themselves crazy; they spoke about freedom of expression. No, I am speaking about the legitimization of capital, I am speaking of money laundering, and we have asked the Attorney General’s Office to investigate the facts to determine how an association that was created in May by a gentleman who had never paid one bolívar in taxes to the country could contract with a television station for 3 million strong bolívares in the month of June. Where did these riches come from? I am talking about a television station. No, no. I am taking the case of a television station and I have the contract. Of a television station! This is occurring all over the country. And they went for the side of freedom of expression. No, it is not freedom of expression, it deals with the mental health of the Venezuelans.” National Assembly of the Republic of Venezuela. July 9, 2009. *Punto de información del ciudadano Ministro del Poder Popular para las Obras Públicas y Vivienda Diosdado Cabello para referirse a la situación actual de los servicios de radiodifusión sonora, televisión abierta y difusión por suscripción* (Point of information from citizen Minister of Popular Power for Public Works and Housing Diosdado Cabello to refer to the current situation of the radio, broadcast television, and subscription services), p. 17. Available in Spanish at: http://www.asambleanacional.gov.ve/index.php?option=com_docman&task=cat_view&gid=41&&Itemid=124.

137.036, from all the banks and financial institutions about the accounts, movements, and operations carried out by Cedice in the last six months.

639. On July 13, 2009, the Special Rapporteurship requested information from the State in relation to these facts. This request was reiterated in a communication of October 8, 2009. As of the date of this report, however, no response to these requests for information has been received.

640. The IACHR expresses its deep concern to the State about these measures and reminds it that Article 13.2 of the American Convention provides explicitly that the exercise of freedom of expression cannot be subject to prior censorship. The Constitution of the Bolivarian Republic of Venezuela itself establishes the same principle in its Article 57, which states that “every person has the right to express his or her thoughts, ideas, or opinions freely [...] and to make use of any medium of communication for this purpose [...] without the establishment of prior censorship.”⁶¹¹ In the same sense, Article 2 of the Law on Social Responsibility indicates that “the interpretation and application of [this norm] shall be subject, without prejudice to all of the other constitutional provisions” to the principle of “prohibition of prior censorship.”⁶¹²

641. The IACHR has repeatedly stated that prior censorship is the prototypical extreme and radical violation of freedom of expression, precisely because “through the public power, means are established to impede the free circulation of information, ideas, opinions, or news prior [to their dissemination] by any type of proceeding that subjects the expression or dissemination of information to the control of State.”⁶¹³

642. On the other hand, it should be reiterated that which has already been expressed to the State, in that freedom of expression must be guaranteed not only with respect to the dissemination of ideas and information that are received favorably or are considered inoffensive or indifferent, but also with respect to those that offend, shock, worry, or are unwelcome to public functionaries or to a sector of the population.⁶¹⁴

643. Additionally, the IACHR considers it important to remind the State that the application of extreme measures that limit the exercise of freedom of expression based on that which is provided in Article 13.4 of the American Convention, especially in the context of elections or the consideration of legislative reforms, as in the present case, cannot be imposed based on mere conjectures about eventual, hypothetical effects on the public order. In each case, it is necessary to show that there is a certain, real, and objective risk of a severe effect on public order that can only be addressed through proportionate and reasonable restrictions on the exercise of freedom of expression in the terms established by Article 13 of the American Convention.

⁶¹¹ Constitution of the Bolivarian Republic of Venezuela. Official Gazette No. 36.860 of December 30, 1999. Available in Spanish at: <http://www.constitucion.ve/constitucion.pdf>.

⁶¹² Updated text of the Law on Social Responsibility in Radio and Television. Official Gazette No. 38.333 of December 12, 2005. Available in Spanish at: http://www.conatel.gob.ve/download/marco_legal/Ley%20Responsabilidad%20Reforma.pdf.

⁶¹³ IACHR. *Annual Report 2008*. Volume II: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III: Inter-American Legal Framework of the Right to Freedom of Expression, para. 123. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>.

⁶¹⁴ I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, para. 113; I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile*. Judgment of February 5, 2001. Series C No. 73, para. 69.

644. The IACHR considers that the measures of control that the State has been adopting could constitute acts of censorship incompatible with the parameters provided in the American Convention. In this sense, it urges the State to ensure that the competent authorities take into account the standards described here and adopt the measures necessary to guarantee the exercise the right to freedom of expression in relation to the facts summarized in this section.

645. Finally, the IACHR exhorts the State to take into account that, in accordance with Principle 5 of the Declaration of Principles: “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information, violate the right to freedom of expression.”

iii. The case of theatrical associations

646. The IACHR received information that indicates that in Venezuela there is no legal framework ensuring that the assignation of subsidies for the arts and culture is carried out in an objective manner, respecting the State’s obligation of neutrality. In this context, it was informed that the *Asociación Cultural Skena*, the *Asociación Civil Teatro del Duende*, which received subsidies from the Ministry of Popular Power for Culture, were excluded from the Agreements on Cultural Cooperation through which they were assigned resources for carrying out their activities in the state of Miranda. According to information provided to the IACHR, the Ministry of Popular Power for Culture had justified its decision based on the criteria applicable in so-called “exceptional cases,” according to which they “do not finance groups and individuals whose pernicious public conduct affects the collective psychological and emotional stability of the population, making use of offensive language, discrediting, lying, and manipulating through media campaigns with these aims.”⁶¹⁵

647. The *Asociación Teatral Grupo Actoral 80* found itself in a similar situation. According to the information received by the IACHR, in August of 2009 the entity that studies the assignation of subsidies (*Mesa Técnica de Teatro y Circo de los Convenios de Cooperación Cultural para la Plataforma del Instituto de las Artes Escénicas y Musicales*, PIAEM) proposed to exclude the *Asociación Teatral Grupo Actoral 80* from the list of groups that received economic assistance from the State in the Capital District. According to the information reported, the cancellation of the subsidy was a consequence of the critical opinions of the director of the *Asociación Teatral Grupo Actoral 80* with respect to some decisions of the government about cultural policies. For the cancellation of the subsidy, the clause of the Agreements on Cultural Cooperation was applied that prohibits financing of “groups and individuals whose pernicious public conduct affects the collective psychological and emotional stability of the population, making use of offensive language, discrediting, lying, and manipulating through media campaigns with these aims.” It should be noted that due to the lack of agreement among the members of the *Mesa Técnica* to determine the exclusion of the *Asociación Teatral Grupo Actoral 80*, it was requested that the case be “elevated to higher instances of the Ministry of Popular Power for Culture for its resolution.”⁶¹⁶

⁶¹⁵ Ministry of Popular Power for Culture. State Office of Miranda. Document No. 24-08. In the document, “Criteria for the execution of the Agreements on Cultural Cooperation in Performing Arts and Musicals 2009” are also detailed. Information provided on November 2, 2009 by Sinergia to the Office of the Special Rapporteur for Freedom of Expression in the framework of the 137th Ordinary Period of Sessions of the IACHR.

⁶¹⁶ Minutes of the Results of the Technical Committees of the Agreements on Cultural Cooperation 2009. Program for Performing Arts and Musicals. Technical Committee for Theater and Circus. Agreement 7. September 1, 2009. Information provided by Sinergia to the Office of the Special Rapporteur for Freedom of Expression on November 2, 2009, in the context of the 137th Ordinary Period of Sessions of the IACHR. See also: Sinergia. *Amenazas a los derechos humanos y a la democracia en Venezuela. Informe comprehensivo de seguimiento. Octubre 2009* (Threats to human rights and

648. Additionally, on January 21, 2009, the *Fundación El Ateneo de Caracas* was notified with an eviction order by the Ministry of Popular Power for Economics and Finance. According to the information received, the measure was justified based on the upcoming expiration of the contract for a loan on the building, owned by the State, and on the necessity of using these installations for the University of the Arts. The day before, a group of armed individuals, led by Lina Ron, had entered the building to attack leaders of the Bandera Roja political party who were meeting there. During this incident, Lina Ron stated that “the installations of Ateneo [were] being taken by the extreme right” and that “by her instructions, they would be taken for the revolution.” After learning of the decision by the Ministry of Popular Power for Economics and Finance, the general director of *Ateneo de Caracas*, Carmen Ramia, indicated that the eviction order was based on the organization’s pluralism. In her opinion, this was a consequence of the fact that *El Ateneo de Caracas* accepted “what comes from the opposition as well as that which comes from the government” and emphasized that this was “an institution that [had] its doors open to everyone.”⁶¹⁷ The IACHR expressed its concern about this occurrence, since other theater groups have indicated that the eviction of *Ateneo de Caracas* is one more manifestation of the intentions of governmental officials to stifle “free cultural creation” in Venezuela.⁶¹⁸

iv. Restrictions of the right to personal liberty: The case of Gustavo Azócar

649. On December 28, 2000, journalist Gustavo Azócar, known for having made important denunciations of corruption in the state of Táchira, was denounced before the Attorney General’s Office under the argument that the station that he worked for had neglected to broadcast some publicity notices about the state lottery. The oral phase of these penal proceedings began on May 11, 2009.

650. According to the information received, the trial was postponed for more than nine years, during which the journalist was prohibited from leaving the country, giving statements, or

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democracy in Venezuela. Comprehensive follow-up report. October 2009), p. 18; El Universal. March 2, 2009. *No debe permitirse la censura. Entrevista a Héctor Manrique* (Censorship must not be permitted. Interview with Héctor Manrique). Available in Spanish at: http://www.eluniversal.com/2009/03/02/til_art_no-debe-permitirse_1286893.shtml; El Nacional. October 6, 2009. *Las conciencias de los teatreros no están en venta* (The consciences of theater workers are not for sale). Available in Spanish at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/102601/Entretimiento/Las-conciencias-de-los-teatreros-no-est%C3%A1n-en-venta.

⁶¹⁷ El Nacional. January 21, 2009. *Ordenan desalojo del Ateneo de Caracas* (Eviction of *Ateneo de Caracas* ordered). Available in Spanish at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/64766/Pol%C3%ADtica/Ordenan-desalojo-del-Ateneo-de-Caracas; Noticias 24. January 21, 2009. *Ordenan desalojar El Ateneo de Caracas el 6 de mayo* (Eviction of *Ateneo de Caracas* ordered on May 6). Available in Spanish at: <http://www.noticias24.com/actualidad/noticia/23174/presidente-%C2%BFque-le-pasa-con-el-ateneo-de-caracas/comment-page-1/>; El Nacional. May 20, 2009. *Chavistas arremeten contra instalaciones del Ateneo* (Chávez supporters attack installations of *Ateneo*). Available in Spanish at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/64506/Pol%C3%ADtica/Chavistas-arremeten-contra-instalaciones-del-Ateneo; El Universal. January 20, 2009. *Cuarenta personas estuvieron a resguardo de la PM por hechos violentos en El Ateneo* (Forty people protected by PM [Metropolitan Police] from violent acts in *El Ateneo*). Available in Spanish at: http://politica.eluniversal.com/2009/01/20/pol_ava_cuarenta-personas-es_20A2199399.shtml; El Universal. May 6, 2009. *Ministro Soto: Desalojo del Ateneo responde a culminación del comodato* (Minister Soto: Eviction of *Ateneo* is result of expiration of loan contract). Available in Spanish at: http://www.eluniversal.com/2009/05/06/cul_ava_ministro-soto:-desal_06A2318385.shtml; Sinergia. *Amenazas a los derechos humanos y a la democracia en Venezuela. Informe comprehensivo de seguimiento. Octubre 2009* (Threats to human rights and democracy in Venezuela. Comprehensive follow-up report. October 2009), pp. 19-20. Information provided by Sinergia to the Office of the Special Rapporteur for Freedom of Expression on November 2, 2009 in the context of the 137th Ordinary Period of Sessions of the IACHR.

⁶¹⁸ Frente Cultural José Ignacio Cabrujas. July 1, 2009. *Manifiesto contra el cierre del Ateneo de Caracas* (Declaration against the closing of *Ateneo de Caracas*). Available in Spanish at: <http://www.youtube.com/watch?v=JLeibNHGkg>.

referring to the proceedings in any way. This has prevented him, in practice, from carrying out his profession freely. Various journalistic guilds and organizations have requested that this trial be resolved soon given that, in their understanding, it has fundamentally political motives since it constitutes retaliation for the denunciations of corruption made by the journalist. These organizations indicate that there is sufficient evidence to disprove the accusation and for that reason, they request a prompt decision. Nevertheless, the process has been postponed indefinitely with the aggravating factor that the journalist has recently been deprived of his liberty for having divulged on his Web public information related to the penal proceedings that was already in the public domain.

651. [In effect], on July 29, 2009, Azócar was taken by members of the National Guard to the Penitentiary of Western Santa Ana in the state of Táchira, because the communicator “obstructed justice” by publishing information about the penal proceedings against him. According to the information received, the information published by the journalist was the faithful reproduction of two reports published in two newspapers of broad circulation several days before.⁶¹⁹

652. Recently, the Special Rapporteurship was informed that on September 1, 2009, the judge in charge of the penal proceedings was dismissed, “a week before the trial was to end,” and that on October 5, 2009, the new judge in charge resolved to “nullify the entire previous trial,” except the decision to imprison the journalist in a public prison for the faithful reproduction of information published in two newspapers.⁶²⁰

- e. **Regulation of the broadcasting spectrum and the application of dispositions on broadcasting**
- i. **The announcement of the revocation or cancellation of 240 broadcasting concessions and the decision to order the suspension of the transmission of 32 radio stations**

653. On July 3, 2009, the Minister of Popular Power for Public Works and Housing, Diosdado Cabello, after indicating that they were in a process of democratization of the broadcasting spectrum, announced that Conatel would open a process to establish the possible revocation of the concessions granted to 240 radio stations. This surprising announcement was followed by the decision to order the suspension of the transmission of 32 radio stations. In the present section, some of the most important antecedents of this process and some of the effects of these decisions on the right to freedom of expression are explained.

654. Article 73 of the Organic Law on Telecommunications provides that: “The rights of use and exploitation of the broadcasting spectrum derived from a concession cannot be transferred or given away, nevertheless, the concession holder may request [Conatel] his or her substitution as

⁶¹⁹ Information provided on November 2, 2009 by Espacio Público to the Office of the Special Rapporteur for Freedom of Expression in the framework of the 137th Ordinary Period of Sessions of the IACHR; El Universal. July 29, 2009. *Periodista Gustavo Azocar es enviado al Centro Penitenciario de Santa Ana* (Journalist Gustavo Azocar sent to Santa Ana Penitentiary). Available in Spanish at: http://internacional.eluniversal.com/2009/07/29/pol_ava_periodista-gustavo-a_29A2560563.shtml; El Nacional. July 29, 2009. *Privado de libertad en audiencia periodista Gustavo Azocar* (Journalist Gustavo Azocar deprived of liberty at hearing). Available in Spanish at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/92138/Regiones/Privado-de-libertad-en-audiencia-periodista-Gustavo-Az%C3%B3car.

⁶²⁰ Information provided on November 2, 2009 by Espacio Público to the Office of the Special Rapporteur for Freedom of Expression in the framework of the 137th Ordinary Period of Sessions of the IACHR; Reporters without Borders. October 8, 2009. *Journalist still held in custody despite quashing of suspect case against him*. Available at: <http://www.rsf.org/Journalist-still-held-in-custody.html>.

owner with the person s/he indicates for this purpose, as long as s/he complies with the conditions and principles established in this Law.”⁶²¹

655. On the other hand, Article 210 of the Organic Law on Telecommunications confers upon Conatel the obligation to establish “through resolution, special transformation schedules for [...] concessions and permits granted in conformity with the foregoing legislation.”⁶²² The process of transformation of the legal titles granted under the previous regulatory framework must be carried out in the two years following the publication of the Organic Law on Telecommunications in the Official Gazette, that is to say, it expired on June 12, 2002.

656. Article 210 of the Organic Law on Telecommunications adds that the transformation of titles must be solicited by the interested party within the time period established by Conatel, which cannot be less than 60 business days. When this time period is expired, Conatel is to publish a list of those who have not responded to the request for transformation, authorizing them an additional period of five business days to address the situation. If this is not done, “the omission [would be] understood as a renunciation of the concessions or permits [...] obtained prior to the publication of the [Organic] Law [on Telecommunications] in the Official Gazette.”

657. Under this framework, on December 4, 2001, Conatel issued Resolution No. 93 (Official Gazette No. 37.342 of December 10, 2001), which established a schedule so that “the persons who unlawfully retain[ed] titles” authorized prior to the Organic Law on Telecommunications could present their requests for transformation. Resolution No. 93 established a period of 60 business days for the presentation of the requests, starting from March 11, 2002.

658. On January 26, 2004, Conatel issued Resolution 357 (Official Gazette No. 37.894 of March 9, 2004), that granted an extension of five working days “starting with and including March 22, 2004,” for the presentation of requests for transformation. Previously, on March 19, 2004, Conatel had published in a newspaper of national circulation the list of natural and legal persons that had not presented their requests for transformation within the time period established in Resolution No. 93.

659. Five years later, on May 29, 2009, Conatel issued Administrative Provision No. 1.419 (Official Gazette No. 39.189 of May 29, 2009), which resolved, “to require natural or legal persons who provide radio or television broadcasting services, as well as not-for-profit community public service radio and television broadcasting, in the entire national territory, to submit to [that body] the information contained in the schedule called ‘Update of Information’ that is available on the official Internet portal of Conatel.” Administrative Provision No. 1.419 granted “a maximum period of fifteen (15) business days to fill out the Update of Information schedule [...] and to submit it with its respective annexes, to [that body], counting from the publication in the press [of that provision], under penalty of the application of the sanctions established in the Organic Law on Telecommunications.”⁶²³ The information must be personally submitted to Conatel by the title holder of the license.

660. As previously mentioned, on July 3, 2009, the Minister of Popular Power for Public Works and Housing, Diosdado Cabello, announced that Conatel would open a process for

⁶²¹ Organic Law on Telecommunications. Official Gazette No. 36.970 of June 12, 2000. Available in Spanish at: http://www.tsj.gov.ve/legislacion/LT_ley.htm.

⁶²² Article 210 makes reference to the Law on Telecommunications of July 29, 1940 (Published in Official Gazette No. 20.248 of August 1, 1940), now repealed.

⁶²³ Conatel. May 25, 2009. Administrative Provision No. 1.419. Available in Spanish at: <http://www.conatel.gob.ve/download/providencias/PROVIDENCIA%20ACTUALIZACI%D3N%20DATOS2.pdf>.

establishing the possible closure of 240 concessions granted to radio broadcasters that had not updated their information before that organ in conformity with that provided by Administrative Provision No. 1.419. In his speech, Minister Diosdado Cabello declared the following: "Of the private concessionaries of AM radio, [...] 86 have not responded, while in the FM signals, 154 stations have not complied with the stipulated procedure. [...] for those who have not passed through Conatel, administrative proceedings will immediately be opened against them for the restitution of all of their concessions to the State. They were not, are not interested, they want to keep themselves at the margin of the Law. We are acting in this case in strict accordance with the Law. Whoever is not updated and has not passed through Conatel must now assume responsibility." The official added that the Venezuelan government was "pledged to democratizing the broadcasting spectrum" and to eliminating the "media oligopoly."⁶²⁴

661. On July 9, 2009, the Minister Diosdado Cabello ratified the adoption of these measures before the National Assembly. According to the Minister, the process of updating information showed that in various cases: (a) the original concessionaries had died and the concessions were being utilized by their relatives, or (b) the original concessionaries had given their concessions to third parties who were utilizing them without authorization. In his presentation to the National Assembly, Minister Diosdado Cabello emphasized the following:

The broadcasting space has been one of the few areas in which the [Bolivarian] Revolution has not been felt. [...] Here in Venezuela 27 families have more than 32% of the radioelectric spectrum for themselves, and still the brazen ones of the Venezuelan Chamber of the Broadcasting Industry claim that this is not oligopoly [...]. They attack us and they will attack us, alleging that this is an abuse against freedom of expression. Here there is no abuse against freedom of expression [...]. And as the Father Camilo Torres said: If the dominant class, the oligarchy does not willingly cede its privileges, the people must oblige them to do so by force. And in this case in Venezuela the people means the Government and we are going to do it. We are going to do it because, on the contrary, here they are preparing for us a coup similar to that of Honduras and they are going to start transmitting cartoon television stations and extinguish the radio stations. [...] If the issue of the business of radio and television stations is so painful, fine, do not exploit it, do not make use of it, return it to the State; if it causes you losses, return it to the State, the State will receive it with no problem. We are not going to sit down to negotiate to see what they are going to do to earn more or how they are going to have more stations. We are not going to do it, we have reasons of principle and, moreover, ethical reasons not to do it: they are the same from the year 2002, they are the same who would have been happy if many of us had committed treason against the President, we [would] almost surely have a program on *Globovisión*, almost surely we [would] have a program on one of those stations that play at the destabilization of Venezuela.⁶²⁵

⁶²⁴ The State has indicated that, currently, the radio broadcasting spectrum is occupied by 794 FM radio stations, 210 AM radio stations, and 108 television stations. Embassy of the Bolivarian Republic of Venezuela in the United States. August 4, 2009. *The facts about recent media events in Venezuela*. Available at <http://www.embavenez-us.org/factsheet/Recent-Media-Events-FS-US.pdf>. Conatel. July 3, 2009. *Ministro Diosdado Cabello anuncia apertura de procedimiento administrativo de CONATEL a 86 emisoras AM y 154 FM, luego que no hicieran la actualización de datos ante el organismo* (Minister Diosdado Cabello announces opening of administrative proceedings by Conatel against 86 AM and 154 FM radio stations, after they failed to update information before the institution). Available in Spanish at: http://www.conatel.gob.ve/noticia_comp.asp?numn=2654; Reporters without Borders. July 21, 2009. *Government steps up hounding of private media through new laws and regulations*. Available at: <http://www.rsf.org/Government-steps-up-hounding-of-33926.html>; El Mundo. July 3, 2009. *Conatel prohíbe propagandas opositoras y revoca 284 permisos de transmisión* (Conatel prohibits opposition propaganda and revokes 284 transmission permits). Available in Spanish at: <http://www.elmundo.es/elmundo/2009/07/03/comunicacion/1246645749.html>; El Tiempo. July 4, 2009. *Cabello anunció revocatoria de concesión a 240 radioemisoras* (Cabello announced the revocation of the concessions of 240 radio stations). Available in Spanish at: <http://www.eltiempo.com.ve/noticias/imprimir.asp?id=195283>.

⁶²⁵ National Assembly of the Bolivarian Republic of Venezuela. July 9, 2009. *Punto de información del ciudadano Ministro del Poder Popular para las Obras Públicas y Vivienda Diosdado Cabello para referirse a la situación actual de los servicios de radiodifusión sonora, televisión abierta y difusión por suscripción* (Point of information from citizen Minister of

662. The IACHR expresses its concern about the declarations of Minister Cabello, which could lead to the conclusion that, in spite of the technical reasons set forth to justify the massive closures, the measures could have been motivated by the editorial lines of the affected stations and by the aim of creating a state communications monopoly.

663. On July 14, 2009, the National Assembly agreed to back the government's measures for the regulation of radio and television concessions. The president of the Permanent Commission on Science, Technology, and Social Communication of the National Assembly, [Congressman] Manuel Villalba, stated that the measures announced by Minister Cabello had received criticism and questions "only from those broadcasting sectors that are at the margin of the law and that did not respond to the National Telecommunications Commission when it convoked them." The deputy added the following: "Minister Cabello, what he is doing is complying with the law. Article 73 of the Organic Law on Telecommunications supports every one of his announcements."⁶²⁶

664. On July 31, 2009, Minister Diosdado Cabello announced the names of 34 communications media, including 32 of the 240 radio stations previously referred to, that Conatel had ordered to cease their transmissions immediately. The Minister stated that in some of these cases, the closure was due to the fact that family members or associates of the deceased original concessionaries were the ones who contacted Conatel for the transformation of the titles authorized under the prior legislation, and that, in accordance with Article 73 of the Organic Law on Telecommunications and Resolution No. 93, only the title holder of the concession is legitimately authorized to make such a request. According to the Minister, in circumstances like those outlined, it is appropriate that the concession be returned to the State and not that the relatives and associates of the deceased title holder continue operating "illegally."⁶²⁷

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Popular Power for Public Works and Housing Diosdado Cabello to refer to the current situation of radio, broadcast television, and subscription services), pp. 2, 8-11. Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=cat_view&gid=41&Itemid=124.

⁶²⁶ National Assembly of Venezuela. July 14, 2009. *Medidas para acabar con el latifundio mediático están contempladas en las leyes venezolanas* (Measures to end the media oligopoly are contemplated in the Venezuelan laws). Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_content&task=view&id=22562&Itemid=27.

⁶²⁷ However, the State clarified that the closure affected only the transmissions through the radio broadcasting spectrum, meaning that the affected communications media could continue transmitting over the Internet. Embassy of the Bolivarian Republic of Venezuela in the United States. August 4, 2009. *The facts about recent media events in Venezuela*. Available at <http://www.embavenez-us.org/factsheet/Recent-Media-Events-FS-US.pdf>. See also: Agencia Bolivariana de Noticias. July 31, 2009. *Conatel anula concesiones a 34 estaciones radioeléctricas del país* (Conatel nullifies concessions of 34 broadcasting stations in the country). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=193093&lee=4>; Reporters without Borders. August 2, 2009. *34 broadcast media shut down at government's behest*. Available at: <http://www.rsf.org/34-broadcast-media-shut-down-at.html>; Agencia Bolivariana de Noticias. August 7, 2009. *Operadores que salieron del aire sabían de su situación ilegal desde 2002* (Operators that went off the air knew about their illegal situation since 2002). Available in Spanish at: http://www.abn.info.ve/go_news5.php?articulo=193895&lee=15; Conatel. August 3, 2009. *Apoyo popular a las decisiones del Gobierno Nacional para democratizar el espectro radioeléctrico* (Popular support for the decisions of the National Government to democratize the radio broadcasting spectrum). Available in Spanish at: http://www.conatel.gob.ve/noticia_comp.asp?numn=2661; Globovisión. August 1, 2009. *Líderes políticos y sociedad civil protestaron por cierre de emisoras* (Political leaders and civil society protest closure of broadcasting stations). Available in Spanish at: <http://www.globovision.com/news.php?nid=123404>; Globovisión. August 1, 2009. *Presidente Chávez pidió un aplauso para Diosdado Cabello por el cierre de las emisoras* (President Chávez requested applause for Diosdado Cabello for the closure of broadcasting stations). Available in Spanish at: <http://www.globovision.com/news.php?nid=123427>; Conatel. August 1, 2009. *Notificadas estaciones de radiodifusión* (Broadcasting stations notified). Available in Spanish at: http://www.conatel.gob.ve/noticia_comp.asp?numn=2660; Globovisión. August 1, 2009. *Salieron del aire 34 emisoras de radio por orden del Gobierno Nacional* (34 radio stations went off the air by order of the National Government). Available in Spanish at: <http://www.globovision.com/news.php?nid=123401>; Globovisión. July 31, 2009. *Cabello anuncia salida del aire*

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665. On the other hand, on September 5, 2009, the Minister Diosdado Cabello announced the closure of another 29 radio stations. The measures, however, have not been carried out. It is worth mentioning that as of the date of this report, the State has not made public the names of the 208 remaining radio stations that, according to Minister Diosdado Cabello,⁶²⁸ could find themselves affected with closure resolutions.⁶²⁹ The IACHR expresses its concern about the intimidating effect that these general declarations about the closure of stations may produce, given the way in which such proceedings have been moving forward.

666. In relation to this point, the IACHR recognizes, as the Special Rapporteurship indicated in its pronouncement of June 26, 2009, that the states have the power to regulate the radio waves and to establish procedures to ensure compliance with the legal dispositions. In any case, this state power must be exercised with strict adherence to the laws and to due process, good faith, and respect for the inter-American standards that guarantee every person's right to freedom of expression.⁶³⁰ In an issue of such sensitivity for freedom of expression as regulation, assignment, or oversight of the use of broadcasting frequencies, the State must ensure that none of its actions is motivated or aimed at rewarding media that agree with the government's policies or at punishing those who are critical or independent.

667. According to information received, some of the radio stations affected by the decision to revoke the licenses had opportunely informed the State about relevant developments (such as the death of one of the title holders of the concession), had opportunely requested the transformation of the titles, had operated publicly, and had maintained relations with the State through the payment of taxes, the certification of technical requirements or adequations, etc. In some cases, the death of one of the partners of one the concessionary stations had given rise to the corresponding transformation of the title; however, in other cases, the State had not opportunely replied to the corresponding request for transformation. According to the data, the way in which the State had been relating to these stations generated in their administrators the confidence that their requests would be resolved following the legal norms in force according to established practice and

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de 34 emisoras (Cabello announces that 34 broadcasting stations are going off the air). Available in Spanish at: <http://www.globovision.com/news.php?nid=123396>; Agencia Bolivariana de Noticias. August 15, 2009. *Democratización del espectro radioeléctrico permitirá diversificar contenidos* (Democratization of the radio broadcasting spectrum permits the diversification of content). Available in Spanish at: http://www.abn.info.ve/go_news5.php?articulo=195071&lee=4. In the same sense, on September 15, 2009, the deputy Manuel Villalba affirmed that it was "necessary to clarify that [these] broadcasting stations were outside the law as it is expressed in the Organic Law on Telecommunications," and that what they "[were] currently trying to set up [was] a matrix of national and international opinion to make believe that the stations were closed by the Government." The parliamentarian added that "[these] media do not say that the concessions were revoked because the stations were operating outside the current legal framework." Agencia Bolivariana de Noticias. September 15, 2009. *Emisoras a las que se les revocó la concesión estaban fuera de la legalidad* (Broadcasting stations with revoked concessions were outside the law). Available in Spanish at: http://www.abn.info.ve/go_news5.php?articulo=198854&lee=1.

⁶²⁸ Conatel. July 3, 2009. *Ministro Diosdado Cabello anuncia apertura de procedimiento administrativo de CONATEL a 86 emisoras AM y 154 FM, luego que no hicieran la actualización de datos ante el organismo* (Minister Diosdado Cabello announces opening of administrative proceedings by CONATEL against 86 AM and 154 FM stations, after they did not update their information with that body). Available in Spanish at: http://www.conatel.gob.ve/noticia_comp.asp?numn=2654.

⁶²⁹ El Universal. September 7, 2009. *Gobierno está dando la espalda al país al silenciar más medios*. (Government is turning its back on the country by silencing more media). Available in Spanish at: http://politica.eluniversal.com/2009/09/07/pol_art_gobierno-esta-dando-1559313.shtml; Miami Herald. September 7, 2009. *Gobierno prepara el cierre de otras 29 emisoras de radio* (Government prepares the closure of another 29 radio stations). Available in Spanish at: <http://www.miamiherald.com/news/americas/venezuela/story/1222213.html>.

⁶³⁰ Office of the Special Rapporteur—IACHR. June 26, 2009. *Press Release R41/09*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=751&IID=1>.

without relevance being attached to the media's editorial line. Article 210 of the Organic Law on Telecommunications provides that any transformation of titles must be carried out based on principles of "transparency, good faith, equality, and promptness."⁶³¹ Nevertheless, as has been explained, the decisions were adopted without considering any of these conditions, without permitting prior challenges to the decision, and alleging reasons that have a close relationship with the independence and the editorial line of the private communications media.

668. On this point, the IACHR reminds the State that decisions that are so sensitive for freedom of expression such as those dealing with the closure, revocation, or extinction of broadcasting concessions and permits, must be the result of a specific, open administrative proceeding, in which due process and legitimate defense are fully guaranteed as prior conditions for the adoption of a decision, and in which it is demonstrated that whoever is utilizing the spectrum neither has nor has the possibility of having the right to such use or has incurred in one of the legal causes that give rise to the decision. Additionally, the assignment of new frequencies must be subject to transparent, pre-established, and non-discriminatory rules that allow for a fair competition under conditions of equality.

669. In no case is it acceptable in light of the American Convention, and it would corrupt any proceeding, for the public functionaries in charge of applying the legal norms in this subject area to take into consideration discriminatory criteria, such as the editorial line, to adopt their decisions.⁶³²

670. The Inter-American Court has established that "[i]t is the mass media that make the exercise of freedom of expression a reality. This means that the conditions of its use must conform to the requirements of this freedom, with the result that there must be, *inter alia*, a plurality of means of communication, the barring of all monopolies thereof, in whatever form, and guarantees for the protection of the freedom and independence of journalists."⁶³³

671. In the present case, it concerns the IACHR that, after several years of complete inaction, the authorities announced, in a context of tension between private media and the government, mass media closures, in a speech in which made constant reference to the editorial content of the private media that could be affected. In effect, as has already been indicated, the affirmations of the Minister of Popular Power for Public Works and Housing suggest that the editorial line of these media would be one of the motivations for the adoption of the revocation or closure measures, independently of the technical reasons that are being used in the corresponding administrative actions.

⁶³¹ Organic Law on Telecommunications. Official Gazette No. 36.970 of June 12, 2000. Available in Spanish at: http://www.tsj.gov.ve/legislacion/LT_ley.htm.

⁶³² In the same sense, in Press Release No. 55/09, the IACHR stated that: "By a July 31, 2009 decision of the National Council of Telecommunications (CONATEL), 34 radio stations operating in AM and FM were forced to cease broadcasting immediately. The decisions that revoked the permits or licenses were allegedly based on technical reasons related to the massive lack of compliance with some of the regulations of the telecommunications law. According to the information received, the competent authorities announced that one of their reasons to proceed with these closures of radio and television stations was that these stations "play at destabilizing Venezuela." The IACHR is concerned by the existence of elements that suggest that the editorial stance of these media outlets have been one of the reasons for their closure. The Commission recognizes the Government's competency to regulate radio frequencies, but emphasizes that this competency has to be used with strict observance of due process and with respect to the Inter-American standards that guarantee freedom of expression of all persons. In particular, the limitations imposed to freedom of expression must not incite intolerance, nor be discriminatory or have discriminatory effects or be based on the editorial line of the media." IACHR. August 3, 2009. *Press Release No. 55/09*. Available at: <http://www.cidh.oas.org/Comunicados/English/2009/55-09eng.htm>.

⁶³³ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 34.

672. The IACHR expresses its deep concern over these declarations and exhorts the State to respect the standards described above when adopting decisions of this nature.⁶³⁴ The forgoing becomes more important if it is taken into account that on August 3, 2009, the IACHR stated clearly that since 2000 “the IACHR has observed a gradual deterioration [...] [of] the exercise of [the right to freedom of expression] in Venezuela, as well as a rising intolerance of critical expression.”⁶³⁵

673. Article 13.3 of the American Convention establishes that: “The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.” In the same sense, Principle 13 of the Declaration of Principles establishes that “the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

674. Finally, the IACHR reiterates that the power to assign concessions, licenses, or permits for the use of the broadcasting spectrum must not be turned into a mechanism for indirect censorship or discrimination based on the editorial line, nor a disproportionate obstacle to the exercise of freedom of expression protected by Article 13 of the American Convention. Additionally, all assignments or restrictions must be made according to rules that are clear, pre-established, and non-discriminatory, that ensure the existence of broadcasting that is independent of the government, free of illegitimate pressures, plural, and diverse. The IACHR emphasizes that the creation of public or private monopolies or oligopolies, open or veiled, compromises the right to freedom of expression. As previously stated, “the states, in administering the frequencies of the radio spectrum, must assign them in accordance with democratic guidelines that guarantee equal opportunity of access to all individuals.”⁶³⁶ This is the sense of Principle 12 of the Declaration of Principles, which provides that “[t]he concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”

⁶³⁴ On the relevance of the context for the study of this type of cases, the Inter-American Court has stated that: “When evaluating an alleged restriction or limitation to freedom of expression, the Court should not restrict itself to examining the act in question, but should also examine this act in the light of the facts of the case as a whole, including the circumstances and context in which they occurred. Taking this into consideration, the Court will examine whether, in the context of the instant case, there was a violation of Mr. Ivcher Bronstein’s right to freedom of expression.” I/A Court H.R., *Case of Ivcher-Bronstein v. Peru*. Judgment of February 6, 2001. Series C No. 74, para.154.

⁶³⁵ IACHR. August 3, 2009. *Press Release No. 55/09*. Available at: <http://www.cidh.oas.org/Comunicados/English/2009/55-09eng.htm>.

⁶³⁶ IACHR. *Annual Report 2002*. Volume III: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter IV: Freedom of Expression and Poverty, para. 45. Available at: <http://www.cidh.oas.org/relatoria/docListCat.asp?catID=32&IID=1>.

ii. The possible intervention in broadcasting content through the regulation of the legal concept of “Independent National Producers”

675. Article 14 of the Law on Social Responsibility in Radio and Television establishes the obligation of the communications media to broadcast daily a total of five hours and 30 minutes of audiovisual material from Independent National Producers. In this regard, the cited norm indicates that: “[t]he providers of radio and television services must broadcast daily, during the hours of general viewership, a minimum of seven hours of programs of national production, of which a minimum of four hours must be of independent national production. Also, they must disseminate daily, during the hours of supervised viewership, a minimum of three hours of programs of national production, of which a minimum of an hour and a half must be of independent national production. [...] In the hours reserved for the broadcasting of programs of independent national production, the providers of radio services will give priority to cultural, educational, and informative programs.”

676. Article 13 of the Law on Social Responsibility in Radio and Television considers that a national audiovisual or audio production is independent “when [it is] made by independent national producers that are included in the registry maintained by the regulating entity in the area of communication and information of the National Executive.”⁶³⁷ The so-called “Register of Independent National Producers” is under the authority of the Ministry of Popular Power for Communication and Information, which also issues and revokes the certifications that accredit this condition.⁶³⁸

677. On the other hand, Article 15 of the Law on Social Responsibility in Radio and Television creates the National Commission on Television Programming and the Commission on Radio Programming, which have as their function “to establish the mechanisms and conditions of the assignation of airtime to independent national producers.” Both commissions are made up of “one representative of the regulating body in the area of communication and information of the National Executive, who will preside over it, a representative of providers of radio services, a representative of the independent national producers, and a representative of the organizations of

⁶³⁷ Ministry of Popular Power for Communication and Information. Independent National Production. Available in Spanish at: http://www.leyresorte.gob.ve/pni/99/191474/produccion_nacional_independiente.html.

On the other hand, Article 13 of the Law on Social Responsibility in Radio and Television adds the following:

A natural or legal person who meets the following requirements shall be considered an independent national producer:

1. A natural person: (a) Resides and is domiciled in the territory of the Bolivarian Republic of Venezuela, in conformity with the law; (b) Is not a shareholder, either personally or through a third party, of any provider of radio or television services; [(c) Is not a shareholder of a legal persons that are themselves shareholders, partners or associates of any radio or television service provider;] (d) Does not occupy a management position or position of confidence, in accordance with the Organic Law on Employment, in any provider of radio or television services; (d) Declares whether s/he maintains a subordinate position with any provider of radio or television services; (f) Is not a functionary of one of the organs and public entities that regulate the activities that are the object of the present Law, in accordance with the respective Regulations.

2. A legal person: (a) Is not a State company, autonomous institute, or other national, state, or municipal public entity; (b) Is domiciled in the Bolivarian Republic of Venezuela, in conformity with the law; (c) Is under the control and management of natural persons of Venezuelan nationality or residency who comply with the requisites set forth in the previous numbered section; (d) Does not have shareholder participation in any provider of radio or television services; and (e) Declares whether it has contractual links separate from the independent national production or a subordinate relationship with any provider of radio or television services.

In any case, whether dealing with a natural person or a legal person, it is required that they possess the experience to or demonstrate capability of making quality national productions.”

⁶³⁸ Ministry of Popular Power for Communication and Information. Resolution No. 037 of August 18, 2009 (Official Gazette No. 39.259 of September 8, 2009). Available in Spanish at: http://www.leyresorte.gob.ve/pni/99/191474/produccion_nacional_independiente.html.

users. The decisions of this commission are binding and must be made by majority vote, in the case of a tie, the President of the commission will have a double vote.”

678. According to the information received, in support of the legal framework described in the previous paragraphs, each communications media negotiated separately with the Independent National Producers, without state intervention, in order to decide which programs to transmit during the schedule established in the Law on Social Responsibility in Radio and Television for this purpose.⁶³⁹

679. Nevertheless, the IACHR learned that on September 16, 2009, the Commission on Radio Programming of the Ministry of Popular Power for Communication and Information approved Resolution No. 047, Norms Regarding the Mechanisms and Conditions of Assignment of Airtime to Independent National Producers in Providers of Radio Services (Official Gazette No. 36.269 of September 22, 2009).⁶⁴⁰

680. The IACHR observes that Resolution No. 047 proposes the creation of a “Catalogue of Independent National Production” which contains the “ordered list of pilot programs of Independent National Production that comply with the dispositions of the Law on Social Responsibility in Radio and Television and other norms that regulate the subject matter of this law, developed by the Ministry of Popular Power for Communication and Information, which constitute the offerings of programs that will be the objects of assignation.”

681. In the same sense, the IACHR observes with concern that Articles 8 and 9 of that resolution confer upon the Ministry of Popular Power for Communication and Information a mechanism for direct assignation for the transmission of programs that form part of the Catalogue of Independent National Production. By virtue of this power, the Ministry for Communication and Information can impose “upon the providers of radio services,” for three and a half hours a day, the programs that it considers necessary to “guarantee the democratization of the radio broadcasting spectrum, plurality, and creative freedom.” Therefore, in practice, this resolution confers upon the Executive Branch the power to impose content directly for three and a half hours of programming daily on all the broadcasters in the country.

682. In relation to the two remaining hours of obligatory transmission of programs of Independent National Producers, Article 10 of Resolution No. 47 provides that “once the Mechanism for Assignation of Airtime by Direct Assignation is established, the Ministry of Popular Power for Communication and Information, with the aim of covering the two remaining hours of Independent National Production during general viewership hours, will hold the Table of Agreements where independent national producers will offer their priority programs from the Catalogue that have not been assigned through the Direct Assignation to the different providers of radio services, setting conditions for negotiation in the framework established in the Law on Social Responsibility in Radio and Television, and the present Norms.”

⁶³⁹ Reporters without Borders. Information received in the e-mailbox of the Office of the Special Rapporteur for Freedom of Expression on September 24, 2009.

⁶⁴⁰ Ministry of Popular Power for Communication and Information. September 24, 2009. *Normas sobre los Mecanismos y las Condiciones de Asignación de los Espacios a los Productores Nacionales Independientes en los Prestadores de Servicios de Radio* (Norms on the Mechanisms and the Conditions of Assignment of Airtime to National Independent Producers in Providers of Radio Services). Available in Spanish at: http://www.leyresorte.gob.ve/notas_de_prensa/104/192253/normas_sobre_los.html. http://www.minci.gob.ve/doc/normasmecanismos_y_condicionesradio.pdf.

683. It should also be stated that Article 22 of Resolution No. 047 establishes that failure to comply with these dispositions on the part of providers of radio services “will give rise to the sanctions established in [Article 28 of] the Law on Social Responsibility in Radio and Television.” Under this scheme, the communications media can be sanctioned with “a fine of from one percent to two percent of the gross income earned in the fiscal year immediately preceding that in which the offense was committed, as well as the [ceding] of airtime for the broadcasting of cultural and educational messages.”

684. All of these measures must be applied by the Ministry of Popular Power for Communication and Information “in a period of no more than four months, counting from their publication in the Official Gazette,” that is to say, by January 22, 2010.

685. The mentioned norms have a double effect on the right to freedom of expression. In the first place, the right to certify what type of material can be included within the category of independent national production taking into account the content of such material is clearly a mechanism that can lead to prior censorship of national production. In effect, it will be the State that previously defines which independent national producers can broadcast their productions in the schedules established for this and which will not have this privilege. This mechanism compromises the State’s duty of neutrality with respect to content, affects the right of all independent national producers not to be censored for the content of their works and the right of the public to obtain plural and diverse information, distinct from that which state functionaries consider must be disseminated.

686. Secondly, these dispositions authorize the State to impose on communications media the specific content of the programming that must be broadcast. In relation to this point, the IACHR reminds the State that any obligation to transmit content that is not decided upon by a communications media must meet the strict conditions described in Article 13 of the American Convention to constitute an acceptable limitation on the right to freedom of expression. Additionally, the exercise of this power must be strictly necessary to satisfy urgent requirements in matters of evident public interest.

687. Article 13.2 of the American Convention expressly provides that the exercise of freedom of expression “shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: (a) respect for the rights or reputations of others; or (b) the protection of national security, public order, or public health or morals.” This prohibition of censorship has its only exception in that provided under Article 13.4 of the American Convention, according to which, “[n]otwithstanding the provisions of paragraph 2 [...], public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.”

688. Interpreting the norms of the Convention, the Declaration of Principles provides in Principle 5 that “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression;” and in Principle 7 that “[p]rior conditioning of expressions, such as truthfulness, timeliness or impartiality, is incompatible with the right to freedom of expression recognized in international instruments.”

689. Bearing in mind these considerations, the IACHR exhorts the State to bring its legislation relating to independent national production into conformity with the described standards.

f. Grave violations of the rights to life and personal integrity based on the victims' exercise of freedom of expression

690. During 2008 and 2009, there were two reported homicides of journalists carried out by unidentified individuals as well as serious acts of physical aggression and threats against journalists and media owners of all different editorial lines in Venezuela. The foregoing is particularly troubling given that, in some of these cases, as will be subsequently explained in detail, the parties affected by the acts of violence were the beneficiaries of active provisional measures granted by the Inter-American Court.

691. The IACHR considers it important to note that the majority of the acts referred to in this section involved action by third parties who were not public functionaries. In some cases, the attacks were carried out by supposed supporters of President Hugo Chávez; in others, the episodes of violence involved journalists and communications media linked to the government who were attacked by supposed members of the opposition. What these facts show, nevertheless, is the serious atmosphere of polarization and intimidation in which media and journalists must carry out their work.

i. Murders presumably linked with the exercise of journalistic activity

692. During 2008, the vice president of the newspaper *Reporte Diario de la Economía*, Pierre Fould Gerges, was murdered. According to the information obtained by the IACHR and its Special Rapporteurship, on June 2, 2008, two unidentified persons riding on a motorcycle fired at least ten shots at the executive, who was at a gas station. Prior to the crime, various editors of the newspaper had been threatened in relation to the editorial line of the newspaper, which denounced acts of corruption. After the crime, the attorney who represents the *Reporte Diario de la Economía* also reported receiving threats from private criminal groups. As it did in its 2008 Annual Report, the IACHR again exhorts the State to investigate this crime so that those responsible will be duly identified, judged, and sanctioned.⁶⁴¹

693. The IACHR and its Special Rapporteurship also reiterate their condemnation of the murder of Orel Sambrano, editor of the weekly *ABC Semana* and of *Radio América*, which occurred on January 16, 2009 in the city of Valencia in the state of Carabobo. The information received indicated that that two unidentified persons traveling on a motorcycle shot him in the nape of the neck. Sambrano was known for denouncing acts related to drug trafficking and local corruption, for which reason some local journalists have stated that he was murdered in retaliation for his work. The IACHR was informed that on February 17 and July 23, 2009, two of the presumed perpetrators and masterminds of the crime were detained.⁶⁴² The IACHR values positively this advance in the

⁶⁴¹ Office of the Special Rapporteur—IACHR. *Press Release No. R24/08*. June 5, 2008. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=731&IID=1>; Committee to Protect Journalists. June 3, 2008. *Newspaper executive slain in Caracas*. Available at: <http://cpj.org/2008/06/newspaper-executive-slain-in-caracas.php>; Reporters without Borders. June 4, 2008. *Asesinado a disparos en Caracas el vicepresidente de un diario económico, su hermano está amenazado de muerte* (Vice president of an economic newspaper shot and killed in Caracas, his brother is receiving death threats). Available in Spanish at: http://www.rsf.org/article.php3?id_article=27306.

⁶⁴² Office of the Special Rapporteur—IACHR. *Press Release No. R01/09*. January 22, 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=737&IID=1>; Espacio Público. *Situación del derecho a la libertad de expresión e información en Venezuela 2008. Narcotráfico: censura a sangre y balas. El asesinato de Orel Sambrano* (Situation of the right to freedom of expression and information in Venezuela 2008. Drug trafficking: censorship with blood and bullets. The murder of Orel Sambrano), pp. 47-58. Available in Spanish at: <http://www.espaciopublico.info/images/documentos/informe%202008.pdf>; Committee to Protect Journalists. January 20, 2009. *Reporter who covered drugs, corruption is slain*. Available at: <http://cpj.org/2009/01/reporter-who-covered-drug-trade-corruption-is-slain.php>; Inter-American Press Association. January 9, 2009. *Condena la SIP asesinato de periodista venezolano* (IAPA condemns murder of Venezuelan journalist). Available in Spanish at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4120&idioma=sp; Reporters without

clarification of the facts and urges the State to adopt all the measures at its disposal to guarantee the life and personal integrity of social communicators in Venezuela. On the other hand, it exhorts the State to continue investigating this act, and to try and punish all those responsible for this crime.

ii. Acts of physical aggression and threats presumably linked with the exercise of journalistic activity

694. With respect to acts of aggression by state authorities, on July 23, 2008, the journalist Dayana Fernández of the newspaper *La Verdad* and the photographer Luis Torres were attacked by municipal agents in the state of [Zulia] while they were working on a piece about environmental contamination in the area.⁶⁴³

695. On February 4, 2009, members of the Municipal Police of Valencia and the National Army snatched the camera of Wilmer Escalona, a photographer for the newspaper *NotiTarde*, while he was covering a story at a hospital. According to the information received, the officials erased the photographs and obliged the photojournalist to leave the hospital.⁶⁴⁴

696. On July 22, 2009, members of Detachment 88 of the National Guard seized audiovisual material from journalistic teams from *RCTV [Internacional]* and *Globovisión* in Puerto Ordaz in the state of Bolívar. The communicators were covering the assembly of workers of the company Siderúrgica del Orinoco (Sidor). According to the information received, the measure was taken because the journalists were in the company headquarters without authorization, although they had been invited by the workers. The seized material was handed over to the Office of the Military Prosecutor, which was in charge of evaluating whether the recorded images compromised the security of the State.

697. The IACHR received information indicating that on the same July 22, 2009, members of the National Guard in San Cristóbal in the state of Táchira, had detained, for a period of one hour, Zulma López, a correspondent for *RCTV Internacional* and the newspaper *El Universal*, and Thaís Jaimes, a journalist with the newspaper *El Panorama*, while they were taking photographs of a construction zone guarded by military personnel. During the incident, members of the National Guard destroyed the viewfinder of the camera belonging to photojournalist Jesús Molina. On July 28, 2009, the Special Rapporteurship sent a communication to the State requesting specific

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Borders. February 20, 2009. *Former policeman arrested on suspicion of participating in journalist's murder*. Available at: <http://www.rsf.org/Former-policeman-arrested-on.html>; Instituto Prensa y Sociedad. February 25, 2009. *Detienen a ex policía por crimen de periodista, buscan a otros dos sospechosos* (Former policeman detained for crime against journalist, two other suspects sought). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1775>; Committee to Protect Journalists. February 13, 2009. *Former police officer arrested in Venezuelan murder*. Available at: <http://cpj.org/2009/03/former-police-officer-arrested-in-venezuelan-journ.php>; Office of the Attorney General of the Bolivarian Republic of Venezuela. July 23, 2009. *Privado de libertad presunto implicado en muerte del periodista Orel Sambrano* (Suspect in murder of journalist Orel Sambrano jailed). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa2307V.htm>.

⁶⁴³ Instituto Prensa y Sociedad. July 30, 2008. *Funcionarios municipales agreden a periodistas en [Zulia]* (Municipal functionaries attack journalists in Zulia). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1549>; Reporters without Borders. July 29, 2008. *Authorities order judicial investigation into newspaper reporter's detention*. Available at: <http://www.rsf.org/Authorities-order-judicial.html>.

⁶⁴⁴ Instituto Prensa y Sociedad. February 10, 2009. *Policías y militares arrebatan cámara a reportero y borran fotos* (Police and military seize reporter's camera and erase photos). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1733>; Inter-American Press Association. *Report on Venezuela. Midyear Meeting of March 13-16, 2006. Asunción, Paraguay*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&infoid=362&idioma=us.

information about these occurrences. As of the date of this report, no response to this request has been received.⁶⁴⁵

698. On August 5, 2009, *Globovisión* cameraman Robmar Narváez, and his assistant Jesús Hernández, were detained by members of the 13th Infantry Brigade of the Army of the city of Barquisimeto in the state of Lara, while they were filming a mural in which the images were painted over with red spots and gag symbols. The information received indicates that the military personnel impeded the filming and approached Narváez to ask for his press credentials. The cameraman, however, showed only an identification card. Narváez and his assistant were then taken to a military base where they were detained for about three hours.⁶⁴⁶

699. With regard to acts of violence committed by private persons, on August 22, 2008 Guillermo Torín, audio operator for the *Fundación Televisora de la Asamblea Nacional* (ANTV), was hit by a group of supporters of the mayor of Chacao when he was going to register his candidacy at the headquarters of the National Electoral Council in Caracas. Torín, who suffered several broken ribs, the perforation of a lung, and the fracture of his right elbow, wore a vest that identified him as part of the journalistic team of a state media.⁶⁴⁷

700. On October 16, 2008, unidentified individuals threw a teargas bomb into the building where Leopoldo Castillo, host of the program *Aló Ciudadano*, a program that is broadcast by the television channel *Globovisión*, lives.⁶⁴⁸

⁶⁴⁵ El Universal. July 23, 2009. *Denuncian ante OEA y ONU agresiones contra periodistas* (Acts of aggression against journalists denounced before the UN and the OAS). Available in Spanish at: http://www.eluniversal.com/2009/07/23/pol_art_denuncian-ante-oea-y-1483547.shtml; *Globovisión*. July 22, 2009. *CNP denunció agresiones de la GN a periodistas en Táchira y Bolívar* (CNP [National Journalists' Association] denounced acts of aggression against journalists by the GN [National Guard] in Táchira and Bolívar). Available in Spanish at: <http://www.globovision.com/news.php?nid=122524>; El Universal. July 22, 2009. *GN retuvo por una hora a tres periodistas en Táchira* (GN [National Guard] detained three journalists for one hour in Táchira). Available in Spanish at: http://www.eluniversal.com/2009/07/22/pol_art_gn-retuvo-por-una-ho-1482807.shtml; Colegio Nacional de Periodistas de Venezuela. July 22, 2009. *CNP condena agresiones de la GN contra periodistas en Bolívar y Táchira* (CNP [National Journalists' Association] condemns acts of aggression by GN [National Guard] against journalists in Bolívar and Táchira). Available at: <http://www.cnpven.org/data.php?link=2&expediente=236>.

⁶⁴⁶ Instituto Prensa y Sociedad. August 6, 2009. *Camarógrafo y asistente de Globovisión retenidos por más de tres horas en base militar* (*Globovisión* cameraman and assistant detained for more than three hours on military base). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1941>; *Globovisión*. August 5, 2009. *Efectivos militares retuvieron a camarógrafo de Globovisión en Lara* (Military personnel detained *Globovisión* cameraman in Lara). Available in Spanish at: <http://www.globovision.com/news.php?nid=123663>.

⁶⁴⁷ Office of the Attorney General of the Bolivarian Republic of Venezuela. August 22, 2008. *Ministerio Público investiga agresiones contra trabajador de ANTV por presuntos seguidores del alcalde de Chacao* (Office of the Attorney General investigates acts of aggression against ANTV worker by presumed supporters of the mayor of Chacao). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2008/prensa2208V.htm>; Instituto Prensa y Sociedad. August 20, 2008. *Agreden a empleado de canal ANTV* (Employee of ANTV channel attacked). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1578>; National Assembly of the Bolivarian Republic of Venezuela. August 22, 2008. *Trabajadores de ANTV solicitaron ante la Fiscalía investigar agresión contra técnico de sonido* (ANTV workers request the Attorney General's Office to investigate aggression against sound technician). Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_content&task=view&id=19955&Itemid=27; El Universal. August 20, 2008. *Condenan agresión a trabajador de ANTV* (Aggression against ANTV worker condemned). Available in Spanish at: http://buscador.eluniversal.com/2008/08/20/pol_art_condenan-agresion-a-1000986.shtml.

⁶⁴⁸ It is worth noting that on October 16, 2008, Conatel notified *Globovisión* of the opening of a punitive administrative proceeding because of the declarations made live by Poleo. National Assembly of the Bolivarian Republic of Venezuela. October 15, 2008. *Fiscalía abrirá averiguación a Poleo y a Globovisión* (Attorney General's Office will open investigation of Poleo and *Globovisión*). Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_content&task=view&id=20314&Itemid=27; *Globovisión*. October 16, 2008. *AN investigará a Leopoldo Castillo y a Globovisión por comentario de Rafael Poleo en Aló Ciudadano* (AN [National Assembly] will investigate Leopoldo Castillo and *Globovisión* for commentary of Rafael Poleo on *Aló Ciudadano*). Available in Spanish at: <http://www.globovision.com/news.php?nid=101688>; *Globovisión*. October 16, 2008. *Periodista Rafael Poleo rechazó implicaciones en presunto magnicidio* (Journalist Rafael Poleo rejected implications of presumed

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701. On August 13, 2009, unidentified persons shot and wounded journalist Rafael Finol, of the newspaper *El Regional* of Acarigua, in the head. According to the information received, the newspaper's editorial line is pro-government.⁶⁴⁹

702. On January 20, 2009, Cecilia Rodríguez, a photojournalist with the newspaper *El Nuevo País* denounced that she had been hit by a group of demonstrators of the Unión Popular Venezolana (UPV) political party, aligned with the government. According to the information received, a police officer approached the photographer and escorted her to prevent her from being attacked further.⁶⁵⁰

703. On August 3, 2009, the headquarters of *Globovisión* were attacked by a group of individuals identifying themselves as members of the UPV, led by Lina Ron, a person allied with the current government. The armed attackers entered the channel's headquarters, threw tear gas bombs inside, and intimidated the workers. A member of the Metropolitan Police and a worker with the security company guarding the location were injured.⁶⁵¹ The attack was immediately condemned by the President of the Republic Hugo Chávez and the Minister of Popular Power for the Interior and Justice, Tarek El Aissami, who also announced a prompt investigation. On August 4, 2009,

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assassination). Available in Spanish at: <http://www.globovision.com/news.php?nid=101737&clave=a%3A1%3A%7Bi%3A0%3Bs%3A17%3A%22leopoldo+castillo%22%3B%7D>; Instituto Prensa y Sociedad. October 24, 2008. *Lanzan bomba lacrimógena a edificio donde vive periodista de Globovisión* (Teargas bomb thrown at building where Globovisión journalist lives). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1631>; Globovisión. October 16, 2008. *Lanzan bomba lacrimógena contra la casa del periodista Leopoldo Castillo* (Teargas bomb thrown at house of journalist Leopoldo Castillo). Available in Spanish at: <http://www.globovision.com/news.php?nid=101699>; Inter-American Press Association. *Report on Venezuela. Midyear Meeting of March 13-16, 2006. Asunción, Paraguay*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inford=362&idioma=us.

⁶⁴⁹ Committee to Protect Journalists. January 16, 2009. *Journalist shot and injured*. Available at: <http://cpj.org/americas/venezuela/2009/?page=2>; Inter-American Press Association. January 15, 2009. *Condena la SIP atentado contra periodista en Venezuela* (IAPA condemns attack against journalist in Venezuela). Available in Spanish at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&idioma=sp&id=4119; Reporters without Borders. January 15, 2009. *Murder attempt against pro-Chávez journalist in Portuguese state*. Available at: <http://www.rsf.org/Murder-attempt-against-pro-Chavez.html>.

⁶⁵⁰ The information also indicates that among the aggressors were members of the group known as La Piedrita. Instituto Prensa y Sociedad. January 21, 2009. *Simpatizantes oficialistas agreden a reportera* (Official sympathizers attack reporter). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1709>; Inter-American Press Association. *Report on Venezuela. Midyear Meeting of March 13-16, 2006. Asunción, Paraguay*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inford=362&idioma=us.

⁶⁵¹ Globovisión. August 3, 2009. *Motorizados armados y comandados por Lina Ron asaltaron sede de Globovisión* (Armed motorists commanded by Lina Ron attack Globovisión headquarters). Available in Spanish at: <http://www.globovision.com/news.php?nid=123531>; Globovisión. August 3, 2009. *Dos heridos y varios afectados por el ataque a Globovisión de grupos armados* (Two injured and several affected by attack on Globovisión by armed groups). Available in Spanish at: <http://www.globovision.com/news.php?nid=123540>; El Universal. August 4, 2009. *Grupo oficialista irrumpió en la sede de Globovisión* (Group of official supporters interrupt in Globovisión headquarters). Available in Spanish at: http://www.eluniversal.com/2009/08/04/pol_art_grupo-oficialista-ir_1504338.shtml; Instituto Prensa y Sociedad. August 3, 2009. *Simpatizantes del gobierno nacional atacan sede de canal privado* (National government sympathizers attack headquarters of private channel). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1936>; Colegio Nacional de Periodistas. August 3, 2009. *CNP exhorta al gobierno a acabar con la impunidad y deplora ataques contra Globovisión* (CNP [National Journalists' Association] exhorts the government to end impunity and deplores attacks against Globovisión). Available in Spanish at: <http://www.cnpven.org/data.php?link=2&expediente=268>; Globovisión. July 3, 2009. *Ministerio Público designó fiscales para investigar el hecho ocurrido en los alrededores de Globovisión* (Attorney General designated prosecutors to investigate the incident that occurred near Globovisión). Available in Spanish at: <http://www.globovision.com/news.php?nid=123539>; IACHR. *Press Release No. 55/09*. August 3, 2009. Available at: <http://www.cidh.org/Comunicados/English/2009/55-09eng.htm>; Communication of August 12, 2009 by *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression.

information was received indicating that the Attorney General's Office had ordered the detention of Lina Ron, and that on that same day, she turned herself over to authorities.⁶⁵² Subsequently, information was received indicating that on October 14, 2009, the 18th Tribunal of Control of the Metropolitan Area of Caracas ordered the release of Lina Ron and that on October 16, 2009, criminal proceedings were initiated against her with respect to these facts for the crime of "agavillamiento" (illegal association).⁶⁵³

704. On August 4, 2009, Roberto Tobar and Emiro Carrasquel, members of the press team of the state channel *Venezolana de Televisión (VTV)*, and Renzo García, a journalist with *Color TV*, were attacked in the state of Aragua by a group of demonstrators presumably allied with the opposition. According to the information received, the aggressors were part of a group of persons that protested during the execution of the judicial measure of raiding the home of the *Globovisión* correspondent Carmen Elisa Pecorelli.⁶⁵⁴

⁶⁵² IACHR. *Press Release no. R57/09*. August 5, 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=759&IID=1>; Office of the Attorney General of the Bolivarian Republic of Venezuela. August 4, 2009. *Dictan orden de detención contra Lina Ron* (Order of detention issued against Lina Ron). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa0408.htm>; Office of the Attorney General of the Bolivarian Republic of Venezuela. August 4, 2009. *Ministerio Público presentará en las próximas horas ante Tribunal de Control a Lina Ron* (Attorney General's Office will present Lina Ron before the Tribunal of Control in the next few hours). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa0408V.htm>; Agencia Bolivariana de Noticias. August 4, 2009. *Presidente Chávez informó detención de Lina Ron* (President Chávez reported the detention of Lina Ron). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=193434&lee=4>; Venezolana de Televisión. August 9, 2009. *Presidente Chávez: Grupos anárquicos le hacen daño a la revolución* (President Chávez: Anarchic groups damage the revolution). Available in Spanish at: <http://www.vtv.gov.ve/noticias-nacionales/22020>; Instituto Prensa y Sociedad. August 4, 2009. *Detienen a dirigente de partido político por agresión a sede de Globovisión* (Leader of political party detained for aggression against headquarters of Globovisión). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1940>; El Universal. August 4, 2009. *El Aissami condenó "acción delictiva"* (El Aissami condemned "criminal action"). Available in Spanish at: http://www.eluniversal.com/2009/08/04/pol_art_el-aisami-condeno-1504339.shtml; El Universal. August 5, 2009. *Chávez exige "todo el peso de la santa ley" para Ron y sus seguidores* (Chávez calls for "all the weight of the sainted law" for Ron and her followers). Available in Spanish at: http://www.eluniversal.com/2009/08/05/pol_art_chavez-exige-todo-e-1507451.shtml; Globovisión. August 4, 2008. *Tribunal 18º de Control dicta privativa de libertad contra Lina Ron* (18th Control Tribunal issues order for deprivation of liberty against Lina Ron). Available in Spanish at: <http://www.globovision.com/news.php?nid=123595>; Globovisión. August 4, 2009. *Chávez dice que Lina Ron se presentó a la justicia y que se prestó para un juego "a favor del enemigo"* (Chávez says that Lina Ron presented herself to the court and that she submitted herself for a game "in favor of the enemy"). Available in Spanish at: <http://www.globovision.com/news.php?nid=123610>.

⁶⁵³ Article 286 of the Penal Code states that "[w]hen two or more persons associate with the goal of committing crimes, each one will be punished, for the sole act of association, with imprisonment of two to five years." For its part, Article 286 provides that "[i]f the associates travel through the countryside or the roads and if at least two of them are carrying guns or have them in a determined place, the penalty will be prison for a period of eighteen months to five years." Penal Code of Venezuela. Official Gazette No. 5768E of August 13, 2005. Available in Spanish at: <http://www.fiscalia.gov.ve/leyes/6-CODIGOPENAL.pdf>. See also: Globovisión. September 19, 2009. *Ministerio Público acusó a Lina Ron por los sucesos ocurridos en Globovisión* (Attorney General's Office accused Lina Ron for the events that occurred at Globovisión). Available in Spanish at: <http://www.globovision.com/news.php?nid=127860&clave=a%3A1%3A%7Bi%3A0%3Bs%3A8%3A%22lina+ron%22%3B%7D>; Globovisión. October 14, 2009. *Liberada dirigente Lina Ron* (Leader Lina Ron freed). Available in Spanish at: <http://www.globovision.com/news.php?nid=130114&clave=a%3A1%3A%7Bi%3A0%3Bs%3A8%3A%22lina+ron%22%3B%7D>; El Nacional. October 15, 2009. *Tribunal libera a Lina Ron* (Tribunal liberates Lina Ron). Available in Spanish at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/103957/Nacional/Tribunal-libera-a-Lina-Ron-tras-m%C3%A1s-de-dos-meses-de-arresto-en-la-DIM; Globovisión. October 16, 2009. *Ordenan enjuiciamiento de Lina Ron por ataque contra sede de Globovisión* (Trial of Lina Ron ordered for attack against headquarters of Globovisión). Available in Spanish at: <http://www.globovision.com/news.php?nid=130247&clave=a%3A1%3A%7Bi%3A0%3Bs%3A8%3A%22lina+ron%22%3B%7D>.

⁶⁵⁴ Instituto Prensa y Sociedad. August 7, 2009. *Agreden a periodistas de medios estatales durante cobertura* (Journalists of state media attacked during coverage). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1949>; Agencia Bolivariana de Noticias. August 5, 2009. *Ministerio Público practicó allanamiento en Maracay ajustado a derecho* (Attorney General's Office carried out raid in Maracay in compliance with law). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=193532&lee=2>; Globovisión. August 4,

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705. On August 13, 2009, twelve journalists from the *Capriles* chain of publications were seriously attacked on the streets of Caracas by presumed government sympathizers who labeled them “defenders of the oligarchy.” According to the information received, Octavio Hernández, Manuel Alejandro Álvarez, Gabriela Iribarren, Jesús Hurtado, Marco Ruíz, Usbaldo Arrieta, Fernando Peñalver, Marie Rondón, Greasi Bolaños, Glexis Pastran, César Batiz, and Sergio Moreno González were handing out flyers in the streets that questioned various articles of the then-draft Organic Law on Education, when they were brutally attacked with sticks and rocks by a crowd that called themselves “defenders of the people.” On the same day, the Minister of Popular Power for Communication and Information, Blanca Eekhout, categorically condemned this act of violence.⁶⁵⁵

706. On August 14, 2009, the Attorney General of the Republic, Luisa Ortega Díaz, also condemned these acts and announced the official opening of an investigation by the Attorney General’s Office. On the same date, the Human Rights Ombudswoman, Gabriela del Mar Ramírez exhorted “the competent investigative bodies to take necessary and adequate measures to clarify the facts and determine the responsibilities, in accordance with the law.” On October 15, 2009, the

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2009. *Allanaron residencia de corresponsal de Globovisión en Aragua* (Residence of Globovisión correspondent in Aragua raided). Available in Spanish at: <http://www.globovision.com/news.php?nid=123647>.

⁶⁵⁵ The Organic Law on Education was approved by the National Assembly at midnight on August 13, 2009. Ministry of Communication and Information. August 13, 2009. *Minci rechaza actos de violencia contra periodistas* (Minci [Ministry of Communication and Information] rejects acts of violence against journalists). Available in Spanish at: http://www.minci.gob.ve/noticias/1/191070/minci_rechaza_actos.html; Agencia Bolivariana de Noticias. August 13, 2009. *Minci rechaza actos de violencia contra periodistas* (Minci [Ministry of Communication and Information] rejects acts of violence against journalists). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=194842&lee=4>; Colegio Nacional de Periodistas. August 13, 2009. *El CNP y el SNTP se declaran en emergencia ante las agresiones a los periodistas de la cadena Capriles* (The CNP [National Journalists’ Association] and the SNTP [National Press Workers’ Union] declare an emergency due to the acts of aggression against journalists of the Capriles chain). Available in Spanish at: <http://www.cnpven.org/data.php?link=5&expediente=288>; Globovisión. August 13, 2009. *Doce periodistas de la cadena Capriles heridos tras emboscada oficialista a protesta contra Ley de Educación* (Twelve journalists of the Capriles chain injured after official supporters ambush protest against the Law on Education). Available in Spanish at: <http://www.globovision.com/news.php?nid=124366>; El Nacional. August 13, 2009. *Chavistas agredieron brutalmente a doce periodistas de la cadena Capriles* (Chávez supporters brutally attacked twelve journalists of the Capriles chain). Available in Spanish at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/94225/Nacional/Chavistas-agredieron-brutalmente-12-periodistas-de-la-Cadena-Capriles; Globovisión. August 13, 2009. *Director de Últimas Noticias exigió celeridad en investigación sobre investigaciones sobre la cadena Capriles* (Editor of Últimas Noticias urged swiftness in the investigation of investigations about the Capriles chain). Available in Spanish at: <http://www.globovision.com/news.php?nid=124371>; Espacio Público. August 13, 2009. *Oficialistas agreden a 12 periodistas de Cadena Capriles* (Official supporters attack 12 journalists of the Cadena Capriles). Available in Spanish at: http://www.espaciopublico.info/index.php?option=com_content&task=view&id=517&Itemid=1; Globovisión. August 17, 2009. *Privan de libertad a presunto implicado en agresión a periodistas de la Cadena Capriles* (Suspect in attack against Cadena Capriles jailed). Available in Spanish at: <http://www.globovision.com/news.php?nid=124682>

Attorney General's Office announced the capture of one of the presumed aggressors.⁶⁵⁶ Subsequently, the IACHR was informed that the person was set free.⁶⁵⁷

707. The IACHR observes that on August 18, 2009, President Hugo Chávez affirmed in an interview that proof existed that would demonstrate that the journalists that had been attacked had, in reality, propitiated the attack by some of [his] presumed supporters. The leader stated:

They were not carrying out journalistic duties; they were in a protest, with banners, passing out flyers, proselytizing against the Law on Education. [...] And according to what I understand, and there is proof, they were provoking the people who were over here and over there.⁶⁵⁸

708. The IACHR expresses its concern about this type of declarations by the President of the Republic, which could be interpreted by his followers as governmental approval of commission of crimes of [this] nature. In this respect, it is important to recall that public protest is one of the

⁶⁵⁶ Reporters without Borders. August 17, 2009. *Activist arrested for attack on 12 journalists but polarization persists*. Available at: <http://www.rsf.org/Activist-arrested-for-attack-on-12.html>; Office of the Attorney General of the Bolivarian Republic of Venezuela. August 17, 2009. *Dictan órdenes de aprehensión contra dos presuntos implicados en agresiones a periodistas en el centro de Caracas* (Orders issued to apprehend two suspects in acts of aggression against journalists in the center of Caracas). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa1708.htm>; Ministry of Communication and Information. August 14, 2009. *Defensoría del Pueblo hace un llamado a la tolerancia* (Office of the Human Rights Ombudsman calls for tolerance). Available in Spanish at: <http://minci.gob.ve/noticias/1/191081/defensoria-del-pueblo.html>; Office of the Attorney General of the Bolivarian Republic of Venezuela. August 14, 2009. *Fiscal General de la República rechazó ataque a periodistas* (Attorney General of the Republic rejected attack on journalists). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa1408.htm>; Globovisión. August 14, 2009. *Luisa Ortega Díaz repudió agresiones a periodistas de la Cadena Capriles* (Luisa Ortega Díaz repudiated acts of aggression against journalists of Cadena Capriles). Available in Spanish at: <http://www.globovision.com/news.php?nid=124416>.

⁶⁵⁷ El Universal. August 25, 2009. *Único detenido por agresión a periodistas queda en libertad* (Only detainee for aggression against journalists set free). Available in Spanish at: http://www.eluniversal.com/2009/08/25/pol_art_unico-detenido-por-a-1538816.shtml; El Nacional. August 26, 2009. *Único detenido por agresión a periodistas fue liberado* (Only detainee for aggression against journalists set free). Available in Spanish at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/96082/Medios%20bajo%20ataque/Gabriel-Uzc%C3%A1tegui-ha-sido-liberado; Information provided on November 2, 2009 by Espacio Público to the Office of the Special Rapporteur for Freedom of Expression in the framework of the 137th Ordinary Period of Sessions of the IACHR.

⁶⁵⁸ El Nacional. August 20, 2009. *Periodistas de la Cadena Capriles niegan haber provocado a chavistas agresores* (Journalists of Cadena Capriles deny having provoked aggression by Chávez supporters). Available in Spanish at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/95358/Medios%20bajo%20ataque/Periodistas-de-la-Cadena-Capriles-niegan-haber-provocado-a-chavistas-agresores; Espacio Público. August 20, 2009. *Periodistas rechazan acusaciones de sector oficial* (Journalists reject accusations of the official sector). Available in Spanish at: http://www.espaciopublico.info/index.php?option=com_content&task=view&id=542&Itemid=1; Venezolana de Televisión. August 19, 2009. *Últimas Noticias criminalizó a periodistas de Ávila TV* (Últimas Noticias characterizes as criminal the journalists of Ávila TV). Available in Spanish at: <http://www.vtv.gov.ve/noticias-nacionales/22527>; El Universal. August 19, 2009. *Chávez asegura que periodistas agredidos provocaron lo que les pasó* (Chávez assures that attacked journalists provoked what happened to them). Available in Spanish at: http://www.eluniversal.com/2009/08/19/pol_ava_chavez-asegura-que-p-19A2632685.shtml; El Nacional. August 19, 2009. *CNP considera "risibles" maniobras para descalificar a periodistas agredidos* (CNP [National Journalists' Association] considers "laughable" attempts to discredit attacked journalists). Available in Spanish at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/95240/Nacional/CNP-considera-risibles-maniobras-para-descalificar-a-periodistas-agredidos; El Universal. August 20, 2009. *Periodistas temen que palabras de Chávez generen más ataques* (Journalists fear that Chávez's words generate more attacks). Available in Spanish at: http://politica.eluniversal.com/2009/08/20/pol_art_periodistas-temen-qu-1531697.shtml; El Nacional. August 19, 2009. *Chávez dijo que periodistas provocaron el ataque* (Chávez said that journalists provoked the attack). Available in Spanish at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/95095/Nacional/Ch%C3%A1vez-dijo-que-periodistas-provocaron-el-ataque; Noticias24. August 19, 2009. *Dice que periodistas de la Cadena Capriles agredidos "provocaron" lo que les pasó* (Attacked journalists of Cadena Capriles said to have "provoked" what happened to them). Available in Spanish at: <http://www.noticias24.com/actualidad/noticia/76376/dice-que-periodistas-de-la-cadena-capriles-agredidos-provocaron-lo-que-les-paso/>.

usual ways in which the right to freedom of expression is exercised and that expressions against the government's proposed laws or policies, far from being an incitement to violence, are an integral part of any pluralistic democracy. Additionally, it is important to recall that, as previously stated in this report, when public functionaries exercise their freedom of expression whether in carrying out a legal duty or as a simple exercise of their fundamental right to express themselves, "[they] are subject to certain restrictions such as having to verify in a reasonable manner, although not necessarily exhaustively, the truth of the facts on which their opinions are based, and this verification should be performed subject to a higher standard than that used by private parties, given the high level of credibility the authorities enjoy and with a view to keeping citizens from receiving a distorted version of the facts."⁶⁵⁹

709. On the other hand, the IACHR observes with concern the attacks that were later attributed to the criminal group known as La Piedrita. On September 23, 2008, members of La Piedrita threw teargas bombs at the outside of the *Globovisión* headquarters in Caracas. The attackers left signed pamphlets declaring *Globovisión* and its director Alberto Federico Ravell to be "military objectives." The pamphlets also blamed the television channel for any attack that could be suffered by President Hugo Chávez.⁶⁶⁰ On October 10, 2008, members of La Piedrita attacked and seized the equipment of the team of *Globovisión* journalists who were covering a protest of transit workers in the 23 de Enero neighborhood.⁶⁶¹ It should be noted that days later, the then-Minister of Popular Power for Communication and Information, Andrés Izarra, condemned this action, accusing La Piedrita of carrying out acts of "political infantilism."⁶⁶² The IACHR expresses its particular concern about these attacks, precisely because given their special vulnerability in the current atmosphere, the journalists, editors, and workers of *Globovisión* have been under the protection of provisional measures ordered by the Inter-American Court since 2004⁶⁶³ and because there is still no information about the results of investigations and sanctions to prevent this type of attacks.

⁶⁵⁹ I/A Court H.R., *Case of Apitz-Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 131.

⁶⁶⁰ The allusion to an attack is referring to the possibility of an assassination. Committee to Protect Journalists. October 6, 2008. *Intimidation, accusations should stop*. Available at: <http://cpj.org/2008/10/intimidation-accusations-should-stop.php>; Instituto Prensa y Sociedad. September 26, 2008. *Lanzan panfletos y bombas lacrimógenas a sede de Globovisión* (Pamphlets and teargas bombs thrown at Globovisión headquarters). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1619>; Reporters without Borders. September 25, 2008. *Interior minister justifies attack against Globovisión claimed by pro-government militants*. Available at: <http://www.rsf.org/Interior-minister-justifies-attack.html>; Globovisión. September 23, 2008. *Director de Globovisión señaló que ataque al canal se veía venir por el lenguaje de violencia de algunos funcionarios* (Director of Globovisión states that attack on channel was predictable due to the violent language of some officials). Available in Spanish at: <http://www.globovision.com/news.php?nid=99438>; Globovisión. September 23, 2008. *Lina Ron reivindicó al grupo "La Piedrita" y ratificó declaratoria de Ravell y Globovisión como objetivos militares* (Lina Ron defended the "La Piedrita" group and ratified the declaration of Ravell and Globovisión as military objectives). Available in Spanish at: <http://www.globovision.com/news.php?nid=99439>; El Nacional. September 23, 2008. *Presunto grupo oficialista ataca fachada de Globovisión* (Group of presumed official supporters attack outside Globovisión). Available in Spanish at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/46191.

⁶⁶¹ The information indicates that the team of journalists was made up by Mayela León, Luis Reaño, and Frank Díaz. Inter-American Press Association. *Report on Venezuela. Midyear Meeting of March 13-16, [2009]. Asunción, Paraguay*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&infoid=362&idioma=us.

⁶⁶² El Universal. October 14, 2008. *RSF celebra condena de Izarra a agresión contra Globovisión* (RSF applauds condemnation by Izarra of aggression against Globovisión). Available in Spanish at: http://www.eluniversal.com/2008/10/14/pol_art_rsf-celebra-condena_1091410.shtml.

⁶⁶³ I/A Court H.R., Order of the Inter-American Court of Human Rights of January 29, 2008. Provisional Measures with regard to the Bolivarian Republic of Venezuela. Matter of "Globovisión" Television Station. Available at: http://www.corteidh.or.cr/docs/medidas/globovision_se_04_ing.pdf. Additionally, in the 2008 Annual Report, the IACHR stated that: "As observed in previous years, in 2008 the Commission continues to be troubled by the intimidation targeted at private media outlets, particularly the *Globovisión* television channel, whose executives and staff continued to be protected by provisional measures first ordered by the Inter-American Court in 2004 and confirmed on January 29, 2008." IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, para. 370. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm>.

710. On October 14, 2008, members of La Piedrita threw teargas bombs in the interior of the headquarters of the newspaper *El Nuevo País*. The aggressors also left pamphlets signed by the criminal group that declared the editor of the newspaper, Rafael Poleo, to be a “military objective.”⁶⁶⁴ As has already been stated, the declarations made by Poleo on the live program *A/ó Ciudadano* of October 13, 2008 were characterized by the Venezuelan authorities as “incitation to assassination.”

711. On December 1, 2008, members of La Piedrita threw teargas bombs and signed brochures in front of the building inhabited by the journalist Marta Colomina, who, since 2003, has been under the protection of provisional measures ordered by the Inter-American Court.⁶⁶⁵ According to the information received, the brochures also declared Colomina to be a military objective.⁶⁶⁶

712. On January 1, 2009, members of La Piedrita once again attacked the headquarters of *Globovisión* with teargas bombs and threw pamphlets in which they reiterated that the media and the newspaper *El Nacional* were “military objectives.”⁶⁶⁷ The IACHR applauds the fact that days later, the then-Minister of Popular Power for Communication and Information, Jesse Chacón, had condemned the act, stating that “the government rejecte[d] any action that goes beyond frank discussion about the way a social communications media manages its editorial line.”⁶⁶⁸

713. On January 19, 2009, members of La Piedrita threw teargas bombs at the residence of the director of *RCTV*, Marcel Granier. In later declarations, the leader of La Piedrita, Valentín Santana, declared that they proposed to “pass the arms by [Marcel] Granier.”⁶⁶⁹ The leader of the

⁶⁶⁴ Instituto Prensa y Sociedad. October 24, 2008. *Amenazan a director de diario y lanzan bombas lacrimógenas a sede* (Editor of newspaper threatened and teargas bombs thrown at headquarters). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1632>; Inter-American Press Association. October 15, 2008. *Condena la SIP agresión contra diario El Nuevo País en Venezuela* (IAPA condemns the acts of aggression against *El Nuevo País* newspaper in Venezuela). Available in Spanish at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4075&idioma=sp; Inter-American Press Association. *Report on Venezuela. Midyear Meeting of March 13-16, [2009]. Asunción, Paraguay*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inford=362&idioma=us.

⁶⁶⁵ I/A Court H.R., Order of the Inter-American Court of Human Rights of July 4, 2006. Provisional Measures regarding Venezuela. Matter of Marta Colomina and Liliana Velásquez. Available at: http://www.corteidh.or.cr/docs/medidas/colomina_se_05_ing.pdf.

⁶⁶⁶ Instituto Prensa y Sociedad. December 3, 2008. *Lanzan bombas lacrimógenas en edificio de periodista y la declaran “objetivo de guerra”* (Teargas bombs thrown in journalist’s building and she is declared an “objective of war”). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1669>; *El Nacional*. December 1, 2008. *Colectivo La Piedrita lanza artefacto explosivo contra residencia de Martha Colomina* (La Piedrita group throws explosive device at residence of Martha Colomina). Available in Spanish at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/57300.

⁶⁶⁷ Committee to Protect Journalists. February 9, 2009. *Pro-government group threatens Venezuelan media outlets*. Available at: <http://cpj.org/2009/02/pro-government-group-threatens-venezuelan-media-ou.php>; Reporters without Borders. January 2, 2009. *New Year’s Day Attack on TV station by radical pro-Chávez group*. Available at: http://www.rsf.org/spip.php?page=article&id_article=29875; *El Universal*. January 2, 2009. *Grupo La Piedrita lanzó bomba lacrimógena en Globovisión* (La Piedrita group throws teargas bomb in Globovisión). Available in Spanish at: http://www.eluniversal.com/2009/01/01/pol_ava_grupo-la-piedrita_01A2180231.shtml.

⁶⁶⁸ Espacio Público. January 5, 2009. *Jesse Chacón condena agresión a medios de comunicación* (Jesse Chacón condemns aggression against communications media). Available in Spanish at: http://www.espaciopublico.info/index.php?option=com_content&task=view&id=269&Itemid=2.

⁶⁶⁹ Granier also stated that his residence had been the object of a similar attack during the same month. Instituto Prensa y Sociedad. January 21, 2009. *Lanzan bombas lacrimógenas a casa de director de RCTV Internacional* (Teargas bombs thrown at home of director of RCTV International). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1706>; Colegio Nacional de Periodistas. January 19, 2009. *Grupo “La Piedrita” amenaza nuevamente* (“La Piedrita” group threatens again). Available in Spanish at: <http://cnpccaracas.org/?p=6324>;

La Piedrita group also recognized its responsibility for the attacks against headquarters of *Globovisión* and *El Nuevo País*, as well as the residences of Marta Colomina and Marcel Granier, in an interview published in a weekly on February 6, 2009.⁶⁷⁰

714. The IACHR applauds the fact that after this series of events and the publication of the interview mentioned previously, President Hugo Chávez condemned the actions of La Piedrita.⁶⁷¹ Nevertheless, as of the date of this report, the IACHR has not received information about his capture or about the investigations or sanctions that would prevent this type of attacks. It is important to note that on May 22, 2009, the Special Rapporteurship sent a communication to the State in which it expressed its concern about the acts of violence carried out by La Piedrita up to this date. However, no advances in the investigation, prosecution, or sanctioning of those responsible for these acts has been reported.

715. In relation to these acts of violence, the IACHR exhorts the State to investigate the existence of these violent groups and proceed to disarm and dismantle them as completely and as quickly as possible, given that, as the IACHR has indicated, "these groups have been the driving force behind violence and direct threats made against [diverse sectors of the Venezuelan population]."⁶⁷²

716. As indicated by the IACHR in its *Report on the Situation of Human Rights in Venezuela* (2003), "a monopoly on force must be maintained solely by the agencies of law enforcement, under the legitimate rule of law; the most complete disarmament possible of all civilian groups must be undertaken immediately."⁶⁷³

...continuation

Globovisión. January 19, 2009. *Residencia de Marcel Granier también fue atacada con bombas* (Residence of Marcel Granier was also attacked with bombs). Available in Spanish at: <http://www.globovision.com/news.php?nid=108308&clave=a%3A1%3A%7Bi%3A0%3Bs%3A17%3A%22leopoldo+castillo%22%3B%7D>; Inter-American Press Association. *Report on Venezuela. Midyear Meeting of March 13-16, [2009]. Asunción, Paraguay.* Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inford=362&idioma=us..

⁶⁷⁰ Communication of May 5, 2009 by *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression; Noticias 24. February 6, 2009. *La Piedrita pasará por las armas a enemigos de la revolución* (La Piedrita will take up arms against enemies of the Revolution). Available in Spanish at: <http://www.noticias24.com/actualidad/noticia/24132/habla-valentin-santana-jefe-del-colectivo-la-piedrita/>; Committee to Protect Journalists. February 9, 2009. *Pro-government group threatens Venezuelan media outlets.* Available at: <http://cpj.org/2009/02/pro-government-group-threatens-venezuelan-media-ou.php>; Inter-American Press Association. *Report on Venezuela. Midyear Meeting of March 13-16, [2009]. Asunción, Paraguay.* Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inford=362&idioma=us..

⁶⁷¹ Agencia Bolivariana de Noticias. February 7, 2009. *Chávez rechaza violencia de grupo La Piedrita y pide captura de su líder* (Chávez rejects violence of La Piedrita group and calls for the capture of its leader). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=168871&lee=4>; El Nacional. February 8, 2009. *Chávez ordena detener a líder de "La Piedrita"* (Chávez orders detention of leader of "La Piedrita"). Available in Spanish at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/67463/Pol%C3%ADtica/Ch%C3%A1vez-ordena-detener-a-l%C3%ADder-de-La-Piedrita; El Universal. February 9, 2009. *Chávez califica de terrorista y fascista a Colectivo La Piedrita* (Chávez characterizes the Colectivo la Piedrita as terrorist and fascist). Available in Spanish at: http://www.eluniversal.com/2009/02/09/pol_art_chavez-califica-de-t-1261095.shtml; Committee to Protect Journalists, February 9, 2009. *Pro-government group threatens Venezuelan media outlets.* Available at: <http://cpj.org/2009/02/pro-government-group-threatens-venezuelan-media-ou.php>.

⁶⁷² IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 250. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

⁶⁷³ IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 250. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

717. With respect to the existing mechanisms to protect communications media and journalists who have been threatened in relation to their editorial line, the State, in a communication of August 13, 2009, stated that: "The victim who has made a denunciation [before the Attorney General's Office] may obtain some measure of protection in accordance with the Law on Protection of Victims, Witnesses, and Others Subject to Proceedings, which stipulates that this may be 'informal, administrative, judicial, or of any other character in order to guarantee the rights of protected persons.' [...] The protection of the law does not distinguish whether or not the aggrieved person is a journalist, since the law provides equal protection for all citizens. In the cases of the communications media, because they are legal persons in a strict sense they cannot enjoy the measures of protection, because they are abstract entities. In this sense the protection falls upon the personnel of the communications media or the journalists who work there, since according to the law they are the only ones that can be considered victims."⁶⁷⁴

718. In this vein, the IACHR recommends that the State intensify the efforts aimed at investigating the acts of violence attributed to these violent groups, and that it continue adopting the urgent and necessary measures to dismantle them, energetically and publicly condemning their actions, strengthening criminal investigative capacities, and sanctioning the illegal actions of these groups to prevent the repetition of these acts in the future.

719. Finally, the IACHR urges the State to investigate promptly all the cases summarized in this section, to make its strongest effort to avoid the repetition of these crimes, and to ensure that they do not remain in impunity. As has been stated in other opportunities, the lack of sanctions for the perpetrators and the masterminds of the murders, acts of aggression, threats, and attacks related to the practice of journalism propitiates the occurrence of new crimes and generates a notorious effect of self-censorship that seriously undermines the possibility of a truly open, uninhibited, and democratic debate. Principle 9 of the Declaration of Principles states that: "[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

g. Recommendations

720. In light of the forgoing considerations, the IACHR recommends that the Venezuelan State:

1. Bring its domestic legislation into agreement with the parameters established in the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man, and the Declaration of Principles on Freedom of Expression. In particular, it should repeal the provisions on *desacato*, *vilipendio*, and insult to the National Armed Forces. Additionally, it should modify the text of Article 29.1 of the Law on Social Responsibility in Radio and Television, Articles 9, 10, and 11 of the Organic Law on Education, and Resolution No. 047 of the Ministry of Popular Power for Communication and Information, Norms on the Mechanisms and Conditions of Assignment of Airtime to Independent National Producers on Providers of Radio Services.

⁶⁷⁴ Bolivarian Republic of Venezuela. August 13, 2009. Questionnaire on human rights presented at the request of the Inter-American Commission on Human Rights. Office of the State Agent for Human Rights before the Inter-American and International Systems, pp. 111-112.

2. Ensure that the use of the power to use the communications media to disseminate state messages is in accordance with inter-American standards, especially with respect to satisfying the requirement of strict necessity. In particular, it is necessary to revise Article 192 of the Organic Law on Telecommunications and Article 10 of the Law on Social Responsibility in Radio and Television.
3. Guarantee the most absolute impartiality and due process in all the administrative and judicial proceedings to enforce the legislation on broadcasting. In particular, the opening of such proceedings and the imposition of sanctions must be the duty of impartial and independent organs, regulated by legal norms that are precise and delimited, and governed by that which is provided in Article 13 of the American Convention. In no case may the media's editorial line be a relevant factor for the adoption of any decision relating to this subject matter.
4. Make all decisions relating to broadcasting subject to the laws, the Constitution, and the international treaties in force and strictly respect all the guarantees of due process, the principle of good faith, and the inter-American standards that guarantee the right to freedom of expression of all persons without discrimination. Ensure that none of its actions is motivated by or aimed at rewarding media that agree with government policies or at punishing those that are critical or independent.
5. Maintain from the highest levels of the state the public condemnation of acts of violence against journalists and communications media, with the aim of preventing actions that foment these crimes, and avoiding the continued development of a climate of stigmatization of those who hold a stance critical of government actions.
6. Ensure that public officials refrain from making declarations that generate an atmosphere of intimidation that limits the right to freedom of expression. In particular, the State must create a climate in which all persons can express their ideas and opinions without fear of being persecuted, attacked, or sanctioned for it.
7. Adopt the measures that are necessary to protect the life and personal integrity of social communicators and the infrastructure of the communications media. In particular, the State has the obligation to carry out serious, impartial, and effective investigations of the acts of violence and harassment against journalists and communications media, identifying, judging, and sanctioning those responsible.
8. Promote the incorporation of international standards on freedom of expression through the judicial system, which constitutes an effective tool for the protection and guarantee of the current normative framework for freedom of expression.

