

CHAPTER II

EVALUATION OF THE STATE OF FREEDOM OF EXPRESSION IN THE HEMISPHERE

A. Introduction and methodology

1. This chapter describes some of the most important aspects related to freedom of expression during 2008 in the hemisphere. Its objective is to begin a constructive dialogue with the Member States of the OAS, calling attention to the reported advances as well as the problems and challenges that have required confrontation during this period. The Office of the Special Rapporteur has confidence in the will of the OAS Member States to promote decisively the right to freedom of expression and, to that end, to publicize their best practices, report the most serious problems observed, and formulate viable and practical recommendations based on the Declaration of Principles.

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

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

4. The cases selected in each topic seek to serve as paradigmatic examples that reflect the situation in each country in relation to the respect and exercise of freedom of expression. Sources are cited in all cases.¹ It is pertinent to clarify that the omission of analysis of the situation of some cases or States is due to the fact that the Office of the Special Rapporteur has not received sufficient information. As such, these omissions should be interpreted only in this sense.

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

¹ In the majority of cases, the Office of the Special Rapporteur provides the direct source, citing the electronic address of the corresponding Web site. When the information is not published directly, the report cites the date the information was received in the electronic mailbox of the Office of the Special Rapporteur. This report does not include information that has been submitted to the Office of the Special Rapporteur through petitions for precautionary measures, which has not been made public. In elaborating the 2008 Annual Report, the Office of the Special Rapporteur used data available up to December 31, 2008. Some cases have been updated with information that has been received up to the completion date of this report between January and February 2009.

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

1. Argentina

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

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

8. The decision of the Supreme Court constitutes a decisive advance in the incorporation of the standards on freedom of expression of the inter-American system in the Argentine legal system. Principle 10 of the Declaration of Principles establishes that the “protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

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

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

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

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

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

11. On another matter, Gregorio Ríos, who was initially sentenced in February 2000 to life in prison for instigating the murder of photographer Jose Luis Cabezas, was granted parole on October 28, 2008.⁵ On September 19, 2007, the Supreme Court of Justice of the Province of Buenos Aires revoked the judgment that reduced to 27 years the sentence of the trial court. Up to the date of this report however, the criminal process continues and the initial judgment has not gained the effect of *res judicata*. This would have allowed for the granting of special benefits to Ríos.⁶ The Office of the Special Rapporteur underscores that the delays in the administration of justice and the granting of criminal benefits cannot lead to the employment of measures of relative impunity that run contrary to the international obligations of the State. The Inter-American Court has stated that States have “a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.”⁷

⁴ I/A Court H.R., *Case of Kimel v. Argentina*. Merits, Reparations, and Costs. Judgment of May 2, 2008 Series C No. 177. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_177_ing.pdf.

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

⁶ It is worth noting, however, that at the completion of this report, the Special Rapporteurship was informed that the Supreme Court of Justice of the Province of Buenos Aires revoked the judgment that had reduced to 24 years the life sentence handed down against Alberto Gomez, ex commissioner of Pinamar, on December of 2002, for having “freed the zone” that facilitated committing such crime. Supreme Court of Justice of the Province of Buenos Aires. February 4, 2009. *P. 98.577 (y su acumulada: P. 98.688) - Sentencia en la denominada causa “Cabezas II”*. Available at: <http://www.scba.gov.ar/sitio/portada/default.asp>. La Nación. February 12, 2009. *Caso Cabezas: Disponen prisión perpetua para un ex comisario de Pinamar*. Available at: http://www.lanacion.com.ar/nota.asp?nota_id=1099220. Clarín. February 12, 2009. *Caso Cabezas: Ordena que el comisario Gómez cumpla la prisión perpetua*. Available at: <http://www.clarin.com/diario/2009/02/12/um/m-01857731.htm>. Foro de Periodismo Argentino. February 12, 2009. *Fopea celebra una decisión de la Suprema Corte de Justicia Bonaerense en el caso Cabezas*. Available at: [http://www.fopea.org/Inicio/Fopea celebra una decision de la Suprema Corte Bonaerense en el Caso Cabezas](http://www.fopea.org/Inicio/Fopea%20celebra%20una%20decision%20de%20la%20Suprema%20Corte%20Bonaerense%20en%20el%20Caso%20Cabezas).

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

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

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

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

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

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

14. On the other hand, the Office of the Special Rapporteur received information about the presentation of bills for a new regulatory framework for broadcasting.¹¹ The Office of the Special Rapporteur emphasizes that this process must take into account that which is provided in Principle 13 of the Declaration of Principles, which establishes that “the concession of radio and television broadcast frequencies, [...] with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten[s] freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

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

2. Barbados

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

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

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

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

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

17. On the other hand, Cherie Pitt, a photographer for the newspaper *Nation*, and Jimmy Gittens, a cameraman with the *Caribbean Broadcasting Corporation*, were detained on December 20, 2008 when they attempted to photograph a police officer who was presumably being investigated. According to this information, the photographer was charged with assaulting a police officer and resisting authority, while Gittens was charged with obstructing a police officer in the exercise of his duty. Both reporters were released on bond and must appear in court in May of 2009.¹⁴ The Office of the Special Rapporteur reminds the State of that which is provided under Principle 2 of the Declaration of Principles: "Every person has the right to seek, receive and impart information freely under terms set forth in Article 13 of the American Convention on Human Rights." It also highlights what is stated in Principle 13, in that: "Direct or indirect pressures exerted on journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression."

3. Bolivia

18. The Office of the Special Rapporteur looks favorably upon the fact that the new Constitution, which was approved by referendum in January 2009, establishes the right to freedom of expression in articles 106 and 107.¹⁵

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

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

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

Article 106.

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

Article 107.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Nueva radio were attacked in September of 2008,²³ while in another attack, dynamite was exploded outside the studios of *Red Uno* in Cochabamba.²⁴ In October of 2008, *Canal 13* of the State University of San Francisco Xavier in Sucre²⁵ and the newspaper *El Potosí*²⁶ were attacked with dynamite.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29. The Office of the Special Rapporteur recognizes as a positive development the fact that, according to the information received, on May 7, 2008, Attorney General Mario Uribe instructed all of the district prosecutors in the country to open, on their own initiative, investigations into cases of attacks on journalists.⁴¹ It also views favorably the progress made in the investigation of some of the aforementioned cases of attacks and the prompt action of the justice system in some of them. Nevertheless, in light of the complaints reported in the above paragraphs, the Office of the Special Rapporteur urges the State to take the measures necessary to guarantee the safety of reporters while they are carrying out their work as journalists. Principle 9 of the Declaration of Principles, states that “[t]he [...] kidnapping, intimidation and/or threats to social communicators, as well as the material destruction of communications media, violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the State to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

30. In this context, the Office of the Special Rapporteur manifests its concern for the declarations made by some high-level government officials and critical media, which may increase the climate of intimidation and hostility toward journalists and could, in turn, lead to self-censorship⁴². As it indicated in its 2007 Annual Report, the Office of the Special Rapporteur recalls that “heads of State play a critical role in making room for tolerance and democratic coexistence; thus, they should exercise special care in terms of the impact their statements may have on freedom of expression and on other human rights, such as the right to life and to personal integrity.”⁴³

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

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

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

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

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

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

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

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

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

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

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

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

4. Brazil

34. On March 10, 2008, during the 131st Period of Sessions, the IACHR held a public hearing on indirect restrictions on freedom of expression in Brazil. Representatives of the Brazilian State and of non-governmental organizations participated in the hearing. In preparing this section of its 2008 Annual Report, the Office of the Special Rapporteur relied on the information provided by the parties in this hearing⁴⁹.

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

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

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

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

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

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

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

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

38. During 2008, the Office of the Special Rapporteur received information regarding attacks on media outlets and journalists who investigated corruption cases. According to the information received, on some of those cases, the aggressors were public officials. However, it should also be highlighted that on multiple occasions, the authorities reacted in a prompt and efficient manner to investigate the facts and punish the perpetrators. Particular attention received the case of a team of journalists from *O Dia* newspaper, who was involved in an undercover investigation of the presence and operations of paramilitary groups in a neighborhood of Rio de Janeiro. On May 14, 2008, the journalists' cover was blown, they were tortured and held captive for eight hours by masked individuals. The reporters were freed on the threat that something would happen to them if they revealed the identity of their captors. The authorities initiated an investigation and detained several persons accused of having committed the crime⁵⁴. Other attacks against journalists and media outlets allegedly related to their investigation on corruption cases took place against employees of *TV Diário*⁵⁵ television program, *Bandeirantes*⁵⁶ television channel, and *Folha de São Paulo*⁵⁷ newspaper.

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

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

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

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

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

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39. In other instances, security agents prevented journalists from *RIC-TV* channel⁵⁸, *TV Educativa* (TVE)⁵⁹ and *O Estado* newspaper,⁶⁰ from reporting on certain situations. Finally, three photographers from different newspapers were attacked by unidentified individuals in Rio de Janeiro while they were covering a Senator's visit.⁶¹

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

50. The Office of the Special Rapporteur received information about the adoption of judicial orders in May of 2008 in nine different Brazilian cities prohibiting the realization of public demonstrations seeking to promote modifications to current penal law. These decisions were justified by the judicial authorities under the argument that they would allegedly constitute advocacy or instigation of criminal activity. The Office of the Special Rapporteur recalls that, except in the case of forms of expression that, in the terms of Article 13(5) of the American Convention, clearly constitute “propaganda for war” or “advocacy of national, racial or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds,” peaceful citizen marches in public areas are demonstrations protected by the right to freedom of expression.⁷⁰

51. The Office of the Special Rapporteur takes note of the judicial proceeding currently before the Supreme Federal Tribunal in which the court is reviewing the requirement of a journalism diploma for the exercise of the profession established in Decree-Law 972/69, the regulation implementing the Press Law.⁷¹ With regards to this case, it is recalled that, in conformity with the jurisprudence of the Inter-American Court, this type of requirement constitutes a restriction on freedom of expression incompatible with Article 13 of the American Convention. Principle 6 of the Declaration of Principles provides that “[e]very person has the right to communicate his/her views by any means and in any form. Compulsory membership or the requirements of a university degree for the practice of journalism constitute unlawful restrictions of freedom of expression.”

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

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

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

⁷² ABRAJI/IFEX. November 17, 2008. *Newspaper’s circulation reduced after it publishes articles criticizing mayor*. Available at: <http://www.ifex.org/en/content/view/full/98590/>. Jornal da ABI. November 2008. *Prefeito de Itaguaí ameaça jornalista*. Available at: <http://issuu.com/uca/docs/jonaldaabi335/32>.

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

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

5. Canada

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

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

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

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

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

⁷⁷ Reporters Without Borders. January 21, 2008. *Federal Court wants to violate "Basic Right" of journalists to Project their sources*. Available at: http://www.rsf.org/article.php3?id_article=25127. Inter-American Press Association. *Canada Report. Midyear Meeting, Caracas, Venezuela*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=5&infoid=281&idioma=us. CNW Group. January 18, 2008. *CAJ disturbed by court ruling*. Available at: <http://www.newswire.ca/en/releases/archive/January2008/18/c2432.html>. Federal Court. January 18, 2008. *Charkaoui Re (2008 FC 61)DES-3-0*. Available at: <http://decisions.fct-cf.gc.ca/en/2008/2008fc61/2008fc61.html>.

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

55. On the other hand, journalist Innocent Madawo denounced that he had received threatening telephone calls in January of 2008 because of an article about Zimbabwe, his country of origin.⁷⁹ The Special Rapporteurship emphasizes that Principle 9 of the Declaration of Principles states that threats to social communicators “violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

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

57. The Office of the Special Rapporteur also highlights the decision of the Supreme Court of Canada of June 27, 2008, which rejected the civil complaint for defamation against journalist Rafe Mair and the radio station *CKNW*, for an editorial that strongly criticized social activist Kari Simpson. The complaint had been rejected, but the Court of Appeals of British Columbia revoked that decision and characterized the reporter’s comments as defamation. The Supreme Court’s ruling overturned this judgment with the defense of the doctrine of “fair comment”.⁸¹ The Special Rapporteurship recalls that Principle 10 of the Declaration of Principles states that: “The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

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

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

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

6. Chile

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

⁸² I/A Court H.R. *Case of Claude Reyes et al*. Monitoring Compliance with Judgment. Order of November 24, 2008. Available only in Spanish at: http://www.corteidh.or.cr/docs/supervisiones/reyes_24_11_08.pdf.

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

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

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

[...]

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

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

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

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

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

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

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

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

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

59. The Office of the Special Rapporteur also celebrates the decision of the State Defense Council on September 9, 2008 to provide reparations to journalist Alejandra Matus for the 1999 seizure of her book, “El Libro Negro de la Justicia Chilena”.⁸⁵ In October 2005, the IACHR recommended that the State “provide adequate reparations to Alejandra Marcela Matus Acuña for the consequences she suffered due to the violations of the right to freedom of expression and the right to property”.⁸⁶ Principle 5 of the Declaration of Principles stipulates that “prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information violate the right to freedom of expression.”

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

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

⁸⁵ State Defense Council of Chile. *Council Agreements, September 2008 Sessions*. Available in Spanish at: http://www.cde.cl/wps/portal/!ut/p/c1/04_SB8K8xLLM9MSSzPy8xBz9CP0os_hg_yAjT2czYwMLQ09TAyOvADPPMD_TQA9D_M6B8pFI8GAYyh4UYGBgZ-It4WpoHG7i7GBPQH06yD79-kLwBDuBooO_nkZ-bqL-QG2GQZeKoCACicrVi/dl2/d1/LOIDU0IKSWdra0EhIS9JTIJBQUlpQ2dBek15cUEhL1ICSkoXtkExTkk1MC13ISEvN19TT1ySUM2MzAwTTJEMDJORzIGQjhVQjNPMA!!/?PC_7_SOR2IC6300M2D02NG9FB8UB300_WCM_CONTEXT=/wps/wcm/connect/Exp ress%20Web%20Content/cde+web/acuerdos+de+consejo/acuerdos+de+consejo+-+sesiones+septiembre+de+2008. Periodistas-es. September 29, 2008. *Chile indemnizará a la periodista Alejandra Matus por la censura del “Libro Negro de la Justicia Chilena*. Available in Spanish at: http://www.p-es.org/index.php?option=com_content&view=article&id=1520:chile-indemnizara-a-la-periodista-alejandra-matus-por-la-censura-del-libro-negro-de-la-justicia-chilena&catid=37:libertad-expresion&Itemid=61.

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

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

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

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

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

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

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

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

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

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

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

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

7. Colombia⁹³

66. The IACHR celebrates the release of journalists Mario Alfonso Puello⁹⁴ and Javier García Rangel,⁹⁵ who were held by the National Liberation Army (ELN) for four years and two months, respectively. The IACHR has repeatedly indicated that the taking of hostages constitutes a serious breach of International Humanitarian Law. Furthermore, the IACHR notes with satisfaction the continued implementation of the Journalist Protection Program by the Ministry of the Interior and Justice and draws attention to a recent decision of the Constitutional Court of Colombia ordering the Ministry to bring said program into line with the professional needs of journalists and the requirements of legal due process.⁹⁶

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁰⁰ IFEX. June 16, 2008. *Journalist assaulted in Bogotá, threatened with murder, obliged to cease distributing magazine in Honda*. Available at <http://www.ifex.org/es/content/view/full/94511> Pedro Antonio Cárdenas is a beneficiary of precautionary measures ordered by the IACHR. The State reported that investigation No. 11001600049200803607 is currently underway and is in the hands of the Office of Bogotá Sectional Prosecutor 330. Note DDH No. 5717/0223 from the Office of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs of the Republic of Colombia, February 5, 2009, page 56.

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

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

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

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

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

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connection, the IACHR expresses its concern at the circulation of pamphlets signed by alleged members of armed groups. On March 11, 2008, a pamphlet allegedly authored by the armed group known as the Águilas Negras was circulated in the Municipality of Manaure, Guajira, in which the journalist Kenneth Rivadeneira and eight other persons in the region were declared military targets.¹⁰⁶ Similarly, the IACHR has been told that in several cases the threats have prompted the communicators to leave their homes. The state's observations indicate that the Ministry of the Interior's Protection Program devotes approximately US\$ 764.000.00 per annum to the protection of journalists under threat¹⁰⁷.

71. The IACHR notes with concern that most of these threats are designed to intimidate not only the journalists, but also the media outlets for which they work. This, combined with the fact that most of the threats occur in provincial areas, leads to the conclusion that the warnings may be intended to close down community radio stations. The IACHR reiterates that, as stated in Principle 9 of the Declaration of Principles on Freedom of Expression, "the murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression." The IACHR also reiterates that, as the Office of the Rapporteur for Freedom of Expression has noted, threats of this type help to create a climate conducive to self-censorship.¹⁰⁸

72. The IACHR notes with concern that high-ranking public officials make statements that tend to generate an atmosphere of intimidation that may dramatically curb freedom of expression by persons who do not agree with government policies and lead to extremely serious situations such as the ones described the following. On February 10 and 11 2008, a presidential adviser¹⁰⁹, spoke dismissively about a march announced for March 6, 2008, to commemorate victims of paramilitary groups, claiming that it had been convened by the FARC. This high-ranking official also associated the organizers of the demonstration with that outlawed group.¹¹⁰ Subsequently, the Office of the President issued press releases in which it undertook to ensure the safety of those taking part in the demonstration but did not refute the serious claims made by the senior adviser, who continued to hurl accusations, especially at the human rights defender Iván Cepeda, one of the organizers of the march.

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

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

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

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

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

¹⁰⁹ José Obdulio Gaviria Escobar.

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

Rozo and Carlos Burbano were murdered, all between February 23 and March 5, 2008.¹¹¹ The State indicates that these murders are being investigated. Furthermore, a threat e-mailed on March 11, 2008, labeled 28 human rights defenders taking part in the March as military targets, saying that they had links to guerrilla groups.

74. The IACHR is troubled by the emergence of a pattern of sweeping negative statements about dissenting grassroots movements that link them to outlawed armed groups or “terrorist organizations” and suggest that behind their public demonstrations lurk their intent on destabilizing the State. This situation recurred during the cane cutters’ strike called in southwest Colombia on September 15, 2008, to denounce and renegotiate working conditions in this sector. High-ranking government officials –including the President of the Republic¹¹² and the Minister of Agriculture and Rural Development–¹¹³ and senior representatives of the sugar growers association, including the president of ASOCAÑA,¹¹⁴ told the media and the public that the strike was infiltrated by “dark forces”, “alien forces,” or, more explicitly, the FARC guerrilla movement.

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

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

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

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

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

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

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

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

76. In this connection, the IACHR deems it pertinent to remind the State that the Inter-American Court has consistently held that freedom of expression (which also covers political criticism and social protest) is a fundamental right that should be guaranteed not only with respect to the circulation of information or ideas that are received favorably or considered inoffensive or indifferent, but also to those that offend, shock or disturb the State or any other sector of the population; such are the demands of pluralism, tolerance and the spirit of openness, which are essential in a democratic society.¹¹⁸ 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.¹¹⁹ 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.”¹²⁰ Furthermore, they should bear in mind that, as public officials, they are in a position of guarantors of the fundamental rights of the individual and, therefore, their statements cannot be such that they disregard said rights.”

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

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

¹¹⁷ Remarks of the President of the Republic at a meeting of the Community Council in Quetame, October 18, 2008, http://web.presidencia.gov.co/discursos/discursos2008/octubre/cc215_18102008.html.

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

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

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

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

their shows and ordered them not to air it. The order was issued as part of a criminal proceeding that was investigating allegations made by the program, according to which, a beautician was irregularly performing surgical procedures. In that regard Principle 5 of the Declaration of Principles on Freedom of Expression provides, "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law."

8. Costa Rica

79. The Office of the Special Rapporteur welcomes the resolution on August 19, 2008 by the Third Chamber of the Supreme Court of Justice, which handed down a definitive decision in the homicide case of social communicator Parmenio Medina Pérez, who was murdered in July 2001.¹²²

80. The Special Rapporteurship further applauds the decision of the Constitutional Chamber of the Supreme Court of Justice on April 30, 2008. In this decision, the Constitutional Chamber denied Former President Miguel Angel Rodriguez's request that the court force *La Nación* newspaper to turn over documents to him that had served as evidence for a publication citing his involvement in a corruption scandal.¹²³ In the case, the Constitutional Chamber remarked that "the fundamental right of journalists to maintain the secrecy of their sources [...] protects [...] the social conglomerate that owns the right to receive information [...] as such, this right guarantees a free, responsible and independent press". Nevertheless, the Office of the Special Rapporteur expresses concern that in the same decision, the tribunal sustained that "in the case of criminal jurisdiction, eventually and in certain fact situations, the right to maintain the secrecy of sources must cede in order to facilitate criminal investigations and the guarantee of certain fundamental rights. Absolute protections do not exist with respect to the secrecy of the social communicator's information sources. [...] The circumstances and situations in which secrecy of sources must yield before the necessities imposed by a criminal investigation will continue to be defined on a case by case basis by this Constitutional Tribunal".¹²⁴ The Office of the Special Rapporteur recalls that Principle 8 of the Declaration of Principles establishes that "every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."

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

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

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

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

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

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

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

9. Cuba¹²⁸

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

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

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

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

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

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

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

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

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

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

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

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

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

...continuation

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

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

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

¹³³ RSF. "Internet enemies: Cuba". Available at: http://www.rsf.org/article.php3?id_article=10611&Valider=OK. IAPA. Sixth-Fourth General Assembly, October 2-7, 2008, Madrid Spain. Report on Cuba. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&infoid=315&idioma=sp.

passes needed to use these connections are expensive and sometimes hard to find.¹³⁴ Bloggers¹³⁵ sometimes use these public connections or those of foreign agencies, for example, to publish their reports. Certain servers, such as Yahoo and Hotmail MSN continue to be hard to access.¹³⁶

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

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

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

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

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

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

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

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

¹³⁹ IAPA. Report on Cuba. General Assembly, October 3-7, 2008, Madrid, Spain. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&inforid=315&idioma=sp.

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

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

93. The IACHR would like to emphasize that Principle 4 of the Declaration of Principles on Freedom of Expression states that “access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”

94. In addition, the IACHR has received information in 2008 of instances of intimidation and harassment of journalists by police agents, which constitute restrictions on the exercise of the freedom of expression. As an example, in April of this year journalist Ernesto Corría Cabrera working for press agency *Nueva Prensa Cubana*, was arrested and expelled from Havana to Camaguey after printing a news report in the United States Interests Section at the Swiss Embassy. According to information received, the journalist was accused of violating a decree that requires that anyone who does not live in the Cuban capital must request special permission if they remain for more than 24 hours. On several occasions State Security agents had warned the reporter that if he did not cease his journalistic efforts, he would be subject to prosecution for violations of Law 88.¹⁴²

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

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

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

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

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

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

¹⁴⁴ El Tiempo. “Cuban Police Disperse Protest of Ladies in White.” Article published on April 22, 2008, available at: http://www.eltiempo.com/internacional/lacionamerica/noticias/ARTICULO-WEB-NOT_INTERIOR-4111791.html.

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

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

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

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

10. Dominica

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

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

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

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

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

11. Dominican Republic

102. The Office of the Special Rapporteur celebrates the advancement represented by the decision of the Supreme Court of Justice on December 19, 2007 to definitively convict the authors of the murder of journalist Orlando Martínez Howley on March 17, 1975.¹⁴⁹

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. Ecuador

111. The Office of the Special Rapporteur appreciates that the text of the new Constitution of Ecuador contains provisions that guarantee diverse aspects of the right to freedom of expression¹⁶⁴. Nevertheless, some of the new constitutional clauses may be interpreted in such a

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

116. Principle 10 of the Declaration of Principles establishes that "[t]he protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest." Principle 11 provides that "[p]ublic officials are subject to greater scrutiny by society."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. El Salvador

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

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

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

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

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

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

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

14. Grenada

125. The Office of the Special Rapporteur received information that Thenesa Thomas, a Jamaican journalist from the *Caribupdate* news agency, was detained on February 14, 2008 by the Grenadian immigration authorities for allegedly not having her immigration documents in order, and was ordered to leave the country. Thomas had arrived in Grenada in January of 2008 to cover the election campaign of the opposition party and, according to the information received, had return tickets for March of 2008, when her work as a journalist would be completed. It was reported that, even though the immigration officials verified that there had been a misunderstanding and that the journalist was not in the country illegally, they told her to leave Grenada within 24 hours. Shortly thereafter, the authorities extended her stay until February 19, 2008. According to the reporter, her visa was valid until August 2, 2008.¹⁸⁷ According to the information received, this occurrence

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

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

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

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

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

prevented the journalist from being able to conduct her work as planned. The Office of the Special Rapporteur reminds the State that, in accordance with Principle 2 of the Declaration of Principles, “[e]very person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights.” Likewise, it emphasizes, as Principle 13 states, that “[d]irect or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

15. Guatemala

126. The Office of the Special Rapporteur views positively the fact that on September 23, 2008 the Congress of the Republic passed Decree No. 57-2008, the Public Information Access Act, which goes into force in January of 2009.¹⁸⁸ It is also pleased that on April 1, 2008, Guatemalan President Álvaro Colom signed the Declaration of Chapultepec.¹⁸⁹ On that occasion, the President of Guatemala expressed publicly his commitment to promoting the enactment of the Public Information Access Act, which was then being debated in Congress. The enactment of this law is a decisive advance in the incorporation of standards on access to information from the inter-American system into the Guatemalan legal system. Principle 4 of the Declaration of Principles establishes that “[a]ccess to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

133. The Office of the Special Rapporteur urges the State to investigate promptly all of these cases and to make all possible efforts to prevent these crimes from being met with impunity. The lack of punishment for the masterminds and perpetrators of murders, assaults, threats and attacks connected to the practice of journalism creates a favorable environment for the occurrence of new offenses. Principle 9 of the Declaration of Principles indicates that “[t]he murder, kidnapping, intimidation and/or threats to social communicators, as well as to the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the State to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

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

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

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

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

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

²⁰³ Presidency of Guatemala. November 27, 2008. Acuerdo Gubernativo No. 308-2008.

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

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

16. Guyana

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

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

138. The Office of the Special Rapporteur also received information regarding possible restrictions against Gordon Moseley, a journalist with *Capitol News*, to prevent him from entering the office of the President. The decision, which was adopted on July 13, 2008, originated from a letter submitted by the journalist to a local newspaper in reaction to declarations made against him by the President.²⁰⁷ The Office of the Special Rapporteur reminds the State of Guyana that the creation of obstacles to the free flow of information constitute, according to Principle 5 of the Declaration of Principles, a violation of the right to freedom of expression. Additionally, Principle 13 of the Declaration of Principles, among other points, states that: “The exercise of power [...] by the state [...] with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten[s] freedom of expression.”

²⁰⁵ Office of the Special Rapporteur – IACHR. *Annual Report 2007*. Volume II. Chapter II. Paragraph 210. Available at: http://www.cidh.oas.org/annualrep/2007eng/Annual_Report_2007.VOL.II%20ENG.pdf.

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

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

17. Haiti²⁰⁸

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

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

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

142. The IACHR reiterates the importance of Principle 9 of the Declaration of Principles, which states that: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of

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

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

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

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

²¹² IAPA. Haiti Report. General Assembly: 64th General Assembly, October 3-7, 2008, Madrid, Spain. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=20&infoid=320&idioma=sp.

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

18. Honduras

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

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

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

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

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

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

146. With respect to point 3 of its recommendations, the Office of the Special Rapporteur has not received information concerning the introduction and adoption of any reforms to the current legal system in working toward the decriminalization of the criminal defamation offenses contained in the Criminal Code of Honduras.²¹⁸ On this point, the Office of the Special Rapporteur reiterates its recommendation to the State to make efforts to make its laws on so-called offenses against honor compatible with international standards. It recalls Principle 10 of the Declaration of Principles, which states that: "The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest."

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

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

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

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

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

and Access to Information Act,²¹⁹ and the subsequent creation of the Institute for Access to Public Information. Nevertheless, according to the information provided to the Office of the Special Rapporteur during its visit, Articles 17²²⁰ (classification of information as secret) and 39²²¹ (information covered by the law) could be open to restrictive interpretations that could hinder the effective exercise of the right to access to information.²²² The Office of the Special Rapporteur appreciates that the regulations to this Act were passed in March of 2008.²²³ Critical information has been received by the Office on some aspects of the implementation of the law, such as an alleged excess of zeal in the classification of information about the budgets of government offices as “secret”, or the establishment of ten-year time limits for the declassification of information on government finances.²²⁴ The Office of the Special Rapporteur urges the adoption of implementation decisions that are consistent with the standards on the issue, to guarantee the effective exercise of the right of all persons to access to information. Principle 4 of the Declaration of Principles states: “Access to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right.”

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

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

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

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

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

²²³ Order No. IAIP 0001-2008. March 3, 2008. *Reglamento de la Ley de Transparencia y Acceso a la Información Pública*. Available at: http://www.bch.hn/download/juridico/reglamentos/reglamento_ley_transparencia.pdf.

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

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

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

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

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

151. Further, the Office of the Special Rapporteur was informed that in November of 2008 the Appeals Division of the Administrative Law Court of First Instance entered a final judgment granting the frequency for the *Canal 8* to the Teleunsa Company, and ordered the government to return it to that firm. According to the information received, judicial authorities had already ordered the government to turn the channel over to Teleunsa in 2007, and again in July of 2008.²²⁷ At the end of 2008, the Office of the Special Rapporteur had not received information as to whether the government had turned the channel over to Teleunsa.

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

19. Jamaica

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

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

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

standards on freedom of expression. The Special Rapporteurship received information that the Prime Minister, Bruce Golding, ordered the creation of a committee to review the country's defamation laws and issue recommendations. On February 28, 2008, the committee presented its report and on April 29 of the same year, its recommendations were presented to the House of Representatives. According to the information received, the committee proposed abolishing the crimes of criminal defamation (*blasphemous, obscene and seditious libel*). It also proposed the elimination of the distinction between the civil actions of slander and libel, as well as the reduction of the statute of limitations to begin judicial actions for defamation from six years to twelve months²²⁸. The IACHR made an *in loco* visit to Jamaica between November 1-5, 2008. The IACHR met with directors of media outlets, journalists, and directors of media and reporter associations. The IACHR was informed that the initiatives of legislative reform presented by the committee were making their way through parliamentary channels²²⁹.

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

20. Mexico

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

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

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

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

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

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

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

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

158. The vulnerability of journalists in Mexico to organized crime, especially the drug trafficking cartels, was again underscored most tragically in 2008. This year, the Office of the Special Rapporteur was informed of the murders of media professionals Teresa Bautista and Felicitas Martínez²³⁴, Miguel Villagómez Valle²³⁵ and Armando Rodríguez Carreón²³⁶, allegedly in

...continuation

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

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

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

²³⁴ According to the information received, Bautista Merino and Martínez Sánchez, broadcasters from the community radio station *La Voz que Rompe el Silencio* of the Triqui indigenous community in Oaxaca, were killed in an ambush on April 7, 2008, by unidentified individuals who fired automatic weapons into the vehicle they were traveling in. Another four people were injured. According to the information obtained from the press and non-governmental organizations, the reporters were killed on their way back from conducting interviews in neighboring towns and talking about their community radio station. The two women worked as program hosts and reporters at the community radio station and would often report on issues concerning the autonomous indigenous government, health, education and their community’s culture. Office of the Special Rapporteur – IACHR. April 18, 2008. *Press Release No. 190/08*. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=729&IID=2>. Centro Nacional de Comunicación Social/Article 19. April 8, 2008. *Asesinan a dos locutoras de radio comunitaria en Oaxaca*. Available at: <http://cencos.org/es/node/18232>. Reporters Without Borders. April 9, 2008. *Asesinadas a disparos dos jóvenes periodistas de una radio comunitaria indígena, el estado de Oaxaca*. Available at: http://www.rsf.org/article.php3?id_article=26514. Committee to Protect Journalists. April 10, 2008. *Dos locutoras de una radio comunitaria asesinadas*, available at: <http://cpj.org/es/2008/04/dos-locutoras-de-una-radio-comunitaria-asesinadas.php>. Office of the United Nations High Commissioner for Human Rights in Mexico. April 17, 2008. *Press Release. La OACNUDH condena los asesinatos y agresiones de periodistas y comunicadores/as sociales*. Available at: <http://www.hchr.org.mx/documentos/comunicados/comunicadoprensa7abril2008.pdf>.

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

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

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

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

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

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

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

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

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

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

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

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

been corroborated by governmental²⁴³ and non-governmental bodies,²⁴⁴ which have also concluded that the situation for those practicing journalism in some regions of the country is extremely serious.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²⁴⁹ 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%20violen.pdf>; Centro Nacional de Comunicación Social. December 9, 2008. *Pobres resultados de la FEADP en su informe 2008*. Available at: <http://cencos.org/es/node/19996>.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

178. With respect to the arbitrary distribution of official advertising, the Office of the Special Rapporteur received information indicating that during 2008 the newspaper *A.M.*, the magazine *Forum* and the magazine *La Tijereta* had been subjected to discriminatory measures because of their editorial line that was critical of the government.²⁷¹ On this point, let us recall that Principle 13 of the Declaration of Principles states that the arbitrary and discriminatory placement of official advertising “[w]ith the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression and must be explicitly prohibited by law.” In this context, the Office of the Special Rapporteur recommends that all State entities establish clear, transparent, fair, objective and non-discriminatory criteria for the placement official publicity. The Office of the Special Rapporteur reminds the State that in no case may government advertising be used with the intention of harming or favoring one communications medium over another because of its editorial line or criticism of public administration.

21. Nicaragua

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22. Panama

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

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

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

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

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

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

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

201. During 2008, the Office of the Special Rapporteur received information about the initiation of criminal prosecutions allegedly related to the exercise of journalism. In July 2008, a judge prohibited sports columnist Bienvenido Brown from leaving the country and ordered him to appear before the courts in a defamation suit presented against him in 2005. The journalist was allegedly prosecuted following his denunciation of alleged irregularities at the Panamanian Sports Institute.²⁹⁵ In October 2008, the Minister of Government and Justice, Daniel Delgado Diamante, sued *La Prensa* journalist Santiago Fascetto for crimes of criminal defamation. Days before, Fascetto had published an article indicating that the official was allegedly responsible for the murder of a National Guard corporal in 1970.²⁹⁶

202. The Special Rapporteur’s Office is concerned with the situation of judicial uncertainty affecting 62 journalists whose pardons for criminal defamation offenses may now be ineffective. On July 1, 2008, the Supreme Court of Justice held that the pardons granted by former president Mireya Moscoso in 2004 were unconstitutional.²⁹⁷

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

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

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

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

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

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

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

23. Paraguay

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

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

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

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

³⁰⁰ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. Paragraph 46; and I/A Court H.R., *Case of Herrera Ulloa*. Judgment of July 2, 2004. Series C No. 107. Paragraph 123.

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

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

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

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

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

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

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

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

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

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

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

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

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

24. Peru

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

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

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

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

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

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

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

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

³¹³ Inter-American Press Association. November 6, 2008. *El Congreso del Perú se comprometió a mayor transparencia y a legislar sobre crímenes contra periodistas*. Available in Spanish at: http://www.declaraciondechapultepec.org/v2/noticia_detalle.asp?id_noticia=108.

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

Julca³¹⁵ and Hugo Bustíos Saavedra,³¹⁶ there are other cases, such as those of Antonio de la Torre Echandía³¹⁷ and Alberto Rivera Fernández,³¹⁸ where there has been no significant progress. The Office of the Special Rapporteur recalls that Principle 9 of the Declaration of Principles on Freedom of Expression says that “the murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression.” Additionally, the Special Rapporteurship calls for the State to investigate, try, and punish the perpetrators of these crimes.

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

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

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

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

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

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

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

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

214. Throughout 2008, the Office of the Special Rapporteur received reports about acts of aggression allegedly caused by protestors during social demonstrations. These reports also accused the authorities of a failure to offer adequate protection or conduct investigations to identify and punish the perpetrators in these cases. Examples of such situations may be the case of *Radio Sicuani* radio station, which was vandalized following its coverage of a protest,³²⁵ as well as of Karina Novoa of *Canal N*, attacked while reporting on the national strike of July 2008.³²⁶

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

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

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

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

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

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

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

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

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

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

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

³³⁰ According to the information received, on February 4, 2008, the journalists were charged with the crime of aggravated criminal defamation for having photographed two officials sleeping in an establishment after drinking alcohol. Asociación Nacional de Periodistas del Perú. February 6, 2008. *Demandan a periodistas por publicar fotos*. Available in Spanish at: <http://www.ifj.org/es/articulos/anp-querellan-a-periodistas-de-jaen-per-por-difundir-fotografas-dos-funcionarios-del-sector-de-educ>. Instituto Prensa y Sociedad. February 6, 2008. *Demandan a periodistas por publicar fotos*. Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1386>

³³¹ According to the information received, on March 24, 2008, the Minister of the Interior, Luis Alva Castro, introduced a complaint for aggravated defamation against journalist Ernesto Barreda Arias. The journalist had reported that a possible link existed between the Minister and the drug trade. Asociación Nacional de Periodistas del Perú. April 18, 2008. *Querellan a director del diario La Industria en Trujillo*. Alert received in the email inbox of the Office of the Special Rapporteur for Freedom of Expression. Idee Radio. April 16, 2008. *Director de diario "La Industria" de Trujillo dispuesto a confrontarse con ministro Luis Alva Castro*. Available in Spanish at: <http://www.ideeradio.org.pe/look/portal/article.tpl?IdLanguage=13&IdPublication=7&NrIssue=50&NrSection=50&NrArticle=20178>.

³³² According to the information received, on July 24, 2008, the journalists were notified of a complaint introduced against them by the Mayor of Kimbi District. The reporters had questioned why the mayor would not adequately invest gas resources in his region. Asociación Nacional de Periodistas del Perú. August 1, 2008. Alert received in the email inbox of the Office of the Special Rapporteur for Freedom of Expression. Instituto Prensa y Sociedad. 6 de agosto de 2008. *Alcalde querella a periodista por comentar noticia que lo acusa de presunta malversación de fondos*. Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1562>.

³³³ Known for her inquiries into the private life of celebrities, the journalist reported that a soccer star had engaged in acts of indiscipline before a game. Reporters Without Borders. October 17, 2008. *President says jailed TV host should be freed*. Available at: http://www.rsf.org/article.php3?id_article=29002. Committee to Protect Journalists. October 17, 2008. *Gossip journalist and producer serving jail for defamation*. Available at: <http://cpj.org/2008/10/gossip-journalist-and-producer-serving-jail-for-de.php>.

the sentence was modified afterward to two years of probation subject to conduct review, in January 2009, the journalist announced her temporary retirement from television.³³⁴ The Office of the Special Rapporteur reaffirms that according to Principle 10 of the Declaration of Principles, “the protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest.”

217. The Special Rapporteurship was informed about the initiation of judicial proceedings due to the publication of artistic or symbolic expressions. In June 2008, the Ministry of Defense charged a local model with the crime of insult to national symbols (*ultraje a los símbolos patrios*) after she posed nude on horseback with the national flag. A criminal prosecution began against the model for these deeds.³³⁵ The Office of the Special Rapporteur recalls that Principle 5 of the Declaration of Principles indicates that “restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

218. Likewise, the Office of the Special Rapporteur received reports of possible cases of telephone wiretapping of journalists. On April 6, 2008, *El Comercio* newspaper reported that it had found a telephone wiretapping device in the home of Juan Paredes Castro, the newspaper’s chief political editor.³³⁶ The Special Rapporteurship calls on the authorities to investigate these acts and try those responsible.

219. On another note, the Office of the Special Rapporteur received information about the creation of an *ad hoc* commission in the Congress to investigate the existence of an alleged network of telephone wiretaps. The *ad hoc* commission requested that the Public Prosecutor’s Office study a judicial process that would force journalists Fernando Ampuero and Pablo O’Brien to reveal the identity of their sources. The case is related to a series of recorded telephone calls that unidentified persons made to reveal a corruption ring. The journalists divulged the information obtained in the recorded calls.³³⁷ Principle 8 of the Declaration of Principles establishes that “every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.”

220. Reports of public officials that allegedly prevented journalists from accessing public information were also received. On July 31, 2008, the Public Prosecutor of Pomabamba refused to

³³⁴ The producer was absolved. Asociación Nacional de Periodistas del Perú. January 1, 2009. *Excarcelan a periodista acusada de difamación*. Available in Spanish at: <http://www.fipcolombia.com/noticiaAmpliar.php?noticia=2888>. Perú 21. December 31, 2008. *Magaly Medina abandonó el penal de mujeres tras 76 días de reclusión*. Available in Spanish at: <http://peru21.pe/noticia/229945/magaly-medida-ney-guerrero-abandonaran-prision-proximas-horas>.

³³⁵ Instituto Prensa y Sociedad. September 10, 2008. *Bailarina y modelo desnudan a los censores de América Latina*. Available in Spanish at: http://www.regioncoquimbo.cl/diario/index.php?option=com_content&task=view&id=3771&Itemid=1. El Comercio. December 23, 2008. *Bailarina Leysi Suárez se salva de ir a la cárcel*. Available in Spanish at: <http://www.elcomercio.com.pe/ediciononline/HTML/2008-12-23/bailarina-leysi-suarez-salva-ir-carcel.html>.

³³⁶ El Comercio. April 6, 2008. *Detectan interceptación a línea telefónica de periodista de El Comercio*. Available in Spanish at: <http://www.elcomercio.com.pe/edicionimpresa/Html/2008-04-06/detectan-interceptacion-linea-telefonica-periodista-comercio.html>. Instituto Prensa y Sociedad/IFEX. April 9, 2008. *Newspaper editor’s telephone tapped; police detain reporters for more than four hours*. Available at: <http://www.ifex.org/en/content/view/full/92446>.

³³⁷ Perú 21. December 13, 2008. *Consejo de la Prensa discrepa con la comisión que investiga el “chuponeo”*. Available in Spanish at: <http://peru21.pe/noticia/224812/consejo-prensa-peruana-discrepa-comision-petroaudios>. El Comercio. December 2, 2008. *Pedirán a fiscal que evalúe levantar secreto profesional a periodistas por “chuponeo”*. Available in Spanish at: <http://www.elcomercio.com.pe/edicionimpresa/Html/2008-12-02/pedirian-fiscal-que-evalue-levantar-secreto-profesional-periodistas-chuponeo.html>.

allow journalist Otilio Norberto Ríos to film the transfer for burning of a drug shipment confiscated by the National Police.³³⁸ The Office of the Special Rapporteur recalls that according to Principle 2 of the Declaration of Principles, “every person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights.”

221. The Office of the Special Rapporteur was informed of public statements made by high government officials regarding certain non-governmental human rights organizations that have manifested opinions different from those held by high government authorities.³³⁹ On April 22, 2008, the Asociación Pro Derechos Humanos (APRODEH) responded to a request by the European Parliament about the possible inclusion of the Movimiento Revolucionario Túpac Amaru (MRTA) on a list of terrorist organizations. APRODEH’s response distanced itself from the government’s opinion on the same topic. Days after their response, the President of Peru, Alan García, suggested that responses like that of APRODEH would constitute “treason” (*traición a la patria*).³⁴⁰ Likewise, on April 2008, the Agencia Peruana de Cooperación Internacional (APCI) requested that APRODEH explain “what source of funding and what aspect of the Annual Budget allows the organization to intervene on behalf of the terrorist organization MRTA before international organisms”³⁴¹. Following these declarations, APRODEH received various telephone threats and prosecutorial processes were instituted against the organization, which will be further discussed.³⁴²

222. The Office of the Special Rapporteur expresses its concern about these public statements and official declarations, as they have the potential to foment a climate of intolerance against those who dissent from government opinions. Likewise, the Special Rapporteurship calls attention to the need to avoid any reference, direct or indirect, that undermines the presumption of innocence and criminalizes critical or dissident forms of expression.

³³⁸ Instituto Prensa y Sociedad/IFEX. August 6, 2008. *Radio journalists harassed, threatened for trying to record drug disposal operation*. Available at: <http://www.ifex.org/en/content/view/full/95945>. Asociación Nacional de Periodistas del Perú. August 6, 2008. *Journalist impeded from doing journalistic work*. Alert received in the email inbox of the Office of the Special Rapporteur for Freedom of Expression.

³³⁹ During the hearing held on October 23, 2008, the IDL representative said that: “there can be no talk of a systematic repressive policy by the Peruvian Government in regards to the exercise of freedom of expression, or of the utilization of the state apparatus with the goal of repressing this right. However, despite the existence of some advances, after two years of the government of President Alan García, [...], we view with concern that this lapse of time has been characterized by a recent climate of intolerance by the President and his team of government toward citizens’ expressions of discrepancy, and criticism of his policies”. The State, on the other hand, indicate that “in Peru [...] there is no persecution whatsoever of any organization for its expressed opinions”.

³⁴⁰ This case was reported during the public hearing on October 23, 2008. According to the information received, the President of Peru, Alan García, noted the following: “I know that an organization inside Peru has been working [...] with one argument or another aiming to promote nonrecognition about the terrorist role of the MRTA. I think this is unfortunate. It is treason (*traición a la patria*). It is treason, that’s what I would call it, to alter the truth and allow so many victims like those who lived in fear or all of those that suffered the economic consequences of those terrorist acts to be forgotten. To seek to justify the actions of those who have destroyed so much inside our country is treason.” Perú 21. April 25, 2008. *García: APRODEH ha cometido traición a la patria por carta sobre el MRTA*. Available in Spanish at: http://www.peru.com/noticias/idocs/2008/4/25/DetalleDocumento_504209.asp. El Comercio. April 26, 2008. *Alan García califica de lamentable y grave decisión europea sobre MRTA*. Available in Spanish at: <http://www.elcomercio.com.pe/ediciononline/HTML/2008-04-25/alan-garcia-califica-lamentable-y-grave-decision-europea-sobre-mrta.html>.

³⁴¹ This case was summarized during the public hearing of October 23, 2008. Information provided by IDL to the IACHR on October 23, 2008 as part of the 133rd Period of Sessions. El Comercio. April 23, 2008. *APCI pide que APRODEH rinda cuentas en próximas 48 horas*. Available at: <http://www.elcomercio.com.pe/edicionimpresa/Html/2008-04-26/apci-pide-que-aprodeh-rinda-cuentas-proximas-48-horas.html>.

³⁴² This information was submitted by APRODEH to the IACHR on May 1, 2008 during the processing of precautionary measures on behalf of Francisco Soberón Garrido and other members of APRODEH.

223. According to information received, on April 25, 2008, the Peruvian Agency of International Cooperation (APCI) initiated a prosecutorial process against APRODEH,³⁴³ and on April 27, 2008, APRODEH and 63 other non-governmental human rights organizations were removed from the Consejo Nacional de Derechos Humanos by supreme decree.³⁴⁴ According to the information provided by the State, “no evidence or conduct indicating administrative infractions were found” during the audit conducted.³⁴⁵

224. Likewise, other non-governmental human rights organizations critical of the government were also subjected to audits that, according to the ones affected, were aimed to inhibit dissident opinions and critical voices. According to the information received, in 2007 and 2008, the Instituto de Defensa Legal (IDL) was subjected to at least two audits by the APCI.³⁴⁶ The development of the organization’s activities was also discussed by both the Congressional Committee on Intelligence and the Congressional Committee on Defense and Internal Order.³⁴⁷ The Asociación Interétnica de Desarrollo de la Selva del Perú (AIDSESP) was also audited.³⁴⁸ The State has explained that these audits were planned in advance (in the case of organizations with the highest levels of international financial support per year) or according to a lottery among organizations. According to the State, the audits obey technical, rather than political, criteria and have the objective of analyzing the adequate investment of international contributions in various projects, not the work of the organizations.³⁴⁹

225. The Special Rapporteurship recognizes the important role that the State plays in guaranteeing the enforcement of the law in cases in which it has been violated. Nevertheless, the organizations investigated have indicated that neither the criteria used nor the chronograms of the visits to these organizations are available to the public.³⁵⁰ On the other hand, it calls the attention of the Special Rapporteur that the debates and audits are being initiated after denunciations or the pronouncement of dissident opinions³⁵¹. The Special Rapporteurship considers it important to remind the State that prosecutions should not be used as mechanisms of censorship or for the inhibition of

³⁴³ According to the information received, the APCI, an entity dependent on the Executive Branch, requested that APRODEH explain “what source of funding and what aspect of the Annual Budget allows the organization to intervene on behalf of the terrorist organization MRTA before international organisms.” Information presented by APRODEH to the IACHR on May 1, 2008 during the processing of precautionary measures on behalf of Francisco Soberón Garrido and other members of APRODEH.

³⁴⁴ The National Human Rights Council is an organism dependent on the Ministry of Justice and charged with implementing policies in support of the protection of human rights. Available at: <http://www.minjus.gob.pe/directoriogeneral.asp>. El Comercio. April 28, 2008. *Ejecutivo retira a 64 ONG del Consejo Nacional de Derechos Humanos*. Available in Spanish at: <http://www.elcomercio.com.pe/edicionimpresa/Html/2008-04-28/ejecutivo-retira-64-ong-consejo-nacional-ddhh.html>.

³⁴⁵ Information presented by the State to the IACHR on October 23, 2008 during its 133rd period of sessions.

³⁴⁶ Information submitted by the State to the IACHR on October 23, 2008 during its 133rd period of sessions. The State informed the IACHR that it was planning a new period of audits for the third trimester of 2008.

³⁴⁷ This case was reported during the public hearing on October 23, 2008. Information submitted by the IDL to the IACHR on October 23, 2008 during its 133rd period of sessions.

³⁴⁸ This case was reported during the public hearing on October 23, 2008. Information submitted by the IDL to the IACHR on October 23, 2008 during its 133rd period of sessions.

³⁴⁹ This case was reported during the public hearing on October 23, 2008. Information submitted by the State to the IACHR on October 23, 2008 during its 133rd period of sessions.

³⁵⁰ Information submitted by the IDL to the IACHR on December 5, 2008.

³⁵¹ According to the information received, in the case of AIDSESP, the prosecution followed a mobilization that the organization led against the flexibilization of the property regime for community land. Information provided by IDL to the IACHR on October 23, 2008, as part of the 133rd Period of Sessions. La República. September 3, 2008. *Esta fiscalización a AIDSESP es una forma de amedrentamiento*. Available at: <http://www.larepublica.com.pe/content/view/241559/483/>.

critical speech. Prosecutions must obey strict criteria and be subjected to national and international human rights standards, as the Peruvian Constitutional Court noted in its August 29, 2007 judgment about laws No. 28875 and 28925, regarding the system of international cooperation.³⁵²

226. The Office of the Special Rapporteur would like to recall that the voices of dissent and criticism are essential for democracy. Non-governmental organizations, especially those that defend human rights, should be protected by the State. In this regard, the Special Rapporteurship will continue to closely observe the situations described.

25. St. Kitts and Nevis

227. The Office of the Special Rapporteur received information that the photojournalist Stachio Williams, of *SKN Vibes*, was detained by the Police on December 12, 2008, while he was photographing a crime scene. According to the information submitted, Williams was taking photos with his cellular telephone, when a police officer told him to stop. When he refused, the reporter was detained for obstructing the work of the police. His cellular telephone was also confiscated. He was released an hour later without any charges being presented against him.³⁵³

26. United States

228. The Office of the Special Rapporteur views positively the fact that on December 31, 2007 amendments to the Freedom of Information Act (FOIA)³⁵⁴ were finally passed. Most notable among the changes to the FOIA are the creation of the Office of Government Information Services within the National Archives and Records Administration, an entity that can mediate in conflicts between federal agencies and parties requesting information,³⁵⁵ the opening of a permanent telephone hotline for servicing information requests, and the implementation of a follow-up system for petitions that take more than 10 days to be processed.³⁵⁶ A system of penalties was also established for those government agencies that fail to comply with the time limits established under

³⁵² Constitutional Court of Peru. August 29, 2007. *Files 0009-2007-PI/TC*. In this case, the Court decided a constitutionality challenge filed by Luis Miguel Sirumbal Ramos and 8,438 citizens and members of Congress against several provisions of Law No. 28925 (Law that modifies Law No. 27692, Law of creation of the APCI), and Law No. 28875 (Law that creates the national Decentralized System of Cooperation). Available at: <http://www.tc.gob.pe/jurisprudencia/2007/00009-2007-AI%200010-2007-AI.html>.

³⁵³ Winn FM. December 12, 2008. *We should not be attacking each other like this! Journalist outraged over arrest*. Available at: <http://www.winnfm.com/news2.asp?NewsID=2960>. Sun Weekend. December 20, 2008. *Journalist arrested*. Available at: <http://sun-weekend.com/paper/?asw=view&asw=view,view&sun=145336097312132008&an=263525087512202008&ac=Local#StoryTop>. Caribbeannet News. December 13, 2008. *Journalist arrested for taking crime scene pictures in St Kitts*. Available at: http://www.caribbeannetnews.com/article.php?news_id=12925.

³⁵⁴ 110th Congress, December 14, 2007, S. 2488. *OPEN Government Act of 2007*. Available at: <http://www.gwu.edu/~nsarchiv/news/20071218/S2488%20text.pdf>; Reporters Without Borders. January 7, 2008. *Reforma de la ley de acceso público a los documentos gubernamentales: "un avance importante aunque tardío"*. Available at: http://www.rsf.org/article.php3?id_article=24955.

³⁵⁵ Section 10 of the *OPEN Government Act of 2007* states that, "[t]he Office of Government Information Services shall offer mediation services to resolve disputes between persons making requests under this section and administrative agencies as a non-exclusive alternative to litigation and, at the discretion of the Office, may issue advisory opinions if mediation has not resolved the dispute."

³⁵⁶ Section 7 of the *OPEN Government Act of 2007* states that, "[e]ach agency shall establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request; and establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including—(i) the date on which the agency originally received the request; and (ii) an estimated date on which the agency will complete action on the request."

the FOIA for responding to requests,³⁵⁷ and the right of complainants to recover attorney fees and litigation costs when forced to request the information through the courts.³⁵⁸ Principle 4 of the Declaration of Principles establishes that “[a]ccess to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right.”

229. The Office of the Special Rapporteur is also pleased with the July 24, 2008 decision of the U.S. District Court for the Central District of California, which recognized the right of journalist Bill Gertz of the *Washington Times* to protect the confidentiality of his sources. In an article published on May 16, 2006, Gertz had indicated that “senior Justice Department officials” had provided him with information on a case of espionage. The court’s decision was issued in the context of a legal investigation into the alleged commission of federal crimes by government officials who had leaked classified information.³⁵⁹

230. The Office of the Special Rapporteur received information on the November 17, 2008 decision of the United States Court of Appeals for the District of Columbia Circuit, which suspended the court order that imposed a fine of up to US\$ 5,000 per day against Toni Locy as long as she continued to keep the identity of her sources confidential. In 2002, Locy published articles in *USA Today* on the anthrax attacks of 2001. In the articles she mentioned the military scientist Steven Hatfill as a “person of interest” linked to the investigations into the attacks. After the articles were published, Hatfill filed civil suit against the Department of Justice for having “leaked” his name to the press. Locy and other journalists were subpoenaed by the court to reveal the identity of the government officials who had provided her with the information.³⁶⁰

231. The Office of the Special Rapporteur was also informed that during 2008 the Free Flow of Information Act, a law that would provide federal protection for the right of journalists to keep sources confidential, has still not been approved by the Senate.³⁶¹ The House of Representatives passed the bill in October of 2007. The Office of the Special Rapporteur reminds the State that Principle 8 of the Declaration of Principles establishes that “[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.”

³⁵⁷ See Section 6 of the *OPEN Government Act of 2007*, entitled: “Time limits for agencies to act on requests.”

³⁵⁸ See Section 4 of the *OPEN Government Act of 2007* entitled: “Recovery of attorney fees and litigation costs.”

³⁵⁹ Reporters Without Borders. July 24, 2008. *Un juez norteamericano sentencia a favor de un periodista y reafirma el derecho a preservar la confidencialidad de sus fuentes*. Available at: http://www.rsf.org/article.php3?id_article=27881. The Washington Post. July 31, 2008. *Vote on Journalist Shield Stalled*. Available at: <http://www.washingtonpost.com/wp-dyn/content/article/2008/07/30/AR2008073001321.html>.

³⁶⁰ The payment of the fine was suspended temporarily in March of 2008. In June of 2008, Hatfill settled his case against the Department of Justice. The Associated Press. November 18, 2008. *D.C. Circuit throws out contempt order, fines against reporter*. Available at: <http://www.firstamendmentcenter.org/news.aspx?id=20899&SearchString=toni+locy>. The New York Times. June 28, 2008. *Scientist is paid millions by U.S. in Anthrax suit*. Available at: <http://www.nytimes.com/2008/06/28/washington/28hatfill.html>; April 20, 2008, *Squeezed by the Courts*. Available at: <http://www.nytimes.com/2008/04/20/opinion/20pubed.html>. Reporters Without Borders. March 12, 2008. *Un tribunal de apelación suspende las sanciones económicas a la periodista Toni Locy*. Available at: http://www.rsf.org/article.php3?id_article=26168. Committee to Protect Journalists. March 13, 2008. *Appeals court stays fines against USA Today reporter*. Available at: <http://cpj.org/2008/03/appeals-court-stays-fines-against-usa-today-report.php>.

³⁶¹ Reporters Without Borders. October 22, 2008. *RSF pide a los candidatos a la elección presidencial que se comprometan a proteger mejor la libertad de prensa*. Available at: http://www.rsf.org/article.php3?id_article=29068. Office of the Special Rapporteur – IACHR. *2007 Annual Report*, Volume II, Chapter II, para. 202. Available at: <http://www.cidh.oas.org/annualrep/2007sp/Anual%202007%20Vol.%20II%20Esp.pdf>.

232. The Office of the Special Rapporteur was informed that on August 23, 2008, a law enforcement official in Onslow, North Carolina had ordered one of his officers to pose as a journalist from a weekly publication in order to investigate who was “leaking” confidential information pertaining to a criminal investigation.³⁶² The Office of the Special Rapporteur expresses its concern with regard to these practices, which in certain contexts could unduly restrict the right to practice journalism and adversely affect the right to receive, seek and impart information.

233. During 2008 the Office of the Special Rapporteur also received information on the status of the investigation into the August, 2007 murder of journalist Chauncey Bailey, former editor of the *Oakland Post*.³⁶³ In January of 2008, it was reported to the Office of the Special Rapporteur that journalist Paul Cobb, the current editor of the *Oakland Post*, was receiving police protection. Cobb had become aware of a plan to kill him that was allegedly linked to Bailey’s murder.³⁶⁴ Principle 9 of the Declaration of Principles states that the murder, intimidation and threats to journalists “violate the fundamental rights of individuals and strongly restrict freedom of expression.” The Office of the Special Rapporteur urges the State to investigate these acts effectively, and to prosecute and punish the perpetrators.

234. The Office of the Special Rapporteur takes note of the fact that *Al-Jazeera* cameraman Sami al-Haj was released from custody on May 1, 2008. The Office of the Special Rapporteur notes with concern that the cameraman had been detained at the Guantánamo naval base since 2002 without having been tried for any criminal offense.³⁶⁵ On this issue, the Office of the Special Rapporteur underscores that in its Resolution No. 2/06 of July 28, 2006, the IACHR urged the United States “to close the Guantánamo detention center immediately” and “to remove the detainees from Guantánamo [Bay] through a process undertaken in full accordance with [applicable norms] of international human rights and humanitarian law.”³⁶⁶

235. Finally, the Office of the Special Rapporteur regrets that complaints were received in 2008 of the arrests of journalists during the performance of their work. The cases that occurred

³⁶² Committee to Protect Journalists. August 26, 2008. *Deputy Sheriff poses as Newsweek journalist*. Available at: <http://cpj.org/blog/2008/08/deputy-sheriff-poses-as-newsweek-journalist-in-sou.php>. Reporters Without Borders. August 23, 2008. *Un policía se hace pasar por periodista para determinar el origen de unas filtraciones informativas relativas a una investigación criminal*. Available at: http://www.rsf.org/article.php3?id_article=28294.

³⁶³ Committee to Protect Journalists. November 16, 2008. *Bailey colleagues hold detectives accountable*. Available at: <http://cpj.org/blog/2008/11/bailey-colleagues-hold-detectives-accountable.php>; November 4, 2008. *Bailey slaying to be investigated anew*. Available at: <http://cpj.org/2008/11/bailey-slaying-to-be-investigated-anew.php>. Reporters Without Borders. December 19, 2008. *La muerte de Chauncey Bailey se pudo evitar: RSF continúa pidiendo una investigación federal*. Available at: http://www.rsf.org/article.php3?id_article=29760. Office of the Special Rapporteur – IACHR. 2007 *Annual Report*, Volume II, Chapter II, para. 203. Available at: <http://www.cidh.oas.org/annualrep/2007sp/Anual%202007%20Vol.%20II%20esp.pdf>.

³⁶⁴ Reporters Without Borders. January 31, 2008. *Amenazan de muerte al director del semanario Oakland Post, complicaciones en la investigación del asesinato de Chauncey Bailey*. Available at: http://www.rsf.org/article.php3?id_article=25299. Committee to Protect Journalists. February 15, 2008. *Publisher threatened after editor’s murder*. Available at: <http://cpj.org/2008/01/publisher-threatened-after-editors-murder.php>.

³⁶⁵ Office of the Special Rapporteur – IACHR. 2007 *Annual Report*, Volume II, Chapter II, para. 201. Available at: <http://www.cidh.oas.org/annualrep/2007sp/Anual%202007%20Vol.%20II%20esp.pdf>. The Associated Press. May 2, 2008. *Al-Jazeera cameraman freed from Guantanamo*. Available at: [http://www.firstamendmentcenter.org/news.aspx?id=20000&SearchString=sami al haj](http://www.firstamendmentcenter.org/news.aspx?id=20000&SearchString=sami%20al%20haj). Reporters Without Borders. May 2, 2008. *En libertad el camarógrafo de Al-Jazeera, tras permanecer seis años detenido en la base de Guantánamo*. Available at: http://www.rsf.org/article.php3?id_article=26788. Committee to Protect Journalists. May 1, 2008. *After six years, Al-Jazeera cameraman freed from Guantanamo*. Available at: <http://cpj.org/2008/05/after-six-years-aljazeera-cameraman-freed-from-gua.php>.

³⁶⁶ IACHR. July 28, 2006. *Press Release No. 27/06*. Available at: <http://www.cidh.org/Comunicados/Spanish/2006/27.06sp.htm>.

during the coverage of the presidential elections received particular attention. On August 28, 2008, television producer Asa Eslocker from *ABC News* was arrested by Police while his team was filming outside a hotel where the Democratic Party was holding a meeting in Denver. Eslocker was later charged with the violation of several municipal ordinances, including trespassing.³⁶⁷ On September 1, 2008, Amy Goodman, Sharif Abdel Kouddos and Nicole Salazar, of the television program *Democracy Now!*, were arrested by Police as they reported on the protests outside the Republican Convention in Minnesota. Following her arrest, Goodman was charged with the offense of interference with a peace officer. According to the information received, the charges were dropped in all of the cases and the journalists were released.³⁶⁸

27. Uruguay

236. The Office of the Special Rapporteur is pleased with the advances in Uruguayan law during 2008 to guarantee freedom of expression. On October 17, 2008, the Parliament enacted the Public Information Access Act³⁶⁹ in an effort to bring its laws into compliance with standards on freedom of expression. The Office of the Special Rapporteur understands that this law is complemented by the National Archives Act³⁷⁰ and the Community Broadcasting Service Act,³⁷¹ both enacted in December of 2007, which also further develop the right to freedom of expression.

237. The Office of the Special Rapporteur views positively the enactment of a law on access to information, and in its implementation invites the State to bear in mind Principle 4 of the Declaration of Principles, which states that “[a]ccess to information [...] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right.”

238. In addition, the Office of the Special Rapporteur notes with interest that the Senate unanimously approved in December of 2008 the draft bill to reform the legal concept of *desacato*, eliminate the offense of insulting patriotic symbols, and decriminalize the expression of critical or

³⁶⁷ Reporters Without Borders. October 20, 2008. *Sobreseídos los cargos contra un periodista de ABC News detenido durante la Convención Demócrata*. Available at: http://www.rsf.org/article.php3?id_article=28363. Committee to Protect Journalists. August 28, 2008. *News reporter arrested in Denver*. Available at: <http://cpj.org/blog/2008/08/abc-news-reporter-arrested-in-denver.php>; August 28, 2008. *CPJ alarmed by arrest, harassment of ABC producer in Denver*. Available at: <http://cpj.org/2008/08/cpj-alarmed-by-arrest-harassment-of-abc-producer-i.php>.

³⁶⁸ Committee to Protect Journalists. September 5, 2008. *Dozens of journalists arrested while covering RCN*. Available at: <http://cpj.org/2008/09/dozens-of-journalists-arrested-while-covering-rcn.php>; September 2, 2008. *Four arrested covering protest at GOP convention*. Available at: <http://cpj.org/2008/09/four-arrested-covering-protest-at-gop-convention.php>; September 2, 2008. *Democracy Now! producers arrested at RCN*. Available at: <http://cpj.org/blog/2008/09/democracy-now-journalists-arrested-at-rcn-in-minne.php>. Reporters Without Borders. September 22, 2008. *Van a levantar los cargos imputados a los periodistas detenidos durante la Convención Republicana*. Available at: http://www.rsf.org/article.php3?id_article=28391.

³⁶⁹ The law was backed by the Archives and Public Information Access Group [*Grupo Archivos y Acceso a la Información Pública*], a coalition of social organizations including the Uruguayan Press Association [*Asociación de la Prensa del Uruguay*], the Peace and Justice Service [*Servicio Paz y Justicia*], the World Association of Community Broadcasters, Transparency Uruguay [*Transparencia Uruguay*], the Uruguayan Institute for Legal and Social Studies [*Instituto de Estudios Legales y Sociales del Uruguay*], the School of Library Science at the University of the Republic [*Escuela de Bibliotecología de la Universidad de la República*], the Uruguay Chapter of Amnesty International, the Media and Society Group [*Grupo Medios y Sociedad*], Archivists without Borders and the Uruguayan Association of Archivists and Citizen Action for Civil Rights [*Asociación Uruguaya de Archivólogos y Acción Ciudadana por los Derechos Civiles*]. Law 18.381. October 17, 2008. *Public Information Access Act*. Available at: <http://www.presidencia.gub.uy/web/leyes/2008/10/EC1028-00001.PDF>. Presidency of Uruguay. November 13, 2008. *Nueva Ley garantiza marco legal al derecho para acceder a la información pública*. Available at: <http://www.presidencia.gub.uy/web/noticias/2008/11/2008111307.htm>.

³⁷⁰ Law 18.220. December 5, 2007. *Ley Nacional de Archivos*. Available at: http://www.presidencia.gub.uy/web/leyes/2007/12/EC789_19%2010%202007_00001.PDF.

³⁷¹ Law 18.232. December 22, 2007. *Ley Servicio de Radiodifusión Comunitaria*. Available at: http://www.presidencia.gub.uy/web/leyes/2007/12/IE527_19%2010%202007_00001.PDF.

offensive opinions concerning public officials or individuals who voluntarily expose themselves to the public, provided that it is not proven that the person expressing his opinion acted with actual malice.³⁷² According to the information received, the draft bill was sent to Parliament in October of 2008 by the Executive Branch, through the Ministry of Education and Culture, after it received a draft prepared by experts and representatives of various social organizations.³⁷³ On December 16, 2008, with the vote of the Senate, the initiative was taken under consideration by the House of Representatives to continue working its way through the legislature.³⁷⁴ However, the Office of the Special Rapporteur notes that the criminal offense of *desacato* in some cases is preserved in this initiative,³⁷⁵ and that it also does not exempt from liability for criminal defamation individuals who violate the privacy of others.³⁷⁶ These and other points may give rise to ambiguous interpretations that jeopardize the effective exercise of freedom of expression.

239. The Office of the Special Rapporteur expects that any law on this issue will take into account Principle 10 of the Declaration of Principles: “[t]he protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a

³⁷² The initiative amends Law 16.099, known as the Press Act, and articles 138, 173 and 336 of the Criminal Code. Presidency of Uruguay. September 29, 2008. Draft Bill. Available at: http://www.presidencia.gub.uy/web/proyectos/2008/09/CM556_26%2006%202008_00001.PDF.

³⁷³ World Association of Community Broadcasters /IFEX. October 28, 2008. *Gobierno envía al parlamento proyecto para despenalizar figuras que limitan la libertad de expresión*. Available at <http://www.ifex.org/alrtrts/content/view/full/97964/>.

³⁷⁴ Committee to Protect Journalists. December 17, 2008. *In Uruguay, Senate approves new press bill*. Available at: <http://cpj.org/blog/2008/12/in-uruguay-senate-approves-new-press-bill.php>. Grupo Medios y Sociedad. December 2008. *Cámara de Senadores aprueba proyecto que modifica la Ley de Prensa*. Available at: <http://www.infoycom.org.uy/?q=node/2775>. Knight Center for Journalism. January 7, 2009. *Senado aprueba reforma a ley de prensa; despenaliza delito de difamación*. Available at: <http://knightcenter.utexas.edu/blog/?q=es/node/2639>.

³⁷⁵ Article 6. Article 173 of the Criminal Code is hereby replaced with the following:

“Article 173 (*Desacato*).- *Desacato* is committed by undermining the authority of public officials in one of the following ways:

- 1) By actual insults made in the presence of the official or in the place where he is performing his duties.
- 2) By the open disobedience of the legitimate order of a public official, undermining his authority. The offense shall be punishable by a term of imprisonment ranging from three to eighteen months. No person shall be punished for expressing his disagreement with the authority’s order.”

³⁷⁶ Article 4. Article 336 of the Criminal Code is hereby replaced with the following:

“Article 336 (Exemption from liability and proof of truth). The following shall be exempt from liability:

- a) Any person who makes or disseminates any kind of statement regarding matters of public interest, matters referring to public officials and individuals who, due to their profession or occupation, have relevant exposure to society, or matters regarding any person who has become involved voluntarily in matters of public interest;
- b) Any person who repeats any kind of statement concerning matters of public interest, when the author of such statement is identified;
- c) Any person who makes or disseminates any kind of humorous or artistic statement, provided that it falls into one of the above categories.

There shall be no exemption from liability when it is demonstrated that the author acted with actual malice in attacking others or invading their privacy.

Persons charged with the offenses provided for in Article 333 and even in 334, when there is an accusation at issue, shall have the right to prove the truth of the facts and the likelihood of the qualities attributed to the person, except in cases concerning the private life of the person, or when the disclosure of the facts is not in the public interest. If truth or likelihood is proven, the author of the accusation shall be exempt from punishment, except when he has acted with actual malice.”

public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news." The Office also reminds the State that Principle 11 of the Declaration of Principles indicates that: "[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as 'desacato' laws, restrict freedom of expression and the right to information."

240. On the issue of community radio, the Office of the Special Rapporteur appreciates the implementation in 2008 of the Community Broadcasting Service Act, which was passed in December of 2007, as well as the commercial broadcasting regulations enacted this year. For example, it was informed that the Executive Branch issued two executive orders, one on April 14, 2008 concerning community broadcasting,³⁷⁷ and the other on August 4, 2008, which creates new procedures and criteria for granting commercial broadcast licenses.³⁷⁸ According to the information received, these new rules have created bodies for academic and citizen participants to submit opinions during the frequency allocation process and to oversee the government's actions in this area. The Honorary Advisory Board of Community Broadcasting was created for community broadcasting, and the Independent Honorary Advisory Board, which includes representatives from business associations, was created for the commercial media. In both cases, public meetings and consultations were held, the former through the Internet and the latter in local meetings. According to the information received, the first 38 community broadcasting licenses were issued during 2008 pursuant to the new law.³⁷⁹ In addition, the government provided for one-third of all broadcasting bands in the radio spectrum to be reserved for community and non-commercial media, including the new digital TV bands.³⁸⁰ The Office of the Special Rapporteur recalls that Principle 12 of the Declaration of Principles, among other points, establishes that "[t]he concession of radio and television broadcast frequencies should take into account the democratic criteria that provide equal opportunity of access for all individuals."

241. The Office of the Special Rapporteur has received information during 2008 about journalists that have been attacked or threatened for practicing their profession. On March 29, 2008, the daughter of journalist Enrique Aldabe was shot at in her parents' home after the journalist reported on his radio program "Micrófono Abierto" on *Radio Tacuarembó* on alleged irregularities involving members of the Police. According to the information received, the alleged perpetrators of the attack were brought to justice a week later.³⁸¹ The Office of the Special Rapporteur was also

³⁷⁷ Executive Order 208/008. April 14, 2008. *Integración del Consejo Honorario asesor de radiodifusión comunitaria*. Available at: http://www.presidencia.gub.uy/web/decretos/2008/04/82_19%2010%202007_00002.PDF.

³⁷⁸ Executive Order 374/008. August 4, 2008. *Se actualiza los aspectos relativos al otorgamiento del uso de frecuencia para radiodifusión comercial*. Available at: http://www.presidencia.gub.uy/web/decretos/2008/08/IE654_26%2006%202008_00001.PDF.

³⁷⁹ Order 885/008. Ministry of Industry, Energy and Mining. October 24, 2008. *Regularización de la prestación de servicio de radiodifusión comunitaria de las asociaciones civiles constituidas o en trámite de formación*. Available at: http://www.presidencia.gub.uy/web/resoluciones/2008/10/IE726_00001.PDF. Order 888/008. Ministry of Industry, Energy and Mining. October 24, 2008. *Regularización de la prestación de servicio de radiodifusión comunitaria de los grupos de personas organizadas sin fines de lucro*. Available at: http://www.presidencia.gub.uy/web/resoluciones/2008/10/IE729_00001.PDF.

³⁸⁰ Grupo Medios y Sociedad. *Informe sobre estado de la libertad de expresión en Uruguay durante 2008*. Requested and received by the Office of the Special Rapporteur for Freedom of Expression on December 31, 2008. World Association of Community Broadcasters. August 2008. *Uruguay reserva un tercio del espectro de TV Digital para el sector comunitario*. Available at: <http://amarcuruguay.org/content/view/77/26/>.

³⁸¹ Grupo Medios y Sociedad. *Informe sobre estado de la libertad de expresión en Uruguay durante 2008*. Requested and received by the Office of the Special Rapporteur for Freedom of Expression on December 31, 2008. Inter

informed that on July 26, 2008, photographer Nicolás Celaya, who worked for the newspaper *La República*, was detained and held incommunicado for several hours at a police station after police prevented him from taking pictures of an operation being conducted at a basketball game. The Court later dismissed the charges against him.³⁸²

242. The Office of the Special Rapporteur was also informed that on April 17, 2008, journalist Luis Elisburu of the "Sin Censura TV" program aired on the Trinidad cable channels, reported having been pressured to report on alleged irregularities involving a member of Parliament and a former governor.³⁸³ In April of 2008 journalist Marlene Vaz, editor of the weekly publication *Opción Cero* of Río Branco, was threatened in relation to a report published in her newspaper.³⁸⁴ In addition, on July 25, 2008, journalist Williams Pérez and his wife received death threats after the journalist reported on *Radio Continental* of Pando that 60 town councilmen of Canelones collected for fuel expenses without having vehicles.³⁸⁵ On September 19, 2008, journalist Luis Carlos Coteló of *Radio Nacional* reported to authorities that he had received death threats for comments he had made on the air.³⁸⁶

243. The Office of the Special Rapporteur recalls that Principle 9 of the Declaration of Principles establishes that, "[t]he murder, kidnapping, intimidation and/or threats to social communicators, as well as to the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the State to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

...continuation

American Press Association/IFEX. April 8, 2008. *Atentado contra hija de periodista radial en Tacuarembó*. Available at: <http://www.ifex.org/en/content/view/full/92409/>. Círculo de Periodistas de Tacuarembó. March 31, 2008. *El Círculo de Periodistas de Tacuarembó se solidariza con el colega Enrique Aldabe Dini y repudia el atentado que sufrió su familia*. Available at: <http://circuloperiodistastacuarembó.wordpress.com/2008/03/31/el-circulo-de-periodistas-de-tacuarembó-se-solidariza-con-el-colega-enrique-aldabe-dini-y-repudia-el-atentado-que-sufriera-su-familia/>.

³⁸² Grupo Medios y Sociedad. *Informe sobre estado de la libertad de expresión en Uruguay durante 2008*. Requested and received by the Office of the Special Rapporteur for Freedom of Expression on December 31, 2008. La República. July 27, 2008. *Fotógrafo de la República fue esposado y detenido en comisaría*. Available at: <http://www.larepublica.com.uy/politica/321736-fotografo-de-la-republica-fue-detenido-y-esposado-en-comisaria>. Inter American Press Association. *Uruguay Report, 64th General Assembly, Madrid, Spain*. Available in Spanish at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=20&inford=329&idioma=sp.

³⁸³ Grupo Medios y Sociedad. *Informe sobre estado de la libertad de expresión en Uruguay durante 2008*. Requested and received by the Office of the Special Rapporteur for Freedom of Expression on December 31, 2008. Inter American Press Association. *Uruguay Report, 64th General Assembly, Madrid, Spain*. Available in Spanish at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=20&inford=329&idioma=sp.

³⁸⁴ Inter American Press Association. *Uruguay Report, 64th General Assembly, Madrid, Spain*. Available in Spanish at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=20&inford=329&idioma=sp. Reporters Without Borders. April 14, 2008. *Reporteros Sin Fronteras solicita protección para una periodista y sus hijos, amenazados de muerte*. Available at: http://www.rsf.org/article.php3?id_article=26567.

³⁸⁵ Grupo Medios y Sociedad. *Informe sobre estado de la libertad de expresión en Uruguay durante 2008*. Requested and received by the Office of the Special Rapporteur for Freedom of Expression on December 31, 2008. Inter American Press Association. *Uruguay Report, 64th General Assembly, Madrid, Spain*. Available in Spanish at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=20&inford=329&idioma=sp. El País. July 25, 2008. *Amenazan de muerte a edil y periodista*. Article reprinted at the following site: <http://politicas.infoycom.org.uy/?q=node/2240>.

³⁸⁶ Grupo Medios y Sociedad. *Informe sobre estado de la libertad de expresión en Uruguay durante 2008*. Requested and received by the Office of the Special Rapporteur for Freedom of Expression on December 31, 2008. Inter American Press Association. *Uruguay Report, 64th General Assembly, Madrid, Spain*. Available in Spanish at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=20&inford=329&idioma=sp. La República. September 21, 2008. *Amenaza II*. Available at: <http://www.larepublica.com.uy/politica/332246-amenaza-ii>.

244. The Office of the Special Rapporteur was further informed of other criminal complaints filed against journalists in connection with the practice of their profession. Also in April of 2008, the Court of Criminal Appeals sentenced Marlene Vaz from *Opción Cero* to five months in prison (with a suspended execution of sentence due to her first-time offender status) for criminal defamation.³⁸⁷ The Office of the Special Rapporteur also notes with concern that on September 19, 2008, the Court of Criminal Appeals affirmed the four month prison sentence (suspended due to his first-time offender status) of journalist Norberto Costabel, editor of the weekly publication *Noticias* in the city of Colonia, for the criminal offense of defamation. According to the information received, the journalist had published an announcement warning readers that a former subscriptions collector from the publication no longer had ties to the company and could catch clients off guard in their good faith. In spite of the fact that it had been proven at trial that “subscription payments were received on at least three occasions without the issuance of a receipt”, the Court held that it was improper to apply “the truth exception” provided for in paragraph 5 of Article 336 of the Criminal Code. The Court reasoned that Costabel had not acted according to a “public interest” but rather was motivated by a “private interest”. The judgment is currently being considered by the Supreme Court of Justice.³⁸⁸ In another case, Carlos Tutzó, a leader of the Communist Party of Uruguay (PCU), filed a criminal complaint in November of 2008 against journalist Álvaro Alfonso alleging criminal defamation stemming from references to the complainant in his book entitled *Secretos del PCU (Secrets of the PCU)*.³⁸⁹

245. The Office of the Special Rapporteur notes that a criminal complaint filed against journalist Roger Rodríguez by a former member of the military who alleged criminal defamation following the publication of an investigative report was dismissed in April of 2008. In the report, the complainant had been named as an alleged participant in the murder of a student months prior to the 1973 coup.³⁹⁰ The Office was also informed that journalist Ana María Mizrahi, against whom a criminal defamation complaint was filed by the daughter of Military Colonel Artigas Álvarez (executed by a Tupamaro commando unit in the 1970s), was acquitted in May of 2008. It also received information that the Court of Criminal Appeals acquitted Federico Fasano, editor of the newspaper *La República*, of the criminal charges brought by a former Naval officer against a

³⁸⁷ Grupo Medios y Sociedad. *Informe sobre estado de la libertad de expresión en Uruguay durante 2008*. Requested and received by the Office of the Special Rapporteur for Freedom of Expression on December 31, 2008. Reporters Without Borders. April 14, 2008. *Reporteros sin Fronteras solicita protección para una periodista y sus hijos, amenazados de muerte*. Available at: http://www.rsf.org/article.php3?id_article=26567.

³⁸⁸ Grupo Medios y Sociedad. *Informe sobre estado de la libertad de expresión en Uruguay durante 2008*. Requested and received by the Office of the Special Rapporteur for Freedom of Expression on December 31, 2008. Inter American Press Association. *Uruguay Report, 64th General Assembly, Madrid, Spain*. Available in Spanish at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=20&inford=329&idioma=sp. *La República*. May 23, 2008. *Jueza y Fiscal de Rosario, Colonia, condenaron a 4 meses de prisión a un veterano periodista al que le impidieron probar la verdad de sus dichos*. Available at: <http://www.larepublica.com.uy/larepublica/2008/05/23/nota/312343>.

³⁸⁹ Grupo Medios y Sociedad. *Informe sobre estado de la libertad de expresión en Uruguay durante 2008*. Requested and received by the Office of the Special Rapporteur for Freedom of Expression on December 31, 2008. *La República*. July 21, 2008. *Edil comunista denuncia a periodista por libro*. Available at: <http://www.larepublica.com.uy/politica/320971-edil-comunista-denuncia-a-periodista-por-libro>. *El País*. July 2008. *Denuncia de edil del PCU contra periodista*. Available at: http://www.elpais.com.uy/Registro/Login.asp?refacc=0&vurl=%2F08%2F07%2F22%2Fpnacio_359156.asp&erracc=99&url_qs.

³⁹⁰ Grupo Medios y Sociedad. *Informe sobre estado de la libertad de expresión en Uruguay durante 2008*. Requested and received by the Office of the Special Rapporteur for Freedom of Expression on December 31, 2008. Inter American Press Association. *Uruguay Report, 64th General Assembly, Madrid, Spain*. Available in Spanish at: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=20&inford=329&idioma=sp.

columnist from the paper who questioned his integrity during the military dictatorship of the 1970s.³⁹¹

246. The Office of the Special Rapporteur was also informed of a tense meeting between journalists from the weekly publication *Búsqueda*, Iván Kirichenko and Ismael Grau, and the president of Banco República (BROU), Fernando Calloia, concerning the April 17, 2008 publication of an article on alleged irregularities in the payment of a debt owed to the bank by a high-ranking government official. According to the information received, on May 7, 2008, the Office of the Director of BROU informed to *Búsqueda* that it was canceling in advance a purchase order for government advertising that it had submitted on April 11, 2008, prior to the publication of the article at issue and the meeting with the BROU Director. According to this information, the bank asked to be billed for the advertising space that had been used up to that date, and for the remaining part of the purchase order to be cancelled.³⁹² This situation, according to this information, was the subject of debate for a parliamentary committee in August of 2008, at which the President of the BROU justified the bank's withdrawal from the advertising contract by stating that the amount that the BROU was permitted to spend on a direct purchase had been exceeded. According to the information available, the banking institution has since returned to contracting specific advertising in the weekly publication.³⁹³

247. The Office of the Special Rapporteur underscores that Principle 13 of the Declaration of Principles indicates that "[t]he arbitrary and discriminatory placement of official advertising and government loans [...], with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression."

28. Venezuela³⁹⁴

248. As in previous years, exercise of the right to freedom of expression in Venezuela continues to be a matter of special concern to the IACHR. In 2008, the IACHR received information, especially through the Office of the Special Rapporteur for Freedom of Expression, on situations detrimental to the normal exercise of this right. The State indicates in this regard that the IACHR employs a biased monitoring mechanism that leads it to condemn the State without any evidence. It

³⁹¹ Grupo Medios y Sociedad. *Informe sobre estado de la libertad de expresión en Uruguay durante 2008*. Requested and received by the Office of the Special Rapporteur for Freedom of Expression on December 31, 2008. La República. October 10, 2008. *El juez absolvió ayer a Fasano*. Available at: <http://www.larepublica.com.uy/politica/334807-el-juez-absolvio-ayer-a-fasano>.

³⁹² Inter American Press Association. April 24, 2008. *Preocupación de la SIP por amenazas contra periodistas en Uruguay y agresiones en México*. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=3918&idioma=sp. Inter American Press Association/IFEX. May 14, 2008. *Banco estatal retira publicidad oficial para penaliza a semanario tras artículo crítico*. Available at: <http://www.ifex.org/es/content/view/full/93742/>.

³⁹³ *Búsqueda* No. 1459. May 29, 2008. *Publicidad oficial: el diputado Jorge Gandini pide la comparecencia en el Poder Legislativo del presidente del Banco República*. Print version available by subscription at: www.busqueda.com.uy. Transcript No. 1683. August 6, 2008. *Sesión de Comisión de Hacienda de Cámara de Representantes: Medidas adoptadas por el Banco República Oriental del Uruguay respecto de la publicidad en el semanario Búsqueda*. Available at: <http://www.parlamento.gub.uy/IndexDB/Distribuidos/ListarDistribuido.asp?TIPO=CON&URL=/distribuidos/contenido/camara/D20080806-0078-1683.htm>.

³⁹⁴ This section corresponds to the chapter on freedom of expression in Venezuela, part of Chapter IV, Volume I of the Annual Report of the IACHR.

notes that “there is no country in the world where freedom of expression is more respected, and the facts have borne this out; despite the fact that the media act as political parties, and have participated in the coup d’état, no media outlet has been closed, and no journalist has been arrested for exercising his or her right.”

249. Among the development of particular concern to the IACHR in the area of freedom of expression is the assassination of the Vice President of the newspaper *Reporte Diario de la Economía*, Pierre Fould Gerges, on June 2, 2008. According to the information supplied, two unidentified persons on a motorcycle shot the victim at least twelve times when he was at a service station in Caracas.³⁹⁵ According to the information reported to the IACHR, a various of newspaper executives and editors were allegedly threatened because of the newspaper’s editorial position, which had been critical with regard to supposed cases of corruption. Following the murder, the attorney representing the *Reporte Diario de la Economía* also complained of having received threats from private criminal groups, for making statements about the case. Through its Office of the Special Rapporteur for Freedom of Expression, the IACHR deplored the murder and urged Venezuelan authorities to investigate the crime promptly and effectively, and to duly prosecute those responsible.³⁹⁶ However, no progress in this investigation has been reported thus far.

250. As observed in previous years, in 2008 the IACHR continues to be troubled by the intimidation targeted at private media outlets, particularly the *Globovisión* television channel, whose executives and staff continued to be protected by provisional measures first ordered by the Inter-American Court in 2004 and confirmed on January 29, 2008.³⁹⁷ Despite the provisional measures ordered, the severe aggression by private groups against this media outlet has not stopped. On September 23, 2008, the *Globovisión* television channel was the target of an attack. The group calling itself the “La Piedrita Working Group,” which later claimed responsibility for the attack, threw two teargas bombs against the façade of the television station’s building and then issued a communication in which it declared “War to the death” on the channel and declared them to be “military objectives” should their plans for assassination and a coup d’état materialize.”³⁹⁸ Later, on January 1, 2009, a teargas bomb was thrown onto the roof of *Globovisión* headquarters, forcing security staff to empty the building. According to reports, pamphlets with the initials of the *La Piedrita* group, which claimed responsibility for the attack, were found on the site; this group reaffirmed that both the television channel and the newspaper *El Nacional* were considered “military targets.”³⁹⁹

³⁹⁵ CPJ. June 3. *Ejecutivo de diario asesinado en Caracas* [Newspaper executive murdered in Caracas]. Available at: <http://cpi.org/es/2008/06/ejecutivo-de-diario-asesinado-en-caracas.php>. RSF. June 4, 2008. *Asesinado a disparos en Caracas el vicepresidente de un diario económico, su hermano está amenazado de muerte* [Business newspaper vice president shot to death in Caracas, his brother receives death threats]. Available at: http://www.rsf.org/article.php3?id_article=27306.

³⁹⁶ See Press Release R24/08 issued by the Office of the Special Rapporteur for Freedom of Expression. June 5, 2008. Available at: <http://www.Cidh.oas.org/relatoria/showarticle.asp?artID=731&IID=2>.

³⁹⁷ Inter-American Court, Order of January 29, 2008, Provisional Measures. Matter of “Globovisión” Television regarding Venezuela.

³⁹⁸ Information supplied during the 133rd Session. IPYS. *Lanzan panfletos y bombas lacrimógenas a la sede del canal de noticias Globovisión* [Pamphlets and teargas thrown at the headquarters of the *Globovisión* news channel]. September 29, 2008. Available at <http://www.ifex.org/es/content/view/full/97326>. According to press information the group *La Piedrita* identifies it self as a “guerrilla organization”, see http://www.el-nacional.com/www/site/detalle_noticia.php?q=nodo/23350.

³⁹⁹ Reporters without Borders. January 2, 2008. On New Year’s day the radical group *La Piedrita* carries out another attack on the television station. Available at: http://www.rsf.org/article.php3?id_article=29876. *El Universal*. January 2, 2009. *La Piedrita* group attacked *Globovisión* with teargas bomb. Available at: http://www.eluniversal.com/2009/01/01/pol_ava_grupo-la-piedrita_01A2180231.shtml.

251. On October 16, 2008 two new teargas attacks occurred. One was on the home of Leopoldo Castillo, moderator of the *Globovisión* editorial program; the other attack was on the newspaper *El Nuevo País*, where Poleo is director. According to the information received, the “La Piedrita” group, which describes itself as sharing an affinity with the government of Venezuela, claimed responsibility for the attack on the newspaper. Members of this group allegedly distributed a communiqué in which they declared Poleo to be a “military objective” because of the statements he had made about Hugo Chávez.⁴⁰⁰ The statements made by La Piedrita do not appear to have been followed by a clear disavowal or disclaimer or any investigation on the part of Venezuelan authorities. It is worth noting that, using this same plan of attack, a serious attempt was made against journalist Marta Colomina on December 1, 2008; allegedly she was seriously injured in the attack, which was perpetrated despite on provisional measures ordered on her behalf by the Inter-American Court. A teargas bomb was launched against her home, along with some pamphlets declaring her a “battle objective” and accusing her of promoting the plan to assassinate President Hugo Chávez. According to the information obtained, the “La Piedrita” group allegedly claimed responsibility for this incident.

252. The IACHR received reports of attacks by private groups against the headquarters of other media outlets in various parts of the country. The weekly *Dicho y Hecho* in Bejuma, state of Carabobo, was reportedly the target of a gunfire attack on May 11, 2008.⁴⁰¹ On June 29, 2008, the facades of the *Radio Pueblo*, *Rumbera Network*, *Plata*, *Pachanga*, *Guarachera*, *Sonido*, *Favorita* and *Radio San Carlos* stations, all in the state of Cojedes, were painted with graffiti the night before accusing them of lies and threatening them with attack.⁴⁰² On July 15, 2008, two unidentified persons fired on the headquarters of *Radio Marabina 1420 AM*, in the state of Zulia.⁴⁰³ In late July, a group of unidentified persons threw rocks and metal objects against the booth of *Radio Color 99.5*. In August 2008, the premises of *Radio Auténtica 107.5* in Maracay, state of Aragua, was also the target of gunfire; its journalists had complained of receiving threats.⁴⁰⁴ Another similar incident of intimidation was allegedly reported in October 2008, with the newspaper *Panorama* in the city of Maracaibo.⁴⁰⁵

253. The IACHR, through the Office of the Rapporteur for Freedom of Expression, also received a report of numerous acts of aggression, threats and attacks on journalists, either by

⁴⁰⁰ SIP. October 15, 2008. *Condena la SIP agresión contra diario El Nuevo País en Venezuela* [The SIP condemns attack on the newspaper *El Nuevo País* in Venezuela]. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4075&idioma=sp. IPYS. October 24, 2008. *Amenazan a director de diario y lanzan bombas lacrimógenas a sede* [Newspaper director threatened and teargas bombs hurled at the newspaper’s headquarters]. Available at: <http://www.ipys.org/alertas/atentado.php?id=1632>.

⁴⁰¹ RSF. May 14, 2008. *Atentado a disparos a la sede de un semanario en el State de Carabobo* [Shots fired at the headquarters of a weekly in the state of Carabobo]. Available at: http://www.rsf.org/article.php3?id_article=27005; IPYS. May 16, 2008. *Abalean sede de semanario en Carabobo* [They fire shots at the headquarters of a weekly newspaper in Carabobo]. Available at: <http://www.ipys.org/alertas/atentado.php?id=1485>.

⁴⁰² IPYS. July 17, 2008. *Desconocidos hacen pintas amenazantes contra medios de comunicación* [Unidentified persons paint threatening graffiti on radio stations]. Available at: <http://www.ipys.org/alertas/atentado.php?id=1535>.

⁴⁰³ RSF. July 21, 2008. Received in the e-mail of the Office of the Special Rapporteur. IPYS. July 30, 2008. *Sujetos desconocidos disparan contra sede de radio* [Unidentified persons fire on radio station]. Available at: <http://www.ipys.org/alertas/atentado.php?id=1550>.

⁴⁰⁴ IPYS. August 27, 2008. *Disparan contra sede de medios de comunicación* [Shots fired at radio station]. Available at: <http://www.ipys.org/alertas/atentado.php?id=1582>.

⁴⁰⁵ SIP. October 21, 2008. *Preocupación de la SIP por varios atentados en contra de periodistas y medios de comunicación* [SIP concerned over various attacks on journalists and media outlets]. Available at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4079&idioma=sp; IPYS. October 13, 2008. *Estudiantes intentan impedir distribución de diario regional* [Students attempt to stop the distribution of a regional newspaper]. Available at: <http://www.ipys.org/alertas/atentado.php?id=1606>.

representatives of the State or private persons. On July 23, 2008, for example, a journalist with the newspaper *La Verdad*, Dayana Fernández, and photographer Luis Torres allegedly were the target of hostile acts by municipal agents in Maracaibo while the two were investigating issues of environmental contamination.⁴⁰⁶ In another case, Guillermo Torín, sound engineer at channel ANTV, was reported to have been beaten by a group of supporters of the mayor of Chacao when Torín was there to cover the mayor's registration for the regional elections on August 22, 2008.⁴⁰⁷

254. In some of the cases reported, the assault or attack was intended to prevent the journalist from gathering or reporting information. This was what happened on July 25, 2008, when the Police at Barinas Airport detained Dimas Medinas from the newspaper *El Nacional* and confiscated an official document about a robbery that happened to someone close to the President of Venezuela, Hugo Chávez.⁴⁰⁸ Complaints and alerts have also come in from reporters and media outlets that received threats about articles published or news stories carried on radio and television. In July 2008, the attorney for and President of the newspaper *Reporte de la Economía* received death threats after they announced that they would disclose the names of those alleged to be responsible for the death of that newspaper's vice president.⁴⁰⁹ As it did in earlier reports, the IACHR must express its concern over attacks of this kind, which obstruct the unfettered exercise of the right to freedom of expression both by independent journalists and by media outlets that support the government's policies.

255. As for the reported acts of hostility and violence against Globovisión, the State has affirmed: "The Commission persists in pointing to intimidation of and acts of hostility against social communicators, television channels like Globovisión that have protective measures which at all times have been observed by the Venezuelan State, with the exception of minor incidents by third parties who on some occasions have conducted protests outside the station and have painted graffiti and thrown a few teargas bombs, the perpetrators of which have not been identified, as protests against that television channel's bias against the government of President Chávez."

256. The IACHR observes that the present environment of hostility and polarization has been prompted by the institution of administrative actions seeking to attach responsibility to media outlets independent of the government for views expressed on live programs by persons not belonging to the channel. On October 13, 2008, Rafael Poleo, invited to an opinion program on the *Globovisión* channel, broadcast live, said that the President of Venezuela "is going to end up like Mussolini: hanging head-down."⁴¹⁰ Immediately, the program director asked him to moderate his remarks. In application of Article 29, item 1, of the Law on Social Responsibility in Radio and Television, the National Telecommunications Commission (Conatel) opened an administrative action against the channel for alleged incitement to assassination and issued a precautionary measure

⁴⁰⁶ See press article, Reporters Without Borders. July 29, 2008. Unos funcionarios agreden a varios periodistas que tenían información comprometedor [Officials attack various journalists in possession of compromising information]. Available at: http://www.rsf.org/article.php3?id_article=27967.

⁴⁰⁷ See IFEX press note. August 22, 2008. *Empleado de la televisora ANTV sufre graves heridas por simpatizantes de candidato de oposición* [ANTV television employee sustains serious injuries inflicted by supporters of an opposition candidate]. Available at <http://egypt.ifex.org/es/content/view/full/96351.1.html>.

⁴⁰⁸ See press note, Reporters Without Borders, July 29, 2008. *Unos funcionarios agreden a varios periodistas que tenían información comprometedor* [Officials attack various journalists in possession of compromising information]. Available at: http://www.rsf.org/article.php3?id_article=27967.

⁴⁰⁹ See press note. Reporters Without Borders. August 1, 2008 *Amenazan de muerte al presidente y la abogada de Reporte de la Economía* [The president of *Reporte de la Economía* and the newspaper's attorney receive death threats]. Available at: http://www.rsf.org/imprimir.php3?id_article=27306.

⁴¹⁰ Ver nota Unionradio. Conatel:Globovisión tiene 30 días hábiles para defenderse. 16 de octubre de 2008. Available at <http://www.unionradio.com.ve/Noticias/Noticia.aspx?noticiaid=258346>.

ordering the channel to refrain from broadcasting unlawful messages at any hour. As of the date of this report, December 1, 2008, a final decision in this action remains still pending.

257. Later, CONATEL opened a new administrative action against *Globovisión*. In the early hours of November 24, 2008, after the polls closed, this media outlet broadcast statements from the then-candidate for governor of the State of Carabobo, which said “here in Carabobo we demand the results from the CNE without delay, but since they continue to slow the process I want to ask all of the people of Carabobo, all you who support me, to go with me to the Electoral Board to claim victory in Carabobo.” On that same date, in the evening, President Hugo Chávez asked CONATEL to open an investigation of one channel, which he did not identify, for having reporting election results prematurely. Later, one of the rectors of the National Electoral Council (CNE) reported that no media outlet had committed any electoral offense. It clarified, furthermore, that the only body competent to issue administrative sanctions in electoral matters was the Electoral Authority⁴¹¹. Despite these statements, CONATEL found that the broadcast might constitute a violation of the provisions of Article 29, item 1, of the Law on Social Responsibility in Radio and Television, in the sense of broadcasting messages that could incite disruptions of law and order. This same article provides that a repeat offense could lead to a permanent revocation of *Globovisión’s* franchise⁴¹².

258. In addition to the investigations mentioned in previous paragraphs, there have been reports of an additional action against independent communicators or those critical of the government. On November 27, 2008, deputy Mario Isea presented to the plenary National Assembly a final report on an alleged plan to assassinate President Chávez. Among those accused as masterminds of the plan are nine persons, five of whom are media outlet directors, including: Alberto Federico Ravell, director general of *Globovisión*; Nelson Mezerhane, director of *Globovisión*; Rafael Poleo, director of the newspaper *El Nuevo País*; Marcel Granier, director general of *RCTV*; and Miguel Henrique Otero, managing editor of *El Nacional*⁴¹³.

259. The IACHR recognizes the legitimate right of the State to investigate situations that threaten State security. However, in matters of such gravity, investigations and public accusations by high-ranking officials should be supported by sufficient and convincing evidence, not by the issuance of opinions that are critical of or even offensive to government officials, as seems to be the case in this instance, according to public information available on the official page⁴¹⁴. This takes on greater weight if one considers that death threats and violent attacks on communicators and media outlets critical of the government have been conducted with the excuse of private justice against those who allegedly perpetrated the crimes mentioned in the previous paragraph.

260. On this matter, the State indicates that, after the matter is considered by the Commission of the National Assembly, “the Office of the Attorney General is in charge of the corresponding criminal investigation, and for this reason one cannot speak of intimidation or attacks against the *Globovisión* channel.”

⁴¹¹ National College of Journalists. November 28, 2008. Alert regarding threats to *Globovisión*. Available at <http://cnpccaracas.org/?p=4852>.

⁴¹² Reporters without Borders. November 28, 2008. At the request of President Hugo Chávez, an administrative action has been open against private channel *Globovisión*. Available at http://www.rsf.org/article.php3?id_article=29480.

⁴¹³ *El Universal*. November 27, 2008. Isea describes the three forms of magnicidio planned, in the report of the Commission. Available at http://www.eluniversal.com/2008/11/27/pol_ava_isea-destaca-las-tre_27A2148949.shtml#.

⁴¹⁴ Ver al respecto Debate ante la Asamblea Nacional del documento de investigación presentado por el diputado Mario Isea. Available at http://www.asambleanacional.gob.ve/index.php?option=com_content&task=view&id=20680&Itemid=27.

261. Some provisions of the Law on Social Responsibility in Radio and Television are of special concern for the IACHR.⁴¹⁵ For example, provisions like Article 29(1) set very punitive sanctions for violating restrictions that are defined in vague or generic language.⁴¹⁶ The IACHR is also concerned that its application could result in the attachment of responsibility to a media outlet for an activity of a third party, not employed by the channel, in a program broadcast live, or for the broadcast of the speech of a politician.

262. The IACHR recalls that principle 5 of the Inter-American Declaration of Principles on Freedom of Expression states that “[r]estrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression;” as the IACHR has noted previously, “these restrictions, defined in vague terms and combined with highly punitive sanctions, create ideal conditions for self-censorship of the media.”⁴¹⁷

263. As for the placement of official advertising, the IACHR has received information that allegedly shows a tendency to place advertising with media outlets that support the Government. According to the research findings provided by the organization “Espacio Público,” 89% of the advertising in print media appears in newspapers and magazines sympathetic to the government. In this connection the State indicates that “sovereign States like Venezuela have the authority to place their advertising in the outlets most advantageous to the national interest.”

264. Here, the IACHR should point out that Principle 13 of the Inter-American Declaration of Principles on Freedom of Expression provides that “the arbitrary and discriminatory placement of official advertising and government loans (...) ; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law.”

265. The IACHR has also been informed that there may be a discriminatory policy as regards the right to access public information has also been reported. For example, on May 8, 2008, a team from *Globovisión* allegedly prevented access to the opening of the “First South American Energy Council;” on April 14, 2008, entry allegedly was denied to the Ministry of Education, where it wanted to cover the discussion on “Curriculum Design for the Bolivarian Educational System.”⁴¹⁸

266. The IACHR has also been informed that serious limitations hinder access by private parties to public information. According to a research study presented by the organization “Espacio Público” at the Commission’s 133rd session, authorities did not reply to 70.7% of the information requests that the organization tracked, all of which were submitted in writing to State

⁴¹⁵ See IACHR, Annual Report 2005, OEA/Ser.L/V/II.124, Doc. 7 (2006), para. 354 *et seq.*

⁴¹⁶ The article states that “radio and television broadcasters shall face suspension for 72 consecutive hours when the messages they broadcast defend or encourage war, disturbances of law and order, the commission of crime or are discriminatory or contrary to the Nation’s security.”

⁴¹⁷ See IACHR, Annual Report 2005, OEA/Ser.L/V/II.124, Doc. 7 (2006), para. 355; and Annual Report 2004, Follow-up of the Recommendations Formulated by the IACHR in Its Reports on the Situation of Human Rights in Venezuela 2003, OEA/Ser.L/V/II.122, Doc. 5 rev. 1 (2005), para. 293.

⁴¹⁸ IPYS. May 9, 2008. *Niegan acceso de Globovisión a Reunión de Ministros* [Globovisión denied access to Meeting of Ministers]. Available at <http://www.ipys.org/alertas/atentado.php?id=1482>. IPYS. April 17, 2008. *Agente de seguridad prohíbe a equipo de Globovisión ingresar al ministerio* [Security agent bars Globovisión from entering ministry]. Available at <http://www.ipys.org/alertas/atentado.php?id=1460>.

institutions.⁴¹⁹ The same study found that less public information is being reported at government agency Web sites. For example, in the case of persons with dengue or infected with HIV, the report found that fewer figures are available and that most of the information disclosed concerns the guidelines for advertising and reporting the government's achievements.

267. In the decisions delivered by the Venezuelan courts, the IACHR finds jurisprudence that could establish regressive standards vis-à-vis freedom of information. For example, in a September 12, 2008 ruling, the Supreme Court declared inadmissible a petition seeking *amparo* relief that a cooperative had filed against the mayor's office of the capital district to get information on certain relocations. The Court held that because officials at the mayor's office had met with individuals from the cooperative on a number of occasions and there discussed the matter at issue in the petition of *amparo*, the administration could be said to have responded appropriately. The IACHR should point out that the Inter-American Court has written that "the State must guarantee that there is a simple, prompt and effective recourse that makes it possible to determine whether there has been a violation of the right of the person requesting information and, where appropriate, to order the corresponding body to disclose the information."⁴²⁰

268. It is the Commission's view that the conduct and behavior described in this section do not foster the climate of tolerance that is conducive to active participation and the free flow of ideas among the various sectors of Venezuelan society. The numerous violent acts of intimidation by private groups against journalists and media outlets, in addition to the discrediting statements of high officials, and the systematic institution of administrative actions based on legal provisions the application of which is highly discretionary and that allow for drastic penalties, together with other facts, create a restrictive climate that dampens the exercise of freedom of expression that is one of the essential preconditions for a vigorous democracy built upon pluralism and public discourse.

⁴¹⁹ According to the study, 7.01% got a positive response with partial access to information; 5.1% got a positive but inadequate response; 4.46% got a qualified positive response; 1.01% were unable to file, and only 10.10% got an adequate and positive response.

⁴²⁰ I/A Court H.R., *Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151, para. 137.