

Freedom of Expression in Venezuela Report 2010¹

1. The Commission notes that Rafael Segundo Pérez, a former Carabobo state police officer, was sentenced to 25 years in prison after being convicted of the crimes of contract killing and conspiracy to commit crime, all in connection with the murder of journalist Orel Zambrano. The Carabobo Sixth Examining Court delivered the sentence on May 19. According to the information received, the journalist was murdered on January 16, 2009, in the city of Valencia. Orel Zambrano was director of the political magazine *ABC*, an editorial writer for the newspaper *Notitarde* and vice president of a private radio station, *Radio América 890 AM*. According to the reports received, the journalist had reported that members of the Makled family, in the state of Carabobo, were allegedly involved in the drug trafficking business. In August, Colombian authorities detained the alleged Venezuelan drug trafficker Walid Makled. In November, President Juan Manuel Santos promised the Venezuelan State that the suspect would be swiftly extradited to stand trial for his links to a number of murders, one of which was that of Orel Zambrano. Two other persons are also being prosecuted in Venezuela for their involvement in the journalist's murder.²

2. The Commission also notes that on August 12, the Zulia State Legislative Council unanimously approved the Zulia State Transparency and Information Access Act. According to the wording of the first article of that law, the law is intended to facilitate citizen oversight of state public affairs, to ensure that personal information is properly protected within the state government, and enable persons to participate in decision-making and oversight of the business of government in the state of Zulia.³

A. Acts of aggression presumably related to the practice of journalism

3. The Commission is troubled by a number of incidents in which State agents or private citizens allegedly behaved aggressively toward persons working in the communications business during coverage of the news. According to information received, on June 7 a group of motorcyclists allegedly hurled five Molotov cocktails at the Torre de la Prensa (Press Building), headquarters of *Cadena Capriles* in Caracas. *Cadena Capriles* publishes newspapers, magazines and hosts news portals. Although the explosive devices never detonated, they did alarm the workers in the building. No organization claimed responsibility for the attack.⁴ According to what the IACHR was told, on June 8 the Public Prosecutor's Office launched an investigation and performed technical tests and procedures

¹ This section corresponds to the section on freedom of expression in Venezuela in Chapter IV, Volume I, of the IACHR 2010 Annual Report. This section was assigned to the Office of the Special Rapporteur for Freedom of Expression.

² Public Prosecutor's Office. May 19, 2010. *Former Carabobo police officer sentenced to 25 years for murder of Orel Sambrano and Francisco Larrazábal*. Available at: <http://www.ministeriopublico.gob.ve/web/guest;jsessionid=99E6CE71A48F599F434E36B1B56CBA05>; Reporters Without Borders. May 21, 2010. *First suspect convicted in journalist Orel Sambrano's murder*. Available at: http://en.rsf.org/venezuela-breakthrough-arrests-of-suspected-02-03-2010_36575.html; Agencia EFE. November 21, 2010. *Chávez says he believes Santos' word on Makled's extradition*. Available at: <http://www.sandiegored.com/noticias/543/Chavez-dice-que-cree-en-la-palabra-de-Santos-sobre-extradicion-de-Makled/>.

³ Zulia State Legislative Council. August 12, 2010. *Transparency Law unanimously approved*. Available at: http://www.clezulia.gov.ve/index.php?option=com_content&view=article&id=4474%3Aley-de-transferencia-fue-aprobada-por-unanimidad&catid=1&Itemid=1

⁴ Associated Press and France Presse. June 9, 2010. *Five Molotov cocktails hurled at various Venezuelan newspapers*. Available at: http://www.clarin.com/mundo/america-latina/Lanzan-bombas-molotov-diarios-Venezuela_0_277172330.html

at the scene of the incident.⁵ In August 2009, a number of journalists working for Capriles had allegedly been the victims of violent assaults, presumably by government sympathizers.⁶ Nevertheless, as of the date this report went to press, none of the assailants had been brought to trial. Early on the morning of August 3, motorcyclists threw two homemade bombs at the offices of the newspaper *Las Noticias de Cojedes*, in San Carlos, Cojedes state. According to the information received, one of the explosive devices blew up against a car, and the other against the façade of the building that is home to the newspaper. The newspaper publishes complaints of community problems and prior to the attack had investigated cases of discoveries of spoiled food from the Venezuelan Food Producer and Distributor [*Productora y Distribuidora Venezolana de Alimentos*] (PDVAL). The Public Prosecutor's Office launched an investigation.⁷

4. On September 26 in El Tigre, Anzoátegui state, persons presumed to be PSUV (*Partido Socialista Unido de Venezuela*, United Socialist Party of Venezuela) sympathizers allegedly attacked Sara Vargas, a journalist with channel Órbita TV, and Susana Quijada, a journalist with TV Sur, as they were covering the moment when the former mayor and member of the opposition, Ernesto Paraqueima, cast his vote. According to the reports received, shortly after interviewing the former mayor, who had been beaten up by supporters of the party in power, someone had grabbed the camera from the Órbita TV cameraman. The camera, which was on the ground broken, was picked up and hurled at the head of Sara Vargas; in trying to avoid the blow, she cut her hand and needed ten stitches. In the same incident, government sympathizers had reportedly surrounded Susana Quijada and grabbed her microphone.⁸

5. The IACHR received information on an attack that journalist Andrea Rocha and cameraman Víctor Davalí, from the press retinue of opposition deputy Ismael García, reportedly experienced after recording the destruction that presumed government sympathizers had allegedly caused at the scene of a campaign event staged by the Podemos party on May 28. When members of the group realized that they had been caught on film, they demanded that the journalists hand over the film. When the cameraman refused, the group surrounded him, and beat and kicked him. Andrea Rocha managed to safely reach in a vehicle and get away. One member of the group reportedly threw a stone that broke the vehicle's window and injured the reporter's arm.⁹

6. On September 25, the Vice President of Venezuela, Elías Jaua, allegedly shoved a journalist from *Globovisión*, Johnny Ficarella, when he tried to interview him about the flooding caused by the rains in the community of Marapa, Vargas state. According to

⁵ Public Prosecutor's Office. June 9, 2010. *PPO stepped up investigation into explosives thrown at Cadena Capriles*. Available at: http://www.ministeriopublico.gob.ve/web/guest/buscarpor/-/journal_content/56/10136/49993

⁶ IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the state of freedom of expression in the hemisphere), para. 705.

⁷ Public Prosecutor's Office. August 4, 2010. *PPO investigates detonation of 2 explosive devices intended for Las Noticias de Cojedes*. Available at: http://www.ministeriopublico.gob.ve/web/guest/buscarpor/-/journal_content/56/10136/52738

⁸ El Universal. September 26, 2010. *Voting in Anzoátegui marked by aggression and taunting*. Available at: http://www.eluniversal.com/2010/09/26/v2010_ava_proceso-en-anzoategu_26A4523533.shtml; El Nacional. September 26, 2010. *Former mayor of El Tigre and journalists attacked by PSUV sympathizers*. Available at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/157171/Sufragio%202010/Ex-alcalde-de-El-Tigre-y-periodistas-fueron-agredidos-por-simpatizantes-de-PSUV

⁹ Instituto de Prensa y Sociedad. June 9, 2010. *Press team the target of violence*. Available at: http://www.ifex.org/venezuela/2010/06/09/aragua_protest/es/

the information received, within minutes soldiers tried to confiscate the film from the *Globovisión* cameraman.¹⁰ On September 30, another *Globovisión* journalist, Beatriz Adrián, was allegedly shoved and beaten by a group of persons, as she was asking for information in a shelter of victims of the rains. According to what was reported to the Commission, the attack allegedly happened in the presence of Vice President Elías Jaua, who reportedly did not intervene to stop the attack.¹¹ On October 17, a group of persons presumed to be supporters of the government allegedly attacked the teams of journalists from the newspapers *El Siglo* and *Notitarde* as they were covering the process of collecting signatures for a petition to protest the fact that specimens were being sent from the Valencia Aquarium to South Korea.¹² On November 17, teams of journalists from *Globovisión* and *TeleVén*, who were covering the damage done by the heavy rains, were said to have been attacked in Guarico, Lara state, by an official from the mayor's office and persons wearing PSUV shirts. According to the information received, the presumed assailants reportedly attempted to use force to disrupt the journalists' work.¹³

B. Disciplinary, administrative and criminal proceedings against media outlets and journalists

7. The Office of the Special Rapporteur for Freedom of Expression continued to receive information on judicial proceedings instituted for airing opinions or reporting information of great public interest. The Office of the Special Rapporteur is troubled by the fact that a number of cases brought against media outlets or journalists critical of the government began after the highest ranking officials of the State were publicly critical of their editorial position.

8. The Office of the Special Rapporteur was informed that on June 11, 2010, a criminal court in the city of Valencia convicted journalist Francisco "Pancho" Pérez and sentenced him to three years and nine months in prison and a fine of some US\$20,000 for supposed crimes of defamation against the mayor of the city of Valencia, Edgardo Parra. The court also ordered additional penalties involving political disqualification and disqualification from the practice of his profession. According to the information received, the conviction was the result of a complaint concerning a column published in the newspaper *El Carabobeño* in March 2009, in which the reporter mentioned the fact that members of the mayor's family were in the municipal government.¹⁴ According to the information received, on Tuesday November 30, 2010, the Carabobo State Court of Appeals

¹⁰ *Colegio Nacional de Periodistas*. September 25, 2010. *President of National Press Association asks Vice President Jaua for respect*. Available at: <http://www.cnpven.org/data.php?link=2&expediente=626>

¹¹ *Colegio Nacional de Periodistas*. October 1, 2010. *National Press Association communiqué responds to attack on Beatriz Adrián*. Available at: <http://www.espaciopublico.org/index.php/noticias/1-libertad-de-expresi/885-comunicado-del-cnp-ante-agresion-a-beatriz-adrian>

¹² *Espacio Público*. October 18, 2010. *Journalists assaulted in Carabobo state*. Available at: <http://www.espaciopublico.org/index.php/noticias/1-libertad-de-expresi/898-agreden-a-periodistas-en-el-estado-carabobo>

¹³ *Colegio Nacional de Periodistas*. *National Press Association deplores assault on journalists in Lara*. Available at: <http://www.cnpven.org/data.php?link=2&expediente=648>

¹⁴ *Cf.* Hearing on the right to freedom of expression and information in Venezuela, held on October 29, 2010, during the Commission's 140th Session; *Espacio Público*. June 11, 2010. *Espacio Público rejects conviction of journalist Francisco Pérez*. Available at: <http://www.espaciopublico.org/index.php/inicio-mainmenu-1/1-libertad-de-expresi/805-espacio-publico-rechaza-condena-contra-periodista-francisco-perez>

overturned Pérez' conviction.¹⁵ The Office of the Special Rapporteur applauds the court's ruling.

9. On March 8, 2010, Oswaldo Álvarez Paz, former governor of the state of Zulia and a member of the National Assembly, made a statement on the program *Aló Ciudadano*, aired on *Globovisión*, in which he complained that high-ranking state officials supposedly had ties to drug trafficking. The following day, PSUV deputy Manuel Villalba filed a complaint with the Public Prosecutor's Office asking that Álvarez Paz's conduct be investigated for commission of a number of offenses criminalized in Venezuela's Penal Code, including conspiracy against the republican form of government, public instigation to commit crime, public intimidation, false information and creating uncertainty among the public. On March 22, Álvarez Paz was detained and the court confirmed his detention on March 24. Álvarez Paz was held in a unit of DISIP.¹⁶ Álvarez Paz was held in custody for almost two months. On May 7, 2010, the Public Prosecutor's Officer dropped the "conspiracy" charge, which had been the most serious charge, carrying a penalty of six to eight years' imprisonment under Venezuelan law.¹⁷ As a result, on May 13, 2010, he was released on bail; as conditions for his release, he was prohibited from leaving the country, had to appear before the court hearing the case every fifteen days, and was prohibited from making any public statements about the case against him.¹⁸ As of the date this report went to press, the case against Álvarez Paz was still open and his trial had not yet been held.¹⁹

10. On March 24, Congressional Deputy Manuel Villalba also asked the Public Prosecutor's Office to launch an investigation into Guillermo Zuloaga, president of *Globovisión*, for statements made at an assembly of the Inter-American Press Association.²⁰

¹⁵ El Universal. *Conviction of "Pancho" Pérez overturned*. December 1, 2010. Available at: http://www.eluniversal.com/2010/12/01/pol_art_anulan-fallo-contra_2123719.shtml. Agencia Carabobeña de Noticias. *"Pancho Pérez" conviction overturned*. November 30, 2010. Available at: <http://www.acn.com.ve/regional/item/18950-este-30-de-noviembre-le-dictan-sentencia-a-pancho-p%C3%A9rez.html>

¹⁶ El Universal. March 23, 2010. *Oswaldo Álvarez Paz taken into custody and held in El Helicoide*. Available at: http://www.eluniversal.com/2010/03/23/pol_art_detienen-y-recluyen_23A3629571.shtml. LA Times. March 25, 2010. *Venezuela ex – governor to remain in jail without bail over drug remarks*. Available at: <http://articles.latimes.com/2010/mar/25/world/la-fg-venezuela-governor25-2010mar25>

¹⁷ El Universal. May 7, 2010. *Álvarez Paz near release on bail*. Available at: http://politica.eluniversal.com/2010/05/07/pol_art_alvarez-paz-a-pocos_1891456.shtml

¹⁸ IFEX. May 19, 2010. *Former governor granted parole after two months in detention*. Available at: http://www.ifex.org/venezuela/2010/05/19/alvarez_paz_parole/19 de mayo de 2010. El País. May 14, 2010. *Political opponent who linked Chávez to ETA and FARC released*. Available at: http://www.elpais.com/articulo/internacional/Liberado/opositor/vinculo/Chavez/ETA/FARC/elpepiint/20100514elpepiint_10/Tes

¹⁹ According to information received from Juan Carlos Álvarez, by e-mail dated November 13, 2010 (on record with the Office of the Special Rapporteur for Freedom of Expression). *Aporrea*. August 10, 2010. *Antonio Rivero told media outlets that he knew beforehand that the Military Prosecutor would investigate him*. Available at: <http://www.aporrea.org/oposicion/n163204.html>. *Aporrea*. August 14, 2011. *Court orders precautionary measures for Antonio Rivero*. Available at: <http://www.aporrea.org/actualidad/n163383.html>. On this issue, it is worth noting that the State of Venezuela said that Rivero "hasn't been detained or subjected to any kind of trial, as the Commission stated." Observations by the State of Venezuela to the draft of the General Report on the Situation of Human Rights in Venezuela, 2010. Communication of February 22, 2011, observations on the section on Freedom of Thought and Expression. It is worth noting that, as stated in the relevant paragraph, the Commission never stated that Rivero has been "detained."

²⁰ Diario El Impulso. March 24, 2010. *Manuel Villalba requested investigation of Guillermo Zuloaga*. Available at: <http://www.elimpulso.com/pages/vernoticia.aspx?id=99763>

11. On March 25, 2010, the IACHR expressed its deep concern over the use of the State's punitive power to criminally prosecute persons whom the authorities consider to be political opponents in Venezuela.²¹ The IACHR also stated that "the lack of independence and autonomy of the judiciary with respect to the political branches constitutes one of the weakest points of democracy in Venezuela, a situation that seriously hinders the free exercise of human rights in Venezuela. In the Commission's judgment, it is this lack of independence that has allowed the use of the State's punitive power in Venezuela to criminalize human rights defenders, penalize peaceful social protest, and persecute political dissidents through the criminal justice system."²² The IACHR underscored the fact that "it is extremely troubling that those who make allegations or state opinions about the situation in the country are charged with such offenses as the instigation to commit a crime. The public statements made by many government officials supporting the detention of Álvarez Paz and calling for criminal proceedings to be brought against other individuals such as Guillermo Zuloaga, simply because they expressed their opinions in public forums, demonstrate a troubling consensus among the government authorities that it is legitimate to identify those who criticize the government with criminals."²³

12. The IACHR also learned that in August, the military prosecutor's office charged former director of Civil Protection, retired general and independent candidate for the National Assembly, Antonio Rivero, with the crimes of slandering the Armed Forces and disclosing private or secret military information. The charges carry a sentence of three to 10 years in prison. General Rivero went into retirement in April 2010, and shortly thereafter called a press conference where he denounced Cuba's supposed influence over the Armed Forces. The military justice system ordered precautionary measures that prohibited Rivero from leaving the country and from making statements to the domestic or international media about information that might "compromise the Bolivarian National Armed Forces."²⁴

13. On March 30, a Táchira state court convicted Gustavo Azócar, a journalist and former candidate for the office of Governor of Táchira state, and sentenced him to two and a half years' imprisonment, with conditional release, for the crime of "unlawful enrichment from the business of government." The court also imposed an additional penalty which was to disqualify Azócar from participation in politics. According to the information reported to the Commission, the case started in 2000 when a complaint was filed in the Public Prosecutor's Office when the station at which the journalist then worked allegedly stopped airing commercials advertising a state entity. Azócar was prohibited from speaking about his case and in July 2009 was incarcerated for eight months for publishing, on a personal blog site, news related to his legal situation. Media organizations believe that

²¹ IACHR. Press Release 36/10 of March 25, 2010. IACHR concerned about the use of the punitive power of the State to silence opponents in Venezuela. Available at: <http://www.IACHR.oas.org/Comunicados/English/2010/36-10eng.htm>

²² IACHR. Press Release 36/10 of March 25, 2010. IACHR concerned about the use of the punitive power of the State to silence opponents in Venezuela. Available at: <http://www.IACHR.oas.org/Comunicados/English/2010/36-10eng.htm>

²³ IACHR. Press Release 36/10 of March 25, 2010. IACHR concerned about the use of the punitive power of the State to silence opponents in Venezuela. Available at: <http://www.IACHR.oas.org/Comunicados/English/2010/36-10eng.htm>

²⁴ El Universal. August 9, 2010. *Military Prosecutor's Office charges Antonio Rivero*. Available at: http://www.eluniversal.com/2010/08/09/pol_ava_fiscalia-militar-imp_09A4317051.shtml; New York Times. 11 de agosto de 2010. *Ex - General in Venezuela, a Chávez Foe, faces inquiry*. Disponible en: <http://www.nytimes.com/2010/08/12/world/americas/12venez.html>.

Azócar's conviction was politically motivated, as he was critical of the local government; they also believe it was in retaliation for accusations he made alleging corruption.²⁵

14. The Commission was also informed of a number of court cases against persons who expressed comments critical of the authorities. The Ministry of the People's Power for Communications and Information allegedly requested that journalist and humorist Laureano Márquez be prosecuted for an editorial he wrote on January 29, in which he imagined the day when a presidential succession would take place in Venezuela.²⁶ In the opinion of the Ministry of the People's Power for Communications and Information, the humorous article was "a blatant call for the public to refuse to recognize the constitutional order and incited it to violence," an "invitation to a genocidal and terrorist plot to overthrow the government." The Ministry also announced that it would file a criminal complaint against the newspaper so that the "appropriate" sanctions might be enforced.²⁷ Regarding this issue, the State of Venezuela stated that Márquez "only suffered criticism through the mass media by some citizens who thought that he was calling for the disregard of the constitutional order"²⁸. It is worth noting that public officials, though entitled to their right to freedom of expression, are subject to strict limitations as a consequence of their particular duties and responsibilities²⁹.

15. A baseball fan, Miguel Hernández Souquett, was tried on December 1, 2010, for having worn a shirt that read "Hugo, Screw Your Revolution." He could receive a sentence of 3 to 6 years in prison for the crime of offending heads of government. According to the information reported to the Commission, Miguel Hernández wore the shirt at a sports event on the island of Margarita. As he was leaving the stadium, he was allegedly stopped by the police and taken to a unit of the Bolivarian Intelligence Service (SEBIN). A court ordered that he be released, but he was required to make regular appearances before the judge. He was later notified that he would stand trial.³⁰ In the observations by the State of Venezuela to the draft of the General Report on the Situation of Human Rights in Venezuela, 2010, the State informed that "this citizen is not [currently] detained"³¹.

²⁵ Public Prosecutor's Office. March 27, 2010. *Journalist Gustavo Azócar sentenced to prison for two years six months*. Available at: http://www.ministeriopublico.gob.ve/web/guest/buscador/-/journal_content/56/10136/36783

²⁶ Tal Cual Digital. January 29, 2010. *A Venezuela without Esteban*. Available at: <http://www.talcualdigital.com/Avances/Viewer.aspx?id=31096&secid=44>. See also Reporte 360. January 29, 2010. *Minci will charge Laureano Márquez*. Available at: <http://www.reporte360.com/detalle.php?id=24154>

²⁷ Ministry of the People's Power for Communications and Information. Communiqué dated January 29, 2010. Available at: http://www.minci.gob.ve/noticias/1/195620/comunicado_del_ministerio.html.

²⁸ Observations by the State of Venezuela to the draft of the General Report on the Situation of Human Rights in Venezuela, 2010. Communication of February 22, 2011, observations on the section on Freedom of Thought and Expression.

²⁹ On this issue, see *infra* par. *** 469.

³⁰ Espacio Público. November 12, 2010. *Fan will have to stand trial for anti-revolutionary message on T-shirt*. Available at: <http://www.espaciopublico.org/index.php/noticias/1-libertad-de-expresi/914-fanatico-debera-comparecer-ante-tribunales-por-mensaje-antirrevolucionario-en-franela>

³¹ Observations by the State of Venezuela to the draft of the General Report on the Situation of Human Rights by the IACHR, 2010. Communication of February 22, 2011, observations on the section on Freedom of Thought and Expression.

16. On November 12, 33 people were reportedly arrested at a Caracas metro station for having demonstrated to protest train delays and service problems.³²

17. On June 8, the Health Commission of the Anzoátegui Legislative Council launched an investigation into the Director of the Tropical Medicine Center of the Universidad de Oriente, Antonio Morocoima, for statements made concerning Chagas disease and a possible outbreak of that sickness. According to the information received, Venezuela's Parasitological Association supported Morocoima and asked authorities to rely on research papers which, the Association said, would back up what the scientist was saying.³³

18. The IACHR received information to the effect that on April 7, *Globovisión* journalist Beatriz Adrián was reportedly held for several hours at the Directorate of Military Intelligence (DIM) for having taped an interview in the parking lot of a business center located in the building that houses the Office of Comprehensive Security of the Armed Forces Social Security Institute (IPSFA). According to the information received, the journalist was interviewing someone who had been summoned to make a statement in the Office of the Military Prosecutor.³⁴

19. The Office of the Special Rapporteur received information to the effect that members of the Venezuelan Army had detained Colombian journalists Philip Moreno, Milton Uscátegui and Paula Osorio on July 16. According to the reports received, the Venezuelan military held the journalists in custody for two days. The news material that the journalists had gathered (a video containing recordings taken on Venezuelan soil) were said to have been confiscated by members of the Venezuelan Army. According to the reports received, the journalists were deported to Colombia on July 18, 2010. On August 3, 2010, the Office of the Special Rapporteur for Freedom of Expression asked the Venezuelan State to provide information regarding these events. Thus far, it has not replied.³⁵

C. Ban on publishing certain materials in the print media

20. On August 13, 2010, the newspaper *El Nacional* published on its front page a picture of nude and presumably lifeless bodies inside what was said to be the Bello Monte morgue in Caracas, Venezuela. The photograph was accompanied by an article on the increase in violent crime in Caracas. After officials publicly complained about the photograph published on the cover of *El Nacional*, the newspaper *Tal Cual* published the same photograph on August 16, 2010 out of solidarity with *El Nacional*.³⁶

³² El Nacional. November 12, 2010. *33 people detained after protests at Caracas metro*. Available at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/165218/Ciudad/Protesta-en-estaci%C3%B3n-del-Metro-de-Propatria-dej%C3%B3-33-personas-detenido

³³ Sociedad Parasitológica Venezolana. May 27, 2010. *Comunicado from the Sociedad Parasitológica Venezolana*. Available at: <http://www.asovac.org/2010/05/31/comunicado-de-la-sociedad-parasitologica-venezolana/>. Espacio Público. June 11, 2010. *Parliament of the state of Anzoátegui begins investigation against doctor from that state*. Available at: <http://www.espaciopublico.org/index.php/noticias/1-libertad-de-expresi/803-parlamento-del-estado-anzoategui-inicio-investigacion-en-contra-de-medico-de-esa-entidad>

³⁴ Federación de Periodistas de América Latina y el Caribe. April 8, 2010. *FEPALC joins the SNTP in condemning the detention of a Venezuelan journalist*. Available at: http://www.fepalc.org/noticias_det.php?Itemid=516

³⁵ El Tiempo. July 16, 2010. *Colombian journalists detained in Venezuela held incommunicado*. Available at: <http://www.eltiempo.com/archivo/documento/CMS-7810897>

³⁶ Committee to Protect Journalists. August 20, 2010. *Venezuelan censorship over morgue photos is selective*. Available at: <http://cpj.org/blog/2010/08/venezuelan-censorship-over-morgue-photos-is-select.php>. El

21. As a result of the photograph published in the two newspapers, representatives from the Ombudsperson's Office filed a petition seeking protection in which they requested that all the print media be ordered to refrain from publishing images that are "violent, bloody and grotesque (sic), irrespective of whether they are depicting events and inasmuch as such pictures violate the mental and moral integrity of children and adolescents."³⁷ Representatives of the Public Prosecutor's Office brought a similar action against the newspaper *El Nacional*, to protect the collective and diffuse rights of children and adolescents. In that action, the Public Prosecutor's Office asked that the court order "that [...] publication of images, information and advertising of any type, containing blood, weapons, messages of terror, physical aggression, images that depict war and messages on killing and death be prohibited as they can affect the psychological health of children and adolescents."³⁸

22. On August 16, 2010, the Judge of the Twelfth Court of First Instance for Mediation and Protection of Children and Adolescents, William A. Páez, ruled that the right to freedom of expression is not absolute and has limits when it affects other basic rights, such as "the right to have one's physical, mental and moral integrity respected; the right to timely, truthful and impartial information, especially when it conflicts with the best interests of children and adolescents, which always takes preference."³⁹ The magistrate therefore decided that "the newspaper *El Nacional* is prohibited from publishing images, information, and advertisements of any type that contain blood, weapons, messages of terror, physical assaults, images that evoke content about war, and messages about deaths that could alter the psychological well-being of children and adolescents who reside in the Bolivarian Republic of Venezuela, until the merits of the present petition seeking protection are decided."⁴⁰

23. On August 17, 2010, the same magistrate decided the merits of the petition brought by the Ombudsperson's Office seeking an order of protection and prohibited the newspaper *Tal Cual* from "publishing images containing violent, bloody or grotesque content, irrespective of whether they are depicting events, and which in one way or another are detrimental to the mental and moral integrity of children and adolescents..." Applying the principle of *jura novit curia*, the court also stated that "All print media published in the Bolivarian Republic of Venezuela shall refrain from PUBLISHING IMAGES that are violent,

Universal. August 16, 2010. *Newspaper Tal Cual denounced for Publishing Photo of Morgue*. Available at: http://www.eluniversal.com/2010/08/16/pol_ava_denuncian-a-diario-t_16A4345011.shtml

³⁷ Office of the Ombudsperson of the Bolivarian Republic of Venezuela. August 16, 2010. *Ombudsperson's Office asks print media to refrain from publishing images that adversely affect children and adolescents*. Available at: http://www.defensoria.gob.ve/index.php?option=com_content&view=article&id=589:defensoria-solicita-a-tribunales-medida-preventiva-para-que-medios-impresos-se-abstengan-de-publicar-imagenes-que-atenten-contra-la-infancia-y-la-adolescencia-&catid=7:principal&Itemid=79

³⁸ Cf. Decision of the Judge of the Twelfth Court of First Instance for Mediation and Protection of Children and Adolescents. Communication 107/10 addressed to Miguel Enrique Otero, Editor of the newspaper "*El Nacional*," dated August 16, 2010. Available at: http://www.el-nacional.com/www/files/ADMISION_DICTADA_MEDIDA_PREVENTIVA_INNOMINADA_17_8_2010.pdf

³⁹ Cf. Decision of the Judge of the Twelfth Court of First Instance for Mediation and Protection of Children and Adolescents. Communication 107/10 addressed to Miguel Enrique Otero, Editor of the newspaper "*El Nacional*," dated August 16, 2010. Available at: http://www.el-nacional.com/www/files/ADMISION_DICTADA_MEDIDA_PREVENTIVA_INNOMINADA_17_8_2010.pdf

⁴⁰ Cf. Decision of the Judge of the Twelfth Court of First Instance for Mediation and Protection of Children and Adolescents. Communication 107/10 addressed to Miguel Enrique Otero, Editor of the newspaper "*El Nacional*," dated August 16, 2010. Available at: http://www.el-nacional.com/www/files/ADMISION_DICTADA_MEDIDA_PREVENTIVA_INNOMINADA_17_8_2010.pdf

bloody or grotesque, irrespective of whether they are depicting actual events, as they may in one way or another be detrimental to the mental and moral integrity of children and adolescents ...”⁴¹ The magistrate reasoned that “when the media are used in a superficial way, heavily biased in favor of a given sector, they [the media] become a weapon wielded against the citizenry.”⁴²

24. On August 19, 2010, the magistrate lifted the general ban established on all the print media, but left the ban in place in the case of the newspapers *El Nacional* and *Tal Cual*.⁴³

25. The defense of the superior interests of children and adolescents is a common objective of all nations that is protected by international law. This important interest may give rise to legal restrictions on freedom of expression, which should be clear, precise and proportional in conformity with article 13.2 of the Convention. In turn, judges have the ability to apply such restrictions in concrete cases in which they should, within the strict requirements of article 13.2, weigh the legal interests in conflict taking into account the superior interest of the child. None of these requirements is compatible with the existence of judicial decisions of an injunctive nature that impose generic prior constraints on content in an ambiguous or imprecise manner, as was ordered by the judge in the situation just discussed⁴⁴.

D. The Law on Social Responsibility in Radio and Television is extended to include cable channels, and RCTV is taken off the air

26. In late late 2009 the Bureau of Social Responsibility issued Administrative Order No. 1/09 of December 22, 2009, in which it published the *Technical Standard on Domestic Audiovisual Production Services* (hereinafter, the “Technical Standard”).⁴⁵ This Technical Standard extends the reach of the Law so that it applies to cable television channels, unless:

“1. Over 70% of a channel’s weekly programming consists of programs, advertising or commercials that, taken together, do not qualify as domestic production under the terms of Article 2 of this technical standard.// 2. When more than 70% of the total time of a channel’s weekly programming consists of programs, advertising or

⁴¹ Cf. Decision of the Judge of the Twelfth Court of First Instance for Mediation and Protection of Children and Adolescents. Communication 111/10 addressed to Editor/President of the Newspaper “*Tal Cual*,” dated August 17, 2010. Available at: http://static.eluniversal.com/2010/08/17/medida_de_proteccion.jpg

⁴² Cf. Decision of the Judge of the Twelfth Court of First Instance for Mediation and Protection of Children and Adolescents. Communication 111/10 addressed to Editor/President of the Newspaper “*Tal Cual*,” dated August 17, 2010. Available at: http://static.eluniversal.com/2010/08/17/medida_de_proteccion.jpg

⁴³ Agencia Venezolana de Noticias. August 19, 2010. *Ban on publishing violent images in print media lifted*. Available at: <http://www.avn.info.ve/node/12388>

⁴⁴ At the time, the IACHR’s Office of the Special Rapporteur for Freedom of Expression and the UN Special Rapporteur for Freedom of Expression, in an August 19, 2010 joint press release, expressed their concern regarding these events. Press Release R82/10. Rapporteurs for Freedom of Expression concerned over Prior Censorship in Venezuela. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=811&IID=1>

⁴⁵ CONATEL. Administrative Order 01/09 of December 22, 2009. Technical Standard on Domestic Audiovisual Production Services. Available at: http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf

commercials that, taken together, do not qualify as domestic production under the terms of Article 2 of this technical standard.”⁴⁶

27. As can be inferred from the text of the provision cited above, the Technical Standard divides cable television channels into “domestic” and “international”. Whereas the system created by the Technical Standard applies to domestic cable television channels, which implies enforcement of the Law on Social Responsibility in Radio and Television, that system does not apply to international cable television channels.⁴⁷ The Technical Standard establishes certain specific obligations, such as broadcasting of government messages or speeches (Article 5); a ban prohibiting commercial interruption of programs (Article 6); registration of these channels in the record created for that purpose (Article 10); and others. Finally, the conditions it imposes in the area of advertising are more restrictive than the conditions imposed under the Law on Social Responsibility in Radio and Television; whereas the Law on Social Responsibility allows five commercial interruptions every 60 minutes, the Technical Standard bans any commercial interruption and confines advertising to the intervals between various programs.⁴⁸

28. The Technical Standard establishes a procedure where cable channels will be evaluated to determine whether they qualify as “domestic” or “international”. Channels that were already broadcasting when the norm was approved are to submit to CONATEL,⁴⁹ “within fifteen (15) working days from the date of publication of this technical standard, the paperwork to show that they either are or are not purveyors of domestic audiovisual production services for a sample period of four (4) months of programming aired prior to publication of the standard.”⁵⁰ The provision also states that if channels fail to produce the required documentation, they will automatically be regarded as Domestic Audiovisual Production Services.

29. Finally, the last paragraph of Transitory Provision One requires that cable television providers exclude “those audiovisual production services that have failed to produce for the National Telecommunications Commission the documentation to which this

⁴⁶ CONATEL. Administrative Order 01/09 of December 22, 2009. Technical Standard on Domestic Audiovisual Production Services. Article 3. Available at: http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf

⁴⁷ In this connection, Article 4 of the Technical Standard provides that “Domestic Audiovisual Production Services shall comply with the provisions of the Law on Social Responsibility in Radio and Television.” Available [in Spanish] at: http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf

⁴⁸ CONATEL. Administrative Order 01/09 of December 22, 2009. Technical Standard on Domestic Audiovisual Production Services. Article 6. Available at: http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf

⁴⁹ See, in this regard, CONATEL. December 2009. *Guide to doing notifications for Domestic Audiovisual Production Services*. Available at: http://docs.google.com/viewer?a=v&q=cache:wSCBZFiz01kJ:www.conatel.gob.ve/download/Servicio_Produccion_Nacional_Audiovisual/Guia_Notificacion_PNA_%2812-2009%29.pdf+para+los+servicios+de+Producci%C3%B3n+Nacional+Audiovisual+%22Gu%C3%ADa+para+realizar+notificaciones+%22+site:www.conatel.gob.ve&hl=en&gl=us&pid=bl&srcid=ADGEESiilcds2V6qHGI5mtWFieEj6Fynro3K9xhit4kMnrhSXr2mzBYchVagBvIF1wQ7Ftf6JgiBEUbkxJl7iDLyFjoXrLbS4r4XEU7XXOv6HoQ3-JiKtEjav0_HDZPj0R08j6pRfRm-&sig=AHIEtbTUEin-D4wSYmTqSx92OAXpf2ZliQ&pli=1

⁵⁰ CONATEL. Administrative Order 01/09 of December 22, 2009. Technical Standard on Domestic Audiovisual Production Services. Transitory Provision One. Available at: http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf

article refers and those that are not listed in the register of domestic audiovisual production services.”⁵¹

30. A number of earlier reports have documented the tension between government authorities and channel RCTV due to the latter’s editorial position. The authorities have described the channel as “horsemen of the Apocalypse”, “fascists”, the force behind “a campaign of terrorism against the people, the law and the Republic,” “liars, perverts, immoral people, rebels and terrorists” and other epithets.⁵² In 2007, its license expired and was not renewed.⁵³ Around the middle of that year, RCTV began to broadcast on cable television, which meant that the provisions of the Law on Social Responsibility in Radio and Television did not apply to it. As previously observed, the language of that law is too vague and imprecise for the law to constitute a legitimate restriction on freedom of expression. Under the Law on Social Responsibility in Radio and Television, those television channels that are subject to its provisions are required to carry the blanket presidential broadcasts. According to the information supplied by civil society organizations that monitored the use of this resource, there were 1,932 blanket official broadcasts between February 1999 and July 2009, which amounted to 52 uninterrupted days of presidential broadcasts.⁵⁴

31. Given the new provision issued by CONATEL, RCTV decided to change its programming to conform to the parameters established by the Technical Standard for international channels, a decision it reported to the State on January 13, 2010.⁵⁵ This meant drastic programming changes, such as cancellation of a number of programs produced in Venezuela.⁵⁶ In the words of RCTV International, “within the established time period it applied the new programming parameters described for International Channels operating within Venezuelan territory; it did so in order to continue to function as we are, an International Channel.”⁵⁷

32. Despite the programming changes RCTV made, on January 15, 2010 CONATEL classified RCTV International as a domestic audiovisual production service, and so notified RCTV International on Thursday, January 21, 2010. RCTV challenged that decision by filing a writ for constitutional protection (*amparo*).⁵⁸ Since the petition seeking *amparo*

⁵¹ CONATEL. Administrative Order 01/09 of December 22, 2009. Technical Standard on Domestic Audiovisual Production Services. Transitory Provision One. Available at: http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf

⁵² I/A Court H.R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 115.

⁵³ See IACHR. 2007 Annual Report. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Situation of Freedom of Expression in the Region).

⁵⁴ IACHR. 2009 Annual Report of the Inter-American Commission on Human Rights. *Report of the Special Rapporteur for Freedom of Expression*. Chapter 2, Para. 572. OEA/Ser.L/V/II. Doc. 51, December 30, 2009. Available at: <http://www.IACHR.oas.org/pdf%20files/Annual%20Report%202009.pdf>

⁵⁵ CONATEL. Administrative Order 1,569 dated March 4, 2010. On file with Office of the Special Rapporteur. See also Apporeia. March 5, 2010. *Conatel rejects RCTV’s inscription as extemporaneous*. Available at: <http://www.aporrea.org/medios/n152383.html>

⁵⁶ *El Universal*. January 21, 2010. *RCTV radically changes its programming*. Available at: http://www.eluniversal.com/2010/01/21/tit art_rctv-cambia-radicalm_1731007.shtml

⁵⁷ Communiqué from RCTV Internacional, dated January 21, 2010. Available at: <http://www.rctv.net/Noticias/VerNoticia.aspx?Noticiaid=8207&Categoriald=31>

⁵⁸ CONATEL. Administrative Order 1,569 of March 4, 2010. On file with Office of the Special Rapporteur. See also Apporeia. March 5, 2010. *Conatel rejects RCTV’s inscription as extemporaneous*. Available at: <http://www.aporrea.org/medios/n152383.html>

relief was pending before the courts, RCTV -which felt it had proven that it was an "international" channel- decided not to carry the blanket presidential broadcasts on the following Friday and Saturday. CONATEL did an evaluation of the content, using a sample taken from the four months that preceded issuance of the Technical Standard. As a result, the changes that RCTV made to its programming starting on December 22, 2009, did not count since, in order to be classified as an "international producer" under the technical standard issued on December 22, 2009, RCTV had to be in compliance with the requirements stipulated therein four months before the standard was issued, in other words, as of August 22, 2009.

33. On Saturday night, January 23, 2010, Minister Cabello made public statements in which he asserted that there were cable channels that were not in compliance with Venezuelan law. According to administrative order 01/09 of the Bureau of Social Responsibility, if channels fail to comply with the Technical Standard established in that regulation, cable television providers are to eliminate them from their programming. In effect, the final paragraph of Transitory Provision One of the Technical Standard reads as follows:

"Cable providers are to exclude from their programming any audiovisual production services that have not produced for the National Telecommunications Commission the documentation to which this article refers, as well as those not listed in the register of domestic audiovisual production services."⁵⁹

34. The Minister therefore served notice to all cable operators that they were to take off the air those channels that were not in compliance with the law, under penalty of facing administrative proceedings. Specifically, Minister Cabello said the following:

"If a cable operator -let's call it Cable Venezolana- found that a certain channel was not in compliance with Venezuelan law, and Cable Venezolana did nothing to remove that channel from its offerings, we would institute an administrative proceeding against Cable Venezolana, the provider which brings the channel into the home. I should point out that in this instance, the cable operators themselves have been telling CONATEL which channels are not in compliance with the Law on Social Responsibility, even though they have been classified as Domestic Audiovisual Producers, and they simply operate on that basis.
(...)

We're not obligating them to anything; this is simply a matter of compliance. And we're not sanctioning anyone (...) What I'm saying is this: this time the cable operators have done what they are supposed to do. If they don't, I will enforce the Organic Law on Telecommunications and institute administrative proceedings. We'll take action against the cable operator, but thus far this hasn't happened. We've already called them and told them: look, read the technical standard, then look at which channels are classified as domestic audiovisual producers and which channels are international producers, and then verify that. The cable operators have discovered which channels are not in compliance. In keeping with the technical standard, they simply drop any channel that is not in compliance with Venezuelan law.

[Question from a journalist on how much time operators have to drop channels]

This was approved on Thursday and the list went out. To be honest, the operators should have already done it. They have a little time, perhaps. Here, everyone has to

⁵⁹ CONATEL. Administrative Order 01/09 of December 22, 2009. Technical Standard on Domestic Audiovisual Production Services. Transitory Provision One. Available at: http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf

do one's duty. (...) By now, anyone who is not in compliance... well the operators will begin to make their decisions. I guarantee you, that's how it will be!⁶⁰

35. At midnight, January 23, RCTV and five other television stations went off the air.⁶¹

36. The Commissioner for Venezuelan Affairs and the Special Rapporteur for Freedom of Expression expressed their deep concern over the fact that the channels in question were taken off the air. In press release 08/10 they expressed the following:

"The decision to take a cable channel off the air for alleged non-compliance with the Law of Television and Radio Social Responsibility means, for all intents and purposes, the closure of a channel for not complying with this law. This decision therefore has enormous repercussions when it comes to freedom of expression, and as such must comply with all the guarantees consecrated in law, in the Venezuelan Constitution and in the international treaties to which the Bolivarian Republic of Venezuela is a party. In particular, in order for the closing of a media outlet to be legitimate, it is necessary that prior to the exhaustion of due process, an independent and impartial state body verify that the media outlet committed an offense clearly established by law and that the agency charged with enforcing the law adequately and sufficiently justifies the decision. These minimum guarantees of due process cannot be sidestepped on the pretext that the media outlet in question is a cable channel. // In this case, the channels that were so suddenly taken off the air did not have an opportunity to defend themselves with due process and before an impartial authority. These channels were punished summarily, without due process and without justification under Venezuelan law. With this decision, the right to freedom of expression in Venezuela is further eroded, as it blocks cable media outlets from operating independently and without fear of being silenced on account of the focus of their reporting or their editorial stance."⁶²

37. In the case described here, the cable television providers were informally warned that they should take the supposedly noncompliant television channels off the air; if they failed to do so, they would face administrative proceedings and penalties. That indirect pressure is based on retroactive enforcement of a provision that had reportedly been devised to get at RCTV specifically. This would imply a violation of the principle of legality, which presupposes that any restrictions on freedom of expression must be established by pre-existing law, written in clear and unambiguous language in order to provide the necessary "foreseeability", as both the IACHR and the European Court have recognized.⁶³ Moreover, as the Office of the Special Rapporteur for Freedom of Expression wrote in its 2009 Annual

⁶⁰ Venezolana de Televisión. Minister Cabello's press conference. Available at: http://www.youtube.com/watch?v=UPQOnu2WC_I&feature=related

⁶¹ In addition to RCTV, the following channels were also taken off the air: América TV, TV Chile, American Network, Ritmo Son and Momentum. See IFEX. January 26, 2010. *Cable companies take six television stations off the air following communications regulator's orders*. Available at: http://www.ifex.org/venezuela/2010/01/26/cable_stations_off_air/. Committee to Protect Journalists. February 25, 2010. *Venezuela bars RCTV, 5 other stations from cable, satellite*. Available at: <http://cpj.org/2010/01/venezuela-bars-rctv-5-other-stations-from-cable-sa.php>

⁶² Office of the Special Rapporteur for Freedom of Expression of the IACHR. Press release No. R08/10 of January 24, 2010. Available at: <http://www.IACHR.org/relatoria/showarticle.asp?artID=781&IID=1>

⁶³ European Court of Human Rights, Case of Tolstoy Miloslavsky v. United Kingdom, Judgment of July 13, 1995, para. 37, where it wrote that: "The expression 'prescribed by law' [in Article 10 of the European Convention on Human Rights] requires firstly that the impugned measures should have a basis in domestic law. It also refers to the quality of the law in question, requiring that it be accessible to the persons concerned and formulated with sufficient precision to enable them [...] to foresee, to a degree that is reasonable in the circumstances, which a given action may entail."

Report, “because punitive procedures can seriously affect the exercise of freedom of expression, they must provide for all of the due process guarantees enshrined in Articles 8 and 25 of the American Convention.”⁶⁴

38. The IACHR was told that in February 2010, five of the six suspended cable channels were authorized to broadcast again. The exception was RCTV International. Later that same month, RCTV International agreed to its classification as a “domestic audiovisual producer.”⁶⁵ In effect on February 22, 2010, RCTV International notified CONATEL of its intention to provide two services: one domestic audiovisual production service, which would be subject to the laws described in the preceding paragraphs, and RCTV Mundo, an “international” channel whose “domestic” content would not exceed 29%.⁶⁶ On March 4, 2010, CONATEL ruled that the petition that RCTV International filed to register that channel as a domestic audiovisual production service had been submitted too late, and it would therefore take no further action. In so doing, CONATEL applied Article 32 of the Organic Law on Telecommunications which provides that no further action shall be taken on applications filed with CONATEL for licensing if, through the interested party’s fault, the proceedings come to a standstill for more than fifteen working days.⁶⁷ CONATEL also claimed that the documentation presented in connection with RCTV Mundo had been “inaccurate and incomplete” and, as a result, CONATEL could not do the necessary evaluation to determine whether this was a “domestic” or “international” channel.⁶⁸ At the present time, RCTV is not being carried by cable providers.

39. RCTV filed an action asking the courts to strike down the Technical Standard and the decision that classified RCTV as a domestic audiovisual production service. On August 11, 2010, Examining Court of the Administrative Political Chamber of the Supreme Court agreed to hear the nullification action; the next step was to be the hearing.⁶⁹ As of the date this report went to press the hearing had not been held.

E. The *Globovisión* case

40. *Globovisión* is a privately-owned Venezuelan television channel whose position tends to be critical of the Venezuelan government. In previous reports, the Office of

⁶⁴ In this regard it is worth recalling that the Inter-American Court held that “Although Article 8 of the American Convention is entitled ‘Judicial Guarantees’ [in the Spanish version – ‘Right to a Fair Trial’ in the English version], its application is not strictly limited to judicial remedies, ‘but rather the procedural requirements that should be observed in order to be able to speak of effective and appropriate judicial guarantees, so that a person may defend himself adequately in the face of any kind of act of the State that affects his rights.’” And that “although this article does not establish minimum guarantees in matters relating to the determination of rights and obligations of a civil, labor, fiscal or any other nature, the full range of minimum guarantees stipulated in the second paragraph of this article are also applicable in those areas and, therefore, in this type of matter, the individual also has the overall right to the due process applicable in criminal matters.” IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter VI (Freedom of Expression and Broadcasting), para. 144; I/A Court H.R., *Case of the Constitutional Court v. Peru*. Judgment of January 31, 2001. Series C No. 71, paragraphs 69-70.

⁶⁵ Reporters without Borders. February 23, 2010. *RCTV yields in order to resume broadcasting, but problem of “cadenas” remains*. Available at: <http://en.rsf.org/venezuela-rctvi-yields-in-order-to-resume-23-02-2010,36202.html>

⁶⁶ See CONATEL. Administrative order No. PASDR-1.569. March 4, 2010.

⁶⁷ Organic Law on Telecommunications. Article 32. Available at: http://www.tsj.gov.ve/legislacion/lt_ley.htm

⁶⁸ See CONATEL. Administrative order No. PASDR-1.569. March 4, 2010.

⁶⁹ See Supreme Court, Political Administrative Chamber, Examining Court. August 11, 2010. Available at: <http://www.tsj.gov.ve/decisiones/jspa/Agosto/467-11810-2010-10-657.html>

the Special Rapporteur has recounted various episodes of harassment of the channel because of its editorial position. In the 2009 Annual Report the IACHR and the Office of the Special Rapporteur singled out at least six administrative proceedings that CONATEL had instituted against *Globovisión* for alleged violation of Article 29(1) of the Law on Social Responsibility in Radio and Television, and articles 171(6) and 172 of the Organic Law on Telecommunications.⁷⁰ As of the date this report went to press, the outcome of these proceedings was still unknown.

41. Between March 19 and 22, 2010, the midyear meeting of the Inter-American Press Association was held in Oranjestad, Aruba. Participating in the event was Guillermo Zuloaga, president of *Globovisión* of Venezuela. At the meeting, Zuloaga made a statement in which he criticized the handling of public funds to support public media outlets that serve governmental ends; he underscored the political polarization in Venezuela, which he blamed on the President of the Republic. According to Zuloaga, Venezuela's head of state "has devoted himself to being President of one group of Venezuelans and has tried to divide Venezuela for the sake of something, and that something is twenty-first century socialism." Zuloaga also denied the accusations that President Hugo Chávez Frías had made publicly against him, to the effect that he and other media entrepreneurs were somehow linked with the 2002 *coup d'état*.⁷¹

42. On March 23, 2010, the National Assembly approved a draft resolution in which Zuloaga's assertions were rejected. Through this resolution, the National Assembly urged "the Public Prosecutor's Office to conduct all investigations and take all measures necessary to determine what crimes citizen Guillermo Zuloaga had committed under the current legal system by uttering the statements he made before the Inter-American Press Association, in which he repeated a series of false accusations against the legitimate and democratic government of constitutional President Hugo Chávez."⁷² The following day, Deputy Manuel Villalba, President of the National Assembly's Commission on the Social Media, met with Prosecutor General Luisa Ortega Díaz to file a formal complaint.⁷³

43. On March 25, 2010, at Josefa Camejo Airport in Punto Fijo, Falcón state, Zuloaga was detained by virtue of an arrest warrant requested by the Public Prosecutor's Office as part of the investigation instituted against him. The Public Prosecutor reported that

⁷⁰ Article 171.6 of the Organic Law on Telecommunications provides as follows: "Article 171. Without prejudice to the fines that are to be applied in accordance with the provisions in this Law, the penalty shall be cancellation of the government license or concession, as the case may be, in the case of: [...] (6) Someone who utilizes or allows the use of telecommunications services for which one is licensed, as a means to aid and abet the commission of crimes." Article 172 of the Organic Law on Telecommunications states: "Article 172. Natural or legal persons whose government license or concession is revoked will be unable to obtain another, either directly or indirectly, for a period of five years. This period will be start as of the date the administrative decision becomes final. In the case of legal persons, the de-licensing will extend to administrators or other organs responsible for the management and direction of the sanctioned operator which were performing these functions at the time the offense was committed, provided they had knowledge of the situation that led to the de-licensing and did nothing to notify the National Telecommunications Commission in writing before the opening of the punitive proceedings. The violation of the de-licensing and disqualifications established in this Law will cause natural persons responsible for such an offense to be liable for a special disqualification prohibiting them from owning capital shares in or being administrators or managers of telecommunications companies, either directly or indirectly, for a period of five years." Available at: http://www.tsj.gov.ve/legislacion/lt_ley.htm

⁷¹ Guillermo Zuloaga's statements, available at: <http://www.youtube.com/watch?v=1KpM4g1uwa4>

⁷² National Assembly. *National Assembly asks Public Prosecutor's Office to investigate Guillermo Zuloaga*. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_content&task=view&id=24416&Itemid=27

⁷³ Reporte 360. March 24, 2010. *Manuel Villalba asked Public Prosecutor's Office to investigate Zuloaga*. Available at: <http://www.reporte360.com/detalle.php?id=29756&c=1>

"the evidence is sufficient to presume that the businessman constitutes a flight risk in an attempt to avoid the criminal proceedings brought after the complaint filed concerning his remarks at a meeting of the Inter-American Press Association."⁷⁴ Villalba emphasized the fact that Zuloaga's statements constituted the crime of "contempt of and offending" the President of the Republic.⁷⁵ The following day, Caracas' 40th Examining Court decided to grant Zuloaga conditional release, although in lieu of incarceration, it ordered him not to leave the country.⁷⁶ As of the date this report went to press, the case against Zuloaga was still ongoing.

44. On June 3, 2010, President Hugo Chávez Frías allegedly publicly criticized the Judiciary for having allowed Guillermo Zuloaga to remain at liberty.⁷⁷

45. On June 11, 2010, Caracas' 13th Examining Court issued a warrant for the arrest of Guillermo Zuloaga and his son Guillermo Zuloaga Siso. Both were accused of the crimes of usury and hoarding for having kept 24 vehicles in storage on a property they owned in the countryside.⁷⁸ According to the information received, Zuloaga is the owner of a car dealership.⁷⁹

46. Reacting to this turn of events, the Office of the Special Rapporteur for Freedom of Expression sent a letter to the Venezuelan government expressing concern over various issues related to freedom of expression, one of which was the order issued for the arrest of Guillermo Zuloaga and his son. The Office of the Special Rapporteur for Freedom of Expression expressed its concern regarding the arrest warrant, "noting the constant threats and harassment of *Globovisión* in general and Zuloaga in particular". It also pointed out that, "according to information received, on June 3, 2010 (...) the President of the Republic had criticized the Judicial Branch because Zuloaga was still free. It observed that it seems no coincidence that just eight days after the President's rebuke, the Judicial Branch issued a warrant for Zuloaga's arrest".⁸⁰

⁷⁴ IPYS. March 25, 2010. *Globovisión Owner Taken into Custody*. Available at: <http://www.ipys.org/alertas/atentado.php?id=2231>. Noticias 24. March 25, 2010. *Prosecutor General explains reasons for Zuloaga's arrest*. Available at: <http://www.noticias24.com/actualidad/noticia/149235/video-fiscal-general-cuenta-razones-de-la-detencion-de-zuloaga/>

⁷⁵ El Universal. March 25, 2010. *Zuloaga to be charged with crime of contempt and offending the President*. Available at: http://www.eluniversal.com/2010/03/25/pol_ava_imputaran-a-zuloaga_25A3646055.shtml

⁷⁶ El Universal. March 26, 2010. *Zuloaga will not be jailed during his trial for "contempt of and offending the President"*. Available at: http://politica.eluniversal.com/2010/03/26/pol_art_enjuiciaran-en-liber_1810121.shtml

⁷⁷ El Universal. June 12, 2010. *Arrest warrant issued for Zuloaga and his son*. Available at: http://www.eluniversal.com/2010/06/12/pol_art_dictan-orden-de-apre_1936129.shtml. Tal Cual. June 12, 2010. *Chávez gives the orders and the judge acts*. Available at: <http://www.talcualdigital.com/Avances/Viewer.aspx?id=36344&secid=28>. Notitarde. June 11, 2010. *13th Examining Court ordered arrest of Guillermo Zuloaga*. Available at: <http://www.notitarde.com/notitarde/plantillas/nota.aspx?idart=1051140&idcat=9841&tipo=2>

⁷⁸ El Universal. June 11, 2010. *Zuloaga ordered arrested for usury and hoarding*. Available at: http://www.eluniversal.com/2010/06/11/pol_ava_orderan-arrestar-a-z_11A4006611.shtml. El Nacional. June 29, 2010. *Public Prosecutor's Office accuses Zuloaga of usury and hoarding*. Available at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/143323/Nacional/Ministerio-P%C3%BAblico-acusa-a-los-Zuloaga-de-usura-y-agavillamiento

⁷⁹ Telesur. June 11, 2010. *Venezuelan Public Prosecutor's Office orders businessman's arrest for the crime of usury*. Available at: <http://www.telesurtv.net/secciones/noticias/73447-NN/ministerio-publico-venezolano-ordena-captura-de-empresario-por-delito-de-usura/>

⁸⁰ Office of the Special Rapporteur for Freedom of Expression of the IACHR. Letter sent to the Bolivarian Republic of Venezuela on June 14, 2010, in connection with the Situation of Freedom of Expression in the Bolivarian Republic of Venezuela (on file with the Office of the Special Rapporteur). See in this regard, IACHR Commissioner for Venezuelan Matters and the Special Rapporteur for Freedom of Expression Send Communication to the Venezuelan State Expressing Deep Concern over the Serious Situation of Freedom of Expression. Press

47. The Office of the Special Rapporteur underscored the fact that “freedom of expression is a right that can be violated by direct and indirect means. Article 13, subsection 3 of the American Convention states that ‘the right of expression may not be restricted by indirect methods or means, such as abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.’ From this point of view, criminal prosecution for supposed crimes unrelated to the exercise of freedom of expression may constitute an illegitimate infringement of that right if it is established that prosecution is exclusively because of the accused’s political position or the exercise of his fundamental rights, such as freedom of expression in this case.”⁸¹

48. According to the information received, Zuloaga left the country, whereupon proceedings for his extradition were instituted, at the request of the Public Prosecutor’s Office.⁸² In mid-August 2010, the Supreme Court cleared the way for the extradition request to proceed.⁸³

49. Nelson Mezerhane Gozen is one of *Globovisión*’s co-founders and serves as its Principal Director. He is also president of the Federal Bank. On December 19, 2009, in one of his nationwide broadcasts, the President of the Republic questioned statements made by Mezerhane and ordered an investigation of him for the statements Mezerhane had made to the daily newspaper *El Mundo Economía y Negocios*. President Chávez said the following: “I’m going to call the Prosecutor General later and ask that she have those statements investigated, as I consider them to be very serious and irresponsible, especially coming from the mouth of the president of a bank, which has had serious problems, for sure.”⁸⁴

50. On December 21, 2009, a criminal investigation was instituted against Mezerhane, by order of the Prosecutor General of the Republic, Luisa Ortega Díaz.⁸⁵

51. On June 14, 2010, the Minister of State for Public Banking, Humberto Ortega Días, decided to take over the Federal Bank.⁸⁶ On June 16, 2010, in one of his

Release No. R61/10, July 14, 2010. Available at: <http://www.IACHR.org/Relatoria/showarticle.asp?artID=800&IID=1>

⁸¹ Office of the Special Rapporteur for Freedom of Expression of the IACHR. Letter sent to the Bolivarian Republic of Venezuela on June 14, 2010, in connection with the Situation of Freedom of Expression in the Bolivarian Republic of Venezuela (on file with the Office of the Special Rapporteur).

⁸² El Universal. June 29, 2010. *Public Prosecutor’s Office seeks extradition of Guillermo Zuloaga*. Available at: http://www.eluniversal.com/2010/06/29/pol_ava_ministerio-publico-p_29A4106093.shtml. Ministry of the People’s Power for Communications and Information. June 29, 2010. *Public Prosecutor’s Office asks for Zuloaga’s extradition*. Available at: http://minci.gob.ve/nacionales/1/200778/ministerio_publico_solicita.html

⁸³ El Universal. August 17, 2010. *Supreme Court authorizes Zuloaga’s extradition*. Available at: http://www.eluniversal.com/2010/08/17/pol_ava_tsj-autoriza-extradi_17A4349131.shtml. Agencia Venezolana de Noticias. August 17, 2010. *Supreme Court allows request to extradite Guillermo Zuloaga*. Available at: <http://www.avn.info.ve/node/11919>

⁸⁴ Public statements by the President of the Bolivarian Republic of Venezuela, Hugo Chávez Frías. Available at: <http://www.youtube.com/watch?v=3NzzmVGtqls>

⁸⁵ El Universal. December 21, 2010. *Prosecutor’s Office launches investigation into alleged bank-related “rumor mills”*. Available at: http://www.eluniversal.com/2009/12/21/pol_ava_fiscalia-abre-invest_21A3220251.shtml. Noticias RTV. December 22, 2010. *Chávez again says that Mezerhane’s claims will be investigated*. Available at: <http://noticiasrtv.com/noticiasrtv/2009/12/22/chavez-reitero-que-declaraciones-de-mezerhane-seran-investigadas/>

⁸⁶ Venezolana de Televisión. June 14, 2010. *Sudeban announces closed-door takeover of Federal Bank*. Available at: <http://www.vtv.gov.ve/noticias-econ%C3%B3micas/37501>. El Universal. June 14, 2010. *Closed-*

nationwide broadcasts, President Chávez said the following: “While it is true that Mr. Banker, who left and said he wasn’t coming back [Mezerhane] has shares in *Globovisión*, Zuloaga is going to have to show up for us to come to some understanding over that channel.”⁸⁷ He also said that if the court cases demonstrate that both Zuloaga and Mezerhane have shares in *Globovisión*, “both will have to straighten up and come my way; I have a flower to offer.”⁸⁸

52. The statements made by the President of the Republic suggest that the State wants to take over *Globovisión* by intervening in the Federal Bank, whose president, Nelson Mezerhane, is also a shareholder in *Globovisión*:

“Mezerhane has a business that was taken over, and that business has a 20% stake in *Globovisión*. He owns another business that has a 5.8% stake in *Globovisión*. Adding the two together, that’s a 25.8% stake. Well, come to see me, I have a flower. In the days ahead, the Board that intervened in the Federal Bank is required (...) to appoint a representative to sit on *Globovisión*’s Board of Directors, because the 25.8% stake we now have gives us the right to name a representative to the Board of Directors. And I was thinking who should I nominate? (...) Well, it’s not my function to appoint the Board member, but I would recommend someone to be appointed to the Board. (...) We hear names, someone to defend the shareholders’ interests (...) This is pure capitalism, my friend, pure capitalism by the shareholders (...) We’re joining the business (...) And oh, by the way, another 20% of the shares in *Globovisión* are up in the air. They’re up in the air because when the State awarded the concession, 20% of the shares went to a gentleman by the name of (...) Tenorio; he got 20 percent (...). Regrettably, the gentleman is now deceased. By law, these concessions are not inherited; in other words, what one leaves to one’s children, one’s heirs is one’s own property, but radio frequencies are the property of the State. If anyone receives a concession it is for use of the radio frequency; when that person dies, the concession goes back to the State. We’ll see to whom it goes now. So, adding all this together, 28.5% plus 20%, well, my friends that’s a 48.5% stake in *Globovisión*.”⁸⁹

53. The same day the President made these statements, PSUV deputy Carlos Escarrá said the following on the *La Hojilla* television program:

“Mr. Zuloaga is being criminally prosecuted for a number of crimes that are violations of the Defense of the People Law, which makes hoarding and speculation criminal offenses. That law gives the State the authority to adopt precautionary measures, because the crime of which Mr. Zuloaga is accused affects all people (...). The State is fully within its rights to take over, as a precautionary measure, Mr. Zuloaga’s shares in *Globovisión*, which would make the State the majority shareholder in

door takeover of Federal Bank ordered. Available at: http://www.eluniversal.com/2010/06/14/eco_ava_ordenan_intervencion_14A4020011.shtml

⁸⁷ Código ADN. June 16, 2010. Chávez: ‘Zuloaga and the Banker: Come to me, I have a flower’. Available at: <http://www.codigovenezuela.com/2010/06/noticias/pais/chavez-zuloaga-y-el-banquero-vengan-a-mi-que-tengo-flor/>. *Venezolana de Televisión*. June 16, 2010. Revelan que Banco Federal posee acciones de Globovisión [Revealed: Federal Bank has shares in Globovisión]. Available [in Spanish] at: <http://www.vtv.gob.ve/noticias-econ%C3%B3micas/37707>

⁸⁸ Código ADN. June 16, 2010. “Chávez: ‘Zuloaga y ‘El Banquero’: Vengan a mí, que tengo flor” Chávez: ‘Zuloaga and the Banker: Come to me, I have a flower’. Available [in Spanish] at: <http://www.codigovenezuela.com/2010/06/noticias/pais/chavez-zuloaga-y-el-banquero-vengan-a-mi-que-tengo-flor/>. *Venezolana de Televisión*. June 16, 2010. Revelan que Banco Federal posee acciones de Globovisión [Revealed: Federal Bank has shares in Globovisión]. Available [in Spanish] at: <http://www.vtv.gob.ve/noticias-econ%C3%B3micas/37707>

⁸⁹ Statements made by President Hugo Chávez, available at: <http://www.youtube.com/watch?v=PWp2PQ6iKUQ>

Globovisión. Being a majority shareholder means having 55% of the shares; but taking over Mr. Zuloaga's shares would mean that the State would have roughly a 77% stake (...). This is far more than a 55% stake in that phantom business."⁹⁰

54. Subsequently, in a blanket presidential radio and television broadcast delivered on July 2, 2010, the President again made reference to *Globovisión* and stated "Let's see who holds out longer: crazy *Globovisión* or Venezuela." He went on to say the following: "So some thought will have to be given to the question of what happens to that television channel; so, what's going to happen? The owners are out there, fugitives from justice. And I'm calling upon those who run that channel -who are not the owners- and especially those on the front lines, who are acting on the instructions from the owners -who are in hiding, as fugitives from justice-: you are undermining the country's stability on the owners' orders...; it's very dangerous to allow a television channel to incite a country. That's something we just can't allow."⁹¹

55. The facts recounted in the preceding paragraphs are troubling. According to the statements made by public officials, the State intends to seize control of the *Globovisión* channel. As previously mentioned, Article 13(3) of the American Convention prohibits any indirect methods or means intended to restrict freedom of thought and expression.

56. On November 20, 2010, the President gave *Venezolana de Televisión* an interview, in which he said the following about Guillermo Zuloaga:

"And he's not just a fugitive from justice; just yesterday he was at the United States Congress casting aspersions on his own country, his own government, this president; and he's the owner of that channel. As Head of State, I am calling upon Vice President Elías Jaua, the Prosecutor General, and the Supreme Court to do something. Because this is something very odd: here we have the owner of a television channel who is a criminal and a fugitive from justice. He appears at the United States Congress and says whatever he pleases against this government, and conspires against it. They're raising money to pay someone to kill me. I'm telling you this. Yes, Yes. They're paying someone; (...) I have it from very reliable sources that they have 100 million dollars for the person who kills me. And he's one of them; the owner of a television channel that is at this very moment broadcasting in Venezuela. Do you realize what's happening? I'm asking the appropriate organs to investigate this, because something has to be done. Either the owner comes to defend his assets -show his face, as he should- or something will have to be done about that channel..."⁹²

57. In an address to university students on November 21, 2010, the President said the following:

"Just three or four days ago representatives of the ultra right gathered in Washington. And the *Globovisión* owner was there at that meeting, one of them for sure. This is inexplicable; I still don't understand it, and hope to understand it better... In other words, here we have a Venezuelan who is a fugitive from justice. He is the owner of, among other things, a television channel that is on the air every

⁹⁰ *Venezolana de Televisión*. Programa La Hojilla. July 20, 2010. On file with the Office of the Special Rapporteur for Freedom of Expression and available at: <http://www.ojopelao.com/opinion/la-hojilla/18065-la-hojilla-del-dia-martes-20-de-julio-de-2010-video.html>

⁹¹ *Debate socialista*. Address by President Chávez. Available at: http://www.debatesocialistadigital.com/Discursos/discursos_2010/julio/acto_ahorrista_banco_federal.html

⁹² President's interview with *Venezolana de Televisión* on November 20, 2010. Video available at: <http://www.youtube.com/watch?v=zpR-V-MQnEw>

day. Broadcasting from here! Right here in Caracas! And he's out there, a fugitive from justice. Oh, he also goes to Washington to say... well to say whatever he wants; to brand this soldier a tyrant; to say that Venezuela is a dictatorship and Venezuela is foundering; he is practically asking the Yankee imperialists to intervene in Venezuela. And he's the owner of a television channel that remains on the air. I've called upon the branches of government (...) the Office of the Prosecutor General, the Judicial Branch, the Vice President –our dear friend Elías Jaua- to see what we can do. Right? Because that gentleman fled the country, a fugitive from justice; he is a criminal and yet he has a television channel criticizing the government every day, misrepresenting the truth. This government and the Venezuelan State have to do something about this! Let's see what happens... But this situation cannot go on; it is a violation of the Constitution and the law. That gentleman should come here and show his face ... Face the Venezuelan courts. But no, he's there in Washington, asking the empire to intervene in his own country, which is very likely treason (...). I know that this matter is already under review, to see what we can do. Either this man shows up here or some action will have to be taken against his businesses, one of which is a television channel..."⁹³

58. Because of these statements, in which the President asked State authorities to take measures against *Globovisión*, on November 22, 2010 the Office of the Special Rapporteur requested information from the Bolivarian Republic of Venezuela, asking that it report any measures taken with respect to *Globovisión* since the statements made by President Hugo Chávez; information concerning the status of the administrative proceedings that CONATEL previously instituted with respect to *Globovisión*; information about whether Venezuela's legal system allows administrative or judicial proceedings against media outlets because of their editorial stance or the political alignment of their shareholders; information about whether Venezuela's legal system allows intervention or measures against a media outlet because one of its shareholders is being prosecuted for reasons unrelated to the ownership of shares in that outlet; and, finally, the reasons that would explain why the President of the Republic would accuse the *Globovisión* shareholder Guillermo Zuloaga of the crimes of plotting to assassinate him and treason.

59. On November 24, 2010, the Bolivarian Republic of Venezuela responded to request for information made by the Office of the Special Rapporteur and observed the following: "Thus far, no measures of any kind have been taken against *Globovisión* television, inasmuch as each of the constitutionally established branches of government are independent of each other; hence, simple statements made by the President do not constitute an order that the other branches of government are bound to follow." The State also noted that "just as Citizen Guillermo Zuloaga turned to the United States Congress to exercise his right to freedom of expression, Citizen President Hugo Chávez has the same right to answer the accusations made against his Government." Lastly, it wrote that "the investigations instituted against citizen Guillermo Zuloaga have to do with alleged criminal offenses, and not with *Globovisión's* editorial stance; the fact that he is a shareholder in that television channel does not make him immune to investigation or to any criminal, civil or administrative penalties that may be in order after an impartial investigation and a trial with all the guarantees of due process established in the Constitution and the law."⁹⁴

⁹³ Address delivered by the President of the Republic before a gathering of students. Video available at: <http://www.youtube.com/watch?v=EuSspn04hEg>. See also: Bloomberg. November 21, 2010. *Venezuela's Chavez Threatens 'Actions' Against Globovisión*. Available at: <http://www.bloomberg.com/news/2010-11-21/venezuela-s-chavez-threatens-actions-against-globovision.html>. El Universal. November 22, 2010. *Chávez gives orders to go after Zuloaga*. Available at: <http://www.eluniversal.com.mx/internacional/70630.html>

⁹⁴ Response received from the Bolivarian Republic of Venezuela on November 24, 2010. AGEV. 000485 (on file with the Office of the Special Rapporteur).

60. It is important to point out that, as the Office of the Special Rapporteur for Freedom of Expression observed in its 2009 Annual Report, “Public officials, like all people, are entitled to the right to freedom of expression in its diverse manifestations. Nevertheless, the exercise of this fundamental freedom acquires certain connotations and specific characteristics that have been recognized under the case law of the inter-American system.”⁹⁵ That case law has held that public authorities’ right of freedom of expression has certain strict limits that are the product of the particular obligations and responsibilities vested in officials who serve in public office. In effect, when public officials exercise their freedom of expression, either in compliance with their obligation under the law or as a simple exercise of their right to express themselves, “in making such statements the authorities are subject to certain restrictions such as having to verify in a reasonable manner, although not necessarily exhaustively, the truth of the facts on which their opinions are based, and this verification should be performed subject to a higher standard than that used by private parties, given the high level of credibility the authorities enjoy and with a view to keeping citizens from receiving a distorted version of the facts.”⁹⁶

61. Furthermore, given the State’s obligations to ensure, respect and promote human rights, public officials have a duty to ensure that when exercising their right to freedom of expression, they are not disregarding fundamental rights. As the Inter-American Court wrote: “[T]hey should bear in mind that, as public officials, they are in a position of guarantors of the fundamental rights of the individual and, therefore, their statements cannot be such that they disregard said rights.”⁹⁷ Therefore, public officials may not, for example, “violate the presumption of innocence by accusing media outlets or journalists of crimes that have not been investigated and judicially determined.”⁹⁸

62. In making statements, public officials must also be certain not to infringe upon the rights of those who contribute to the public discourse by expressing and publishing their thoughts, such as journalists and media outlets. Here, the Inter-American Court has indicated that public officials must bear in mind the context in which they express themselves, so that their utterances do not constitute “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute to public deliberation through the expression and dissemination of their thoughts.” This duty of special care becomes all the more important in situations of heightened “social conflict, alterations of public order or social or political polarization, precisely because of the set of risks they may imply for certain people or groups at a given time.”⁹⁹

⁹⁵ IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression), para. 200.

⁹⁶ I/A Court H.R., *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 5, 2008, Series C No. 182, para. 131. See also: I/A Court H.R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 139; I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 151.

⁹⁷ I/A Court H.R., *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 5, 2008, Series C No. 182, para. 131.

⁹⁸ IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression), para. 204.

⁹⁹ I/A Court H.R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 139; I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 151.

63. Public officials have a duty to ensure that their exercise of the right to freedom of expression does not interfere with or encumber the functions that other public officials are called upon to perform and in a manner detrimental to the rights of individuals, particularly in the case of the autonomy and independence of the courts. As the Inter-American Court has found: “public officials, particularly the top [g]overnment authorities, need to be especially careful so that their public statements do not amount to a form of interference with or pressure impairing judicial independence and do not induce or invite other authorities to engage in activities that may abridge the independence or affect the judge’s freedom of action,” as that would adversely affect the citizens’ right to an independent judiciary.¹⁰⁰

64. As the Inter-American Court held in the *Ríos* and *Perozo* cases, in contexts and periods of “very high political and social polarization and conflict”¹⁰¹ it is especially imperative that public officials exercise prudence, so as not to create dangerous situations or further inflame the dangers already present.

65. Finally, the Office of the Special Rapporteur recalls that criminal prosecution for crimes unrelated to exercise of freedom of expression may constitute a violation of that right if it is shown that the investigation was motivated exclusively by the accused’s political stance or his or her exercise of the right to freedom of expression.

F. Legal actions instituted against organizations that defend human rights and freedom of expression

66. The IACHR and its Special Rapporteurship received information concerning accusations brought in Venezuela against Venezuelan organizations that defend human rights and, particularly, against organizations that defend the right to freedom of expression. The accusations concern the international funding they have received. The IACHR was informed that on July 12, the Minister of Public Works and Housing and director of CONATEL, Diosdado Cabello, publicly criticized the funding received by some nongovernmental organizations devoted to defending the right to freedom of expression. Minister Cabello based his criticism on an article written by Eva Golinger that appeared on a number of sites on the internet and was titled “United States finances Venezuelan media and journalists.”¹⁰² According to the article, United States government agencies or agencies that receive funding from the US government were reportedly funneling monies to nongovernmental organizations in Venezuela. One day later, the Venezuelan group “*Periodismo Necesario*” filed a complaint with the Office of the Prosecutor General asking it to investigate the organizations that are receiving funds.¹⁰³ Both President Chávez and the Venezuelan National Assembly asked for in-depth investigations into the financing of the

¹⁰⁰ I/A Court H.R., *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 5, 2008, Series C No. 182, para. 131.

¹⁰¹ I/A Court H.R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 121; I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 132.

¹⁰² United Socialist Party of Venezuela. July 12, 2010. *Cabello: Counter-revolutionary journalists receiving funding from abroad*. Available at: <http://www.psuv.org.ve/temas/noticias/cabello-periodistas-contrarrevolucionarios-reciben-financiamiento-externo/>

¹⁰³ Venezolana de Televisión. July 13, 2010. *Movimiento Periodismo Necesario asked that alleged U.S. funding of NGOs and the media be investigated*. Available at: <http://www.vtv.gov.ve/noticias-econ%C3%B3micas/39519>; El Universal. July 13, 2010. *Investigations of IPYS and Espacio Público sought*. Available at: <http://www.vtv.gov.ve/noticias-econ%C3%B3micas/39519>

organizations.¹⁰⁴ On August 16, Eva Golinger supplied documents to the Office of the Prosecutor General that allegedly showed the international funding that a number of Venezuelan organizations had allegedly received.¹⁰⁵ However, as of the date this report went to press, the organizations under investigation had not been notified of what crime one commits by accepting funds from foreign agencies or governments to be used to promote and guarantee human rights. Nor have they been notified that an investigation is being conducted into their affairs.

67. The IACHR also received information on a series of televised messages and programs shown repeatedly by official media outlets that attempt to discredit and stigmatize the aforementioned nongovernmental organizations that are critical of the government.¹⁰⁶ Both *Espacio Público* and the *Instituto de Prensa y Sociedad*, two of the organizations in question, have publicly reiterated that the international funding they receive comes from multiple sources and that they are operating within the law.¹⁰⁷ On December 16, 2010, as mentioned previously, the Executive Director of *Espacio Público*, Carlos Correa, was in front of the National Congress when he was physically assaulted and threatened with death. With no police control, persons hurled an object at him and seriously injured him in the head.¹⁰⁸ Correa had gone to the National Assembly to submit a petition with objections to some of the laws that the deputies were discussing at the time (see *infra*). The attack against Correa, following the campaign to smear and discredit him driven by the government via the public airwaves, demonstrates just how serious government campaigns of this kind can become. The Inter-American Court had already warned Venezuela about this possibility and pointed out that while these official addresses may not directly instigate violence, they nonetheless place the individuals attacked in the speeches in a situation of greater vulnerability vis-à-vis the State and certain sectors of society.¹⁰⁹ In the case of employees of

¹⁰⁴ On July 14, in a publicly televised event, President Hugo Chávez asked for an “in-depth” investigation of the complaint filed with the Office of the Prosecutor General concerning the funding of nongovernmental organizations. *Programa Venezolano de Educación-Acción en Derechos Humanos*. July 14, 2010. President Chávez asked for “in-depth” probe of U.S. funding of Venezuelan NGOs. Available at: <http://www.derechos.org/ve/proveaweb/?p=5140>. Similarly, on July 20, the Permanent Parliamentary Commission on Science, Technology and Social Communication presented a report on foreign funding of journalists and political parties in Venezuela, based on “declassified U.S. State Department documents.” The Chair of the Commission, Manuel Villalba, recommended that the investigation delve further “to ascertain whether activities that could be classified as crimes under the Constitution and other laws, are being carried out.” *El Nacional*. July 20, 2010. *National Assembly approves report on international funding of Venezuelan journalists*. Available at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/145966/Nacional/AN-aprueba-informe-contra-financiamiento-internacional-a-periodistas-venezolanos

¹⁰⁵ Venezolana de Televisión. August 16, 2010. *Golinger files complaint with Prosecutor General concerning U.S. funding of opposition NGOs*. Available at: <http://www.vtv.gob.ve/noticias-nacionales/42054>

¹⁰⁶ International Coalition of Organizations for Human Rights in the Americas [*Coalición Internacional de Organizaciones por los Derechos Humanos en las Américas*]. August 12, 2010. *International Coalition condemns harassment of organizations and persons who defend human rights in Venezuela*. Available at: <http://www.derechos.org/ve/proveaweb/?p=5871>

¹⁰⁷ Instituto Prensa y Sociedad. July 2010. *Concerning our funding and the smear campaign against PIYS Venezuela*. Available at: <http://www.ipys.org.ve/documentos/En%20Venezuela.pdf>

¹⁰⁸ *El Nacional*. December 16, 2010. *Carlos Correa struck on the head during NGO demonstration en route to the National Assembly*. Available at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/172370/Naci%C3%B3n/Carlos-Correa-result%C3%B3-agredido-en-manifestaci%C3%B3n-de-ONG-hacia-la-AN. *El Universal*. December 17, 2010. *Reporters without Borders condemns attack on Carlos Correa*. Available at: http://tiempolibre.eluniversal.com/2010/12/17/pol_ava_reporteros-sin-front_17A4868573.shtml

¹⁰⁹ I/A Court H.R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 145; I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 157.

a television channel harassed by Venezuelan authorities and labeled as the “opposition” and branded as “rebel”, “uninformed” or “destabilizing,” primarily in the presidential addresses, the Court held that this alone meant that this group of persons ran the risk of having their rights violated by private persons, not because of their personal qualities or condition but merely because of their status as employees of that channel.¹¹⁰

68. On July 23, the IACHR asked the Venezuelan State to supply information on the criminal investigations requested against the aforementioned persons and nongovernmental organizations, the grounds for requesting such inquiries, the status of the investigations and the laws that prohibited NGOs from receiving international funding. In its request for information, the IACHR reminded the Venezuelan State of the recommendation made to States that they “[r]efrain from restricting the means of financing of human rights organizations”¹¹¹; of the leading role that human rights defenders play in the full achievement of the rule of law and in strengthening democracy, and that freedom of expression is incompatible with direct or indirect pressure brought to silence the work done by social communicators to report and inform.¹¹²

69. On February 22, 2011, the IACHR received the observations of the State of Venezuela on the IACHR’s Annual Report for 2010. There, in relation to this issue, the State observed: “It is true that the Venezuelan State has questioned NGOs that receive funding from foreign governments. For this reason, a law was passed that forbids this kind of financing. The Venezuelan State has corroborated that the NGOs from Venezuela supported the coup d’état of April 11, 2002 [and] none of them presented a request for precautionary measures to the Commission to guarantee the life of President Chávez.”¹¹³

G. The use of blanket presidential broadcasts [*cadena presidenciales*]

70. The IACHR and the Office of the Special Rapporteur have acknowledged the authority that the President and high-ranking State officials have to use the media to inform the public on issues of vital public interest and those that urgently need to be reported by way of the independent communications media. In effect, as the Inter-American Court has stated, “making a statement on public interest matters is not only legitimate but, at times, it is also a duty of the state authorities.”¹¹⁴

71. Exercise of this authority, however, is not absolute. The information that the head of state conveys to the citizenry in the blanket presidential broadcasts must be that

¹¹⁰ I/A Court H.R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 146; I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 158.

¹¹¹ IACHR. Report on the situation of human rights defenders in the Americas, para. 342, recommendation 19. OEA/Ser.L/V/II.124. Doc. 5 rev.1. March 7, 2006.

¹¹² IACHR. Request to the Bolivarian Republic of Venezuela seeking information. Ref: Investigation launched against nongovernmental organizations. July 23, 2010.

¹¹³ Observations by the State of Venezuela to the draft of the General Report on the Situation of Human Rights in Venezuela, 2010. Communication of February 22, 2011, observations on the section on Freedom of Thought and Expression.

¹¹⁴ I/A Court H.R. *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 5, 2008, Series C No. 182, para. 131; IACHR. *2008 Annual Report*. Volume II: 2008 Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III: Inter-American legal framework of the right to freedom of expression, para. 202. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.IACHR.oas.org/annualrep/2008eng/INFORME%20ANUAL%20RELE%202008.pdf>

strictly necessary to address urgent needs for information in matters that are clearly and genuinely of public interest, and during the time strictly necessary to relay the information. Applying international standards, both the IACHR and its Special Rapporteurship,¹¹⁵ as well as certain domestic agencies of States parties to the American Convention, have indicated that “it is not just any information that gives the President of the Republic the authority to interrupt regular programming; rather, it is information that the general public wants or needs to know about issues that may be of importance to the public and really essential for citizens to be truly able to participate in collective life.” Principle 5 of the Declaration of Principles of Freedom of Expression explicitly provides that “Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

72. In 2009, the IACHR received information from civil society organizations and the academic sector indicating that between February 1999 and July 2009 the Venezuelan communications media transmitted a total of 1,923 blanket presidential broadcasts, equivalent to 1,252 hours and 41 minutes, in other words 52 days of uninterrupted broadcasting of presidential messages.¹¹⁶ The trend held in 2010. On February 2, 2010, President Hugo Chávez went on the airwaves with his 2000th blanket presidential broadcast.¹¹⁷

73. On December 22, 2009, the Bureau of Social Responsibility of the Bolivarian Republic of Venezuela issued an Administrative Order establishing the Technical Standard on Domestic Audiovisual Production Services, according to which cable television channels that have less than 70% international programming would be regarded as Domestic Audiovisual Production Services and would be required to carry government messages or addresses free of charge, in keeping with the provisions of the Law on Social Responsibility in Radio and Television (*Ley Resorte*).¹¹⁸

74. On June 17, 2010, one of the five electoral rectors on the National Electoral Council, Vicente Díaz, questioned the increase in the frequency and duration of the presidential broadcasts, as the September 26 parliamentary elections approached. According to the information received, Mr. Díaz publicly stated that the blanket presidential broadcasts would serve to promote the party in power and the intent might be to influence the electorate.¹¹⁹

¹¹⁵ CIDH. *Democracy and Human Rights in Venezuela*. December 30, 2009, Chapter IV, para. 411. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2009eng/VE09CHAPIVENG.htm>

¹¹⁶ IACHR. 2009 Annual Report of the Inter-American Commission on Human Rights. *Report of the Special Rapporteur for Freedom of Expression*. Chapter II, Para. 572. OEA/Ser.L/V/II. Doc.51, December 30, 2009. Available at: <http://www.cidh.oas.org/pdf%20files/Annual%20Report%202009.pdf>

¹¹⁷ Reporters without Borders. February 3, 2010. *Presidential speeches should have to be broadcast by just one station*. Available at: <http://en.rsf.org/venezuela-presidential-speeches-should-have-03-02-2010,36299>

¹¹⁸ CONATEL. Administrative Order 01/09 of December 22, 2009. Technical Standard on Domestic Audiovisual Production Services. Available at: http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf

¹¹⁹ El Nacional. June 17, 2010. *Vicente Díaz complains that presidential broadcasts are being increased to help the government party's campaign*. Available at: http://el-nacional.com/www/site/p_contenido.php/comentar/p_contenido.php?q=nodo/141940/Nacional/Vicente-D%C3%ADaz-denuncia-incremento-de-cadenas-para-favorecer-campa%C3%B1a-oficial; Venevisión. *National Electoral Council Dean Vicente Díaz complains of notable increase in blanket presidential broadcasts*. Available at: <http://www.youtube.com/watch?v=4RRchK90aOQ>; Informe21.com. June 17, 2010. *Electoral Dean Vicente Díaz asks for an investigation of the increase in blanket presidential broadcasts*. Available at: <http://informe21.com/politica/rector-vicente-diaz-pide-investigar-incremento-las-cadenas-presidenciales>

75. The Office of the Special Rapporteur recalls that any obligation requiring a media outlet to broadcast content that it has not itself selected must be applied in strict accordance with the requirements set forth in Article 13 of the American Convention, in order for a limitation on the right to freedom of expression to be deemed acceptable.

76. Based on the foregoing considerations, the Office of the Special Rapporteur again urges the State to adapt its legislation on presidential broadcasts so that it conforms to the standards herein described.

77. On February 22, 2011, the IACHR received the observations of the State of Venezuela to the IACHR's 2010 Annual Report. There, the State of Venezuela indicated that presidential broadcasts have a legal basis in article 58 of the Constitution¹²⁰ of the Bolivarian Republic of Venezuela.¹²¹

¹²⁰ Article 58 of the Constitution states: "Communication is free and plural, according to the duties and responsibilities established by law. Every person is entitled to timely, truthful and impartial information, with no censorship, in accordance with the principles established in this Constitution, as well as to reply and rectify whenever [the person] is harmed by inaccurate or harmful information. Boys, girls and teenagers have a right to receive appropriate information for their holistic development."

¹²¹ Observations by the State of Venezuela to the draft of the General Report on the Situation of Human Rights in Venezuela, 2010. Communication of February 22, 2011, observations on the section on Freedom of Thought and Expression.

H. The of right of access to information

i) The National Situational Study Center

78. On June 1, 2010, the President of the Republic created the National Situational Study Center [Centro de Estudio Situacional de la Nación] (hereinafter, "CESNA") by Decree 7,454 (Official Gazette 39,436 of June 1, 2010).¹²² CESNA was created as a decentralized organ of the Ministry of the People's Power for Domestic Relations and Justice. The Center will have administrative and financial autonomy and will be headed by a president who shall be an appointee of the Minister of the People's Power for Domestic Relations and Justice, with the President's authorization.¹²³

79. The purpose of this agency, created invoking national security arguments,¹²⁴ is "to constantly compile, process and analyze information from the various situation rooms or similar bodies belonging to institutions of the State and of society, on any issue of national interest. The goal is to provide analytical and informational support to the Office of the Presidency, keeping it supplied with the up-to-date information needed to facilitate strategic decision-making and thus protect the Nation's vital interests and objectives, and to facilitate execution of public policy and fulfillment of the State's essential functions."¹²⁵

80. Article 9 of the Decree gives CESNA the authority to classify as "confidential, classified or for limited distribution, any piece of information, fact or circumstance that the National Situational Study Center learns of or processes in discharging its functions..."¹²⁶ A number of Venezuelan civil society organizations challenged this provision, arguing that it could "lead to abuses on the part of CESNA officials" and that it implies "serious restrictions [on the exercise of the right to freedom of thought and expression] with multiple adverse consequences."¹²⁷

81. National security objectives are most certainly legitimate, as expressly stated in Article 13(2)(b) of the American Convention. However, the concept of "national security" used in regulations that restrict access to public information and authorize that information to be classified as confidential, must be compatible with the standards of openness and

¹²² Decree 7,454 from the Office of the President of the Republic. Official Gazette 39,434 of June 1, 2010. Available [in Spanish] at: <http://www.tsj.gov.ve/gaceta/Junio/162010/162010-2863.pdf#page=2>

¹²³ Decree 7,454 from the Office of the President of the Republic. Official Gazette 39,434 of June 1, 2010. Articles 1 and 4. Available [in Spanish] at: <http://www.tsj.gov.ve/gaceta/Junio/162010/162010-2863.pdf#page=2>

¹²⁴ See in this regard the *consideranda* to Decree 7,454 from the Office of the President of the Republic. Official Gazette 39,434 of June 1, 2010. Available at: <http://www.tsj.gov.ve/gaceta/Junio/162010/162010-2863.pdf#page=2> (where it is asserted that national security "is an essential authority and responsibility of the State" and that the National Executive has exclusive authority over "the collection, classification and dissemination of those matters that have a direct bearing on the planning and executions of operations that concern the security of the Nation.")

¹²⁵ Decree 7,454 from the Office of the President of the Republic. Official Gazette 39,434 of June 1, 2010. Article 3. Available at: <http://www.tsj.gov.ve/gaceta/Junio/162010/162010-2863.pdf#page=2>

¹²⁶ Decree 7,454 from the Office of the President of the Republic. Official Gazette 39,434 of June 1, 2010. Article 9. Available at: <http://www.tsj.gov.ve/gaceta/Junio/162010/162010-2863.pdf#page=2>

¹²⁷ Espacio Público. July 15, 2010. *Espacio Público, CNP and SNTP demand repeal of CESNA decree*. Available at: <http://www.espaciopublico.org/index.php/noticias/1-libertad-de-expresi/825-espacio-publico-cnp-y-sntp-exigen-derogatoria-del-decreto-del-cesna>

transparency essential in a democratic society.¹²⁸ In effect, in order for a restriction on access to information to be valid, the State must show that disclosing certain information in the State's possession would do certain, objective, serious and immediate harm to a democratic state's national security.¹²⁹ In this specific case, the provision speaks of generic national security purposes, without specifying the circumstances and conditions under which a piece of information that in principle should be public, is legitimately withheld from the public. Nor does the regulation make any reference to or cite a law that spells out those circumstances and conditions.

82. Furthermore, Article 9 of Decree 7,454 authorizes the president of CESNA to classify as confidential any type of "information, fact or circumstance of which he/she learns in the course of performing his/her functions or that is processed at the National Situational Study Center ..."¹³⁰ The authorities given to CESNA are a source of concern, because it has broad discretionary powers to establish exceptions to the exercise of freedom of information and access to information, exceptions that, as the case law of the inter-American system has held, may only be established by law, both in the formal and material sense, written in precise and unambiguous language. The relevant definition in this regard is the one that the Inter-American Court established in Advisory Opinion OC-6/86, where it wrote that "the word 'law' is not just any legal norm, but rather a general provision enacted for the general welfare by a legislative body provided for in the Constitution and democratically elected according to procedures set forth in the Constitution."¹³¹ If the State cannot determine by decree the conditions under which certain information can be classified, it can hardly delegate that function to an administrative official, as it appears to do in article 9 of decree 7,454.

83. It must be recalled that under Principle 4 of the IACHR's Declaration of Principles on Freedom of Expression, "[a]ccess to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right."

ii) Judgment 745 of the Constitutional Chamber of the Supreme Court

84. On July 15, 2010, the Constitutional Chamber of the Supreme Court decided an action seeking constitutional *amparo*. The action was brought by the Public Arena Civil Association [*Asociación Civil Espacio Público*] to challenge the refusal of the Office of the Comptroller General of the Bolivarian Republic of Venezuela to turn over information concerning the "base salary and other benefits that the Comptroller General of the Republic receives and the remunerations received by the rest of the staff at the Office of the Comptroller General of the Republic..."¹³² By a majority vote, the Constitutional Chamber of the Supreme Court decided to deny the petition seeking *amparo* relief on the grounds that

¹²⁸ IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter IV (The right of access to information), paras. 52, 57, 59. See also, IACHR, *Final written pleadings to the Inter-American Court in the Case of Julia Gomes Lund et al (Guemilha do Araguaia)*.

¹²⁹ See in this regard, IACHR, *Final written pleadings to the Inter-American Court in the Case of Julia Gomes Lund et al (Guemilha do Araguaia)*.

¹³⁰ Decree 7,454 from the Office of the President of the Republic, Article 9. Official Gazette 39,434 of June 1, 2010. Available at: <http://www.tsj.gov.ve/gaceta/Junio/162010/162010-2863.pdf#page=2>

¹³¹ I/A Court H.R., *Case of Claude Reyes et al.* Judgment of September 19, 2006. Series C No. 151, para. 89.

¹³² Constitutional Chamber of the Supreme Court of Justice. Judgment 745 of July 15, 2010. Available [in Spanish] at: <http://www.tsj.gov.ve/decisiones/scon/Julio/745-15710-2010-09-1003.html>

the request to have access to that information violated the right to privacy of the public officials.

85. As there was no specific law governing this matter, the Constitutional Chamber of the Supreme Court established binding jurisprudence to the effect that anyone requesting information of this type must “expressly state the reasons why the information is needed or purposes to which it will be used” and must prove that “the amount of information being requested is commensurate with the use to which the requested information will be put.”¹³³

86. The jurisprudence established by the Constitutional Chamber of the Supreme Court in its ruling of July 15, 2010, disregards the principle of “maximum disclosure” which must govern access to information in the possession of the State. In effect, in its case law the Inter-American Court has established that “in a democratic society, it is essential that the State authorities are governed by the principle of maximum disclosure.”¹³⁴ The IACHR has also held that under Article 13 of the American Convention, the right of access to information must be governed by the principle of maximum disclosure.¹³⁵

87. The Inter-American Court established that the principle of maximum disclosure “establishes the presumption that all information is accessible, subject to a limited system of exceptions.”¹³⁶ That limited system of exceptions must be set forth by law; in the event of any doubt or gap in the law, then access to information should be allowed. The Court also wrote that, living in a state, every person has a legitimate interest in knowing how public resources are being used. Therefore, persons interested in knowing how much a civil servant earns need not show and demonstrate what their specific interest in the information is.

88. Principle 4 of the IACHR’s Declaration of Principles on Freedom of Expression provides that “Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right.”

I. Criminalization of offenses against honor and the *Case of Usón Ramírez v. Venezuela*

i) The Penal Code

89. In its 2009 Annual Report, the Office of the Special Rapporteur made reference to the March 2005 changes in the Penal Code, which expanded the scope of the provisions on protection of state officials’ honor and reputation against criticisms aired

¹³³ Constitutional Chamber of the Supreme Court of Justice. Judgment 745 of July 15, 2010, Section V. Operative paragraph two. Available [in Spanish] at: <http://www.tsj.gov.ve/decisiones/scon/Julio/745-15710-2010-09-1003.html>

¹³⁴ I/A Court H.R., *Case of Claude Reyes et al.* Judgment of September 19, 2006. Series C No. 151, para. 92.

¹³⁵ IACHR. Arguments made to the Inter-American Court of Human Rights in the case of *Claude Reyes et al.* Transcribed in: I/A Court H.R., *Case of Claude Reyes et al.* Judgment of September 19, 2006. Series C No. 151, para. 58 c).

¹³⁶ I/A Court H.R., *Case of Claude Reyes et al.* Judgment of September 19, 2006. Series C No. 151, para. 92. See also, the 2004 Joint Declaration of the UN Rapporteur for Freedom of Expression, the OAS Rapporteur for Freedom of Expression and the OSCE Representative on Freedom of the Media, where they explained that the principle of maximum disclosure establishes “a presumption that all information is accessible subject only to a narrow system of exceptions.”

publicly that may be deemed offensive to them.¹³⁷ Prior to the 2005 reform, the President of the Republic, the Executive Vice President, the ministers of government, the governors, the Mayor of the Caracas Metropolitan District, the justices of the Supreme Court, the chairpersons of the Legislative Councils and the superior court judges had the authority to institute criminal proceedings for the crime of *desacato* [disrespect]. The amendment of the law added the following to the list: the members of the National Assembly, officials on the National Electoral Council, the Prosecutor General, the Attorney General, the Ombudsperson, the Comptroller General and the members of the Military High Command.¹³⁸ The March 2005 reform retained the article criminalizing the offense known as “*vilipendio*” (contempt or scorn), which is a kind of offense against the institutions of the State.¹³⁹

90. The 2009 Annual Report criticized the fact that these laws were still on the books. The Commission and the Special Rapporteur pointed out that, as the Inter-American Court has stated, “defense of freedom of expression includes the protection of affirmations that could be offensive, disturbing or unpleasant for the State, since this is the requirement of a democratic order founded on diversity and pluralism. In addition, the doctrine and jurisprudence have been consistent and repetitive in indicating that critical expressions that question public authorities or institutions deserve a greater –not lesser– protection in the inter-American system. This has been affirmed by the Inter-American Court in each and every case resolved in the area of freedom of expression.”¹⁴⁰

¹³⁷ In its 2005 Annual Report, the IACHR observed that: “The Commission and the Office of the Special Rapporteur also express their concern over the March 2005 amendment to the Criminal Code. The Office of the Special Rapporteur believes that this amendment strengthens and expands a legal framework that criminalizes forms of expression protected by the American Convention, by both journalists and private citizens. The Office of the Special Rapporteur observes that the amendment expands the reach of *desacato* laws in terms of the number of public officials protected, and in terms of content. It also observes that the new provisions increase the penalties for *desacato* and other forms of defamation, libel, instigation, outrage, and slander, among other criminal offenses. It also criminalizes new types of protest against the government, in both the public and private spheres, and increases the penalties for violating these laws.” IACHR. 2005 Annual Report. Chapter IV, para. 357. Available at: <http://www.IACHR.oas.org/annualrep/2005eng/chap.4d.htm>. See also: IACHR. 2005 Annual Report: Volume II: Annual Report of the Special Rapporteur for Freedom of Expression. Chapter II, para. 227. Available at: <http://www.IACHR.oas.org/relatoria/showarticle.asp?artID=662&IID=1>; Office of the Special Rapporteur – IACHR, March 28, 2005. Press Release No. 118/05. Available at: <http://www.IACHR.org/relatoria/showarticle.asp?artID=402&IID=1>; IACHR. Report on the Situation of Human Rights in Venezuela, paragraphs 451-466. OEA/Ser.L/V/II.118. Doc. 4 rev. 1. October 24, 2003. Available at: <http://www.IACHR.oas.org/countryrep/Venezuela2003eng/chapter6.htm>

¹³⁸ “Article 147. One who offends by word or in writing, or in any other manner disrespects the President of the Republic or whoever is taking his or her place, shall be punished with imprisonment of six to thirty months if the offense was grave, and with half that period if it was minor.//The penalty will be increased by one-third if the offense was committed publicly”.

“Article 148. When the acts specified in the previous article are carried out against the person of the Executive Vice President of the Nation, one of the Judges of the Supreme Court of Justice, a Cabinet Minister, a Governor of a state, a deputy of the National Assembly, the Metropolitan Mayor, a dean of the National Electoral Council, the Human Rights Ombudsman, the Solicitor General, the Attorney General, the Comptroller General of the Republic, or some members [sic] of the High Military Command, the penalty indicated in that article will be reduced to one half, and to one third in the case of municipalities”. Penal Code of Venezuela. Official Gazette No. 5768E of August 13, 2005. Available at: <http://www.ministeriopublico.gob.ve/web/guest/codigo-penal>

¹³⁹ “Article 149. Whoever publicly denigrates the National Assembly, the Supreme Court of Justice, or the Cabinet, or the Council of Ministers, as well as one of the legislative councils of the states or one of the superior courts, shall be punished with imprisonment for a period of fifteen days to ten months.

The penalty will be half that period in the case of those who commit the acts referred to in this article with respect to municipal councils.

The penalty will be increased by half if the offense was committed while one of the enumerated bodies was exercising its official functions”. Penal Code of Venezuela. Official Gazette No. 5768E of August 13, 2005. Available [in Spanish] at: <http://www.ministeriopublico.gob.ve/web/guest/codigo-penal>

¹⁴⁰ IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur on Freedom of Expression, Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere), para. 550.

91. Indeed, the IACHR and the Office of the Special Rapporteur have repeatedly voiced their objections to the existence of laws criminalizing *desacato* [disrespect], such as those just described. The Commission has echoed the conviction that *desacato* laws “conflict with the belief that freedom of expression and opinion is the ‘touchstone of all the freedoms to which the United Nations is consecrated’ and ‘one of the soundest guarantees of modern democracy’.”¹⁴¹ In this regard, *desacato* laws are an unlawful restriction on freedom of expression, because (a) they do not serve a legitimate end under the American Convention, and (b) are not necessary in a democratic society.

92. Therefore, as the IACHR did in its 2003 *Report on the Situation of Human Rights in Venezuela*, the Office of the Special Rapporteur once again concludes that Venezuela’s criminal laws contain provisions that are incompatible with Article 13 of the American Convention¹⁴² and therefore urges the Venezuelan State to take urgent action to bring its criminal laws into compliance with the aforementioned standards on *desacato* and *vilipendio*.

ii) The Organic Code of Military Justice

93. Article 505 of the Organic Code of Military Justice provides that: “Whosoever in any way defames, insults or disparages the National Armed Forces or any of its units, shall face a term of three to eight years imprisonment.”¹⁴³ Establishing criminal penalties for someone who expresses views that can “offend” or “disparage” institutions is contrary to international standards on freedom of expression, because it is a needless restriction in a democratic society.

94. As happens in the case of laws criminalizing disrespect, contempt, defamation, and slander, the language of Article 505 is so imprecise as to make it impossible to foresee with any degree of certainty precisely what behaviors can be punishable offenses. The text of the provision blurs the line between the permissible exercise of freedom of expression with respect to the armed forces and the realm in which the legal prohibition applies. Since there can be no certainty as to what behavior or conduct is deemed to be unlawful, any statement that someone can interpret as criticism of the Armed Forces could be covered in the description of the offense in the article in question.

95. The Inter-American Court of Human Rights addressed this specific provision in the case of *Usón Ramírez v. Venezuela*, decided in late 2009. In that case, the Court was called upon to examine the case of a retired military officer, Francisco Usón Ramírez, who, while appearing on a television program, had expressed opinions critical of the Armed Forces in a case involving a group of soldiers who had been severely injured in a military institution. Analyzing Article 505 of the Organic Code of Military Justice, the Inter-American Court held that the provision in question “does not establish the elements that may offend, slander, or disparage, and it does not specify whether it is important that the active subject

¹⁴¹ IACHR. 1994 *Annual Report. Chapter V: Report on the Compatibility of the Desacato Laws with the American Convention on Human Rights*. OEA/Ser. Doc. 9 rev., February 17, 1995, Title I: Introduction. L/V/II.88. doc. 9 rev. February 17, 1995. Available at: <http://www.IACHR.oas.org/annualrep/94eng/chap.5.htm>

¹⁴² IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 452. OEA/Ser.L/V/II.118. Doc. 4 rev. 1. October 24, 2003. Available at: <http://www.IACHR.oas.org/countryrep/Venezuela2003eng/chapter6.htm>

¹⁴³ It is important to point out that this was the article under which Francisco Usón Ramírez was convicted and sentenced to six years and five months in prison. I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, para. 38.

attribute facts that damage the honor or whether it suffices simply to give an offensive or disparaging opinion, without attributing any illicit acts, for example, for the imputation of the crime.”¹⁴⁴ The Court therefore considered that Article 505 “is vague and ambiguous and it does not specify clearly the typical context of a given criminal behavior, which could lead to broad interpretations, allowing the behaviors in question to be penalized incorrectly using the criminalized offense of slander.”¹⁴⁵ It therefore found that the article was incompatible with the American Convention. The Court also found that in this particular case, the use of criminal sanction was unsuitable, unnecessary and disproportionate in a democratic society.¹⁴⁶

96. In its ruling the Court ordered, *inter alia*, that within the space of one year, the State was to vacate the entire military criminal trial instituted against the victim and, within a reasonable period of time, amend Article 505 of the Organic Code of Military Justice. However, as of the date this report went to press, the legal provision remains in effect.

97. Telecommunications in Venezuela are regulated, fundamentally, by the Organic Law on Telecommunications and the Law on Social Responsibility in Radio, Television and Electronic Media. These provisions, which were discussed in previous reports, remain in force and in 2010 CONATEL expanded their application to new subjects, such as cable television and Internet providers and users that utilize the internet for content distribution.

J. Amendments and bills in the National Assembly

i) Regulation of Telecommunications

98. The original law gave CONATEL and the Bureau of Social Responsibility the authority to regulate the telecommunications sector and impose sanctions.¹⁴⁷ In August 2010, CONATEL was placed under the Office of the Executive Vice President of the Republic.¹⁴⁸ In the 2009 Annual Report, the IACHR and the Office of the Special Rapporteur reiterated their concern over the laws in force, writing that “the search for a significant degree of impartiality, autonomy and independence for the organs charged with regulating telecommunications in a country arises from the duty of the states to guarantee the highest degree of pluralism and diversity of communications media in the public debate. The necessary safeguards for avoiding the cooptation of the communications media by the political and economic powers are nothing other than a functional and institutional guarantee to promote the formation of free public opinion, fluidity and depth in social communications processes, and the exchange and publication of information and ideas of all kinds. The

¹⁴⁴ I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, para. 56.

¹⁴⁵ I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, para. 56.

¹⁴⁶ I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, paras. 59 *et seq.*

¹⁴⁷ The relevant laws and regulations are explained in greater detail in the 2009 Annual Report of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere), paragraphs 505 *et seq.*

¹⁴⁸ National Assembly of the Bolivarian Republic of Venezuela. *Decree 7,588 from the Office of the President of the Republic* (Official Gazette No. 39,479 of August 3, 2010). Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_download&gid=2500&Itemid=250&lang=es

guarantees of impartiality and independence of the enforcement entity ensure the right of all inhabitants that the communications media will not be, by indirect means, controlled by political or economic groups.”¹⁴⁹

99. Again in its 2009 Annual Report, the IACHR urged the state to modify the text of Article 29 of the Law on Social Responsibility,¹⁵⁰ to subject the interpretation of the provisions on sanctions to the regional standards mentioned there, and to establish institutional, organic and functional guarantees to ensure the independence of the authorities enforcing the laws on broadcasting with the aim of ensuring that the opening of administrative proceedings and the eventual imposition of sanctions in the framework of this instrument are the responsibility of impartial organs that are independent of the Executive Branch. To date, however, Article 29 is still in effect and, as will be described below, CONATEL has expanded the scope of its authorities.

100. In early December 2010, the National Assembly began discussion of a series of bills that have the potential to seriously impact the observance and exercise of human rights. As of the date this report went to press, some of those bills had been passed, while others were on the way to being passed. Of particular concern where freedom of expression is concerned is a law, written in vague language, that gives broad legislative authority to the Executive Branch. Others of concern are those that unduly restrict the right to freedom of thought and expression and another aimed at limiting the activities of social organizations that defend and promote human rights. The National Assembly took less than a week to discuss and vote on these legislative initiatives, since the President let it be known that he wanted them passed before the end of 2010, in other words, before the end of the legislative term, which is December 15, 2010.¹⁵¹ In effect, President Hugo Chávez Frías said that “there is a set of laws that I need and want to have enacted quickly, by Christmas; these are decrees, emergency laws for housing, urban and rural land. They are special laws.”¹⁵²

¹⁴⁹ IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the state of freedom of expression in the hemisphere), paragraphs 535 *et seq.*

¹⁵⁰ IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the state of freedom of expression in the hemisphere), para. 538. Under Article 29 of the Law on Social Responsibility, providers of radio and television services that “promote, justify or incite to war; that promote, defend or incite disruption of law and order; promote, defend or encourage crime; are discriminatory; promote religious intolerance; [or] are inimical to the Nation’s security” may face a penalty of suspension for a period of 72 hours or have their operating license revoked for up to five years in the case of repeat offenders. Heretofore, the Commission has commented on the dangers that provisions like Article 29 pose [which] “set very punitive sanctions for violating restrictions that are defined in vague or generic language.” Cf. IACHR. 2008 Annual Report. Chapter IV. Human Rights Developments in the Region, para. 381. Available at: <http://www.IACHR.oas.org/annualrep/2008eng/Chap4eng.htm>

¹⁵¹ Article 219 of the Constitution of the Bolivarian Republic of Venezuela reads as follows: “Article 219. The first regular legislative session of the National Assembly shall begin, without advance notice, on January fifth of each year or as soon thereafter as possible, and will last until August 15.// The second session shall begin on September 15 or as soon thereafter as possible and will end on December 15.” Available at: <http://www.tsj.gov.ve/legislacion/enmienda2009.pdf>

¹⁵² *El Nacional*. December 10, 2010. Chávez solicitará Habilitante a la AN para aprobar leyes extraordinarias en navidad [Chávez will ask NA for Enabling Law in order to approve special laws at Christmas]. Available at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/171254/Naci%C3%B3n/Ch%C3%A1vez-solicitar%C3%A1-Habilitante-a-la-AN-para-aprobar-leyes-extraordinarias-en-navidad. *Noticiero Digital*. December 10, 2010. Chávez solicitará una Ley Habilitante y pide “celeridad” a la AN [Chávez will seek an Enabling Law and is asking the NA to work quickly]. Available at: <http://www.noticierodigital.com/2010/12/chavez-solicitara-ley-habilitante-a-la-an/>

101. One of the laws that the National Assembly passed was the “Enabling Law” that vests the Executive Branch with the authority to exercise legislative functions for a period of twelve months. That law, enacted on December 18, 2010, is written in sweeping and ambiguous language, which implies a delegation of authority that is incompatible with the American Convention. In effect, as the Commission and its Special Rapporteurship for Freedom of Expression stated: “[t]he principle of legality, which must be respected when imposing restrictions on human rights, is jeopardized by permitting the delegation of legislative authority in terms that are overly broad and that could extend to criminal matters. The frequent concentration of executive and legislative functions in a single branch of government, in the absence of appropriate controls and constraints set by the Constitution and the Enabling Law, allows interference in the realm of rights and freedoms.”¹⁵³

102. From the standpoint of freedom of expression, it is troubling that Article 1(2)(b) of the law gives the President the authority to “enact and amend regulatory provisions in the telecommunications and information technology sector, [and with regard to] the public mechanisms of informatics, electronic and telematic communications.”¹⁵⁴ This provision gives the Executive Branch the authority to modify any telecommunications regime without having to go through the National Assembly, thereby preventing a complex system of laws and regulations –such as the one governing broadcasting- from being discussed and debated in the legislative branch. This type of broad, generic delegation of authority allows the executive branch to act suddenly, without the time necessary to reach a reasonable consensus, and modify a provision on the subject from one moment to the next, even those related to control of content, bans, sanctions and procedures that affect the communications media subject to the State’s control. The mere existence of this possibility could have a chilling effect on freedom of expression incompatible with the American Convention.

103. That same week, the National Assembly passed an amendment to the *Law on Social Responsibility in Radio and Television*, now called the *Law on Social Responsibility in Radio, Television and Electronic Media*. The Chair of the National Assembly’s Commission on Science, Technology and Social Communications, Manuel Villalba, said that the law does not regulate the Internet and observed that it must be interpreted according to the Constitution, which guarantees freedom of expression and free and pluralistic communications, bans prior censorship, and provides for subsequent imposition of liability. According to Deputy Villalba, “[t]he idea is to be able to put this informative medium to good use, while protecting the integrity of the most vulnerable among us, namely children and adolescents.”¹⁵⁵

¹⁵³ IACHR. Press Release 122/10. December 15, 2010. IACHR Concerned about Law Initiatives in Venezuela that Could Undermine the Effective Exercise of Human Rights. Available at: <http://www.IACHR.oas.org/Comunicados/English/2010/122-10eng.htm>

¹⁵⁴ Law authorizing the President of the Republic to issue decrees with the rank, value and force of law on the subjects delegated to him. Approved by the National Assembly on December 16, 2010. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2783&tmpl=component&format=raw&Itemid=185&lang=es

¹⁵⁵ El Universal. December 21, 2010. *New Ley Resorte said to limit internet violence*. Available at: http://internacional.eluniversal.com/2010/12/21/eco_ava_afirman-que-nueva-le_21A4883573.shtml. Telesur. December 22, 2010. *Venezuela’s Media Law enacted*. Available at: <http://www.telesurvet.net/secciones/noticias/86202-NN/promulgada-ley-de-medios-en-venezuela/>

104. As will be briefly examined later in this report, the new law increases the likelihood of interference in Internet content and applications;¹⁵⁶ it adds more conditions to be able to operate as a domestic cable television channel and regulates cable and noncable content;¹⁵⁷ and it adds to the list of prohibitions by introducing a number of extremely broad, far-reaching and ambiguous restrictions.¹⁵⁸ The new law also makes the penalties for violating the bans or prohibitions much stiffer.¹⁵⁹ The amendment does not incorporate any of the recommendations the Commission has made in its various reports, as it offers no new guarantees in proceedings in which penalties are imposed, it does not make the administrative bodies charged with imposing those penalties any more autonomous, and it does not limit the scope of the pre-existing prohibitions, which were already sweeping and ambiguous.¹⁶⁰

105. As for the added content restrictions, the bill introduces new prohibitions on conduct using vague and ambiguous language. For example, it prohibits any media outlet, even those on the Internet, regardless of the format, from circulating statements or information that “incite or promote hatred or intolerance”, “cause anxiety and fear in the citizenry”, “ignore the legally constituted authorities,” or “incite or encourage disobedience of the established legal system.”¹⁶¹ These behaviors are extremely difficult to define, leaving the persons (the broadcasters or carriers of these messages) uncertain as to just how far their right to freedom of expression goes and what ideas or information cannot be broadcast by a cable or noncable communications medium or even over the Internet. For these reasons, and as the Commission has explained, laws and regulations of this type give the

¹⁵⁶ See Law on Social Responsibility in Radio, Television, and Electronic Media. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es. Article 1 reads as follows: The provisions of the present law shall apply to any text, image or sound that is disseminated and received within the territory of the Bolivarian Republic of Venezuela, whether it be by way of: (...) 4. Electronic media.”

¹⁵⁷ See Law on Social Responsibility in Radio, Television, and Electronic Media. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es. Article 6 establishes four content types for rating programs: language, health, sex and violence. The regulation defines various types of content whose broadcasting by the communications media, mainly the audiovisual media, is subject to prohibitions and restrictions that confine that content to certain times of the day, which are spelled out in Article 7.

¹⁵⁸ See Law on Social Responsibility in Radio, Television, and Electronic Media. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es. Article 27 provides that: “The radio, television and electronic media services are not permitted to broadcast messages that: // 1. Incite or promote hatred and intolerance on grounds of religion, politics, gender, racism or xenophobia. // 2. Incite or promote and/or justify or defend crime. // 3. Constitute war propaganda. // 4. Cause public fear or unrest. // 5. Ignore the legally constituted authorities. // 6. Induce killing. // 7. Incite or encourage disobedience of the established legal system.”

¹⁵⁹ See Law on Social Responsibility in Radio, Television, and Electronic Media. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es. Indeed, Article 29 of the law establishes a fine for violations whereas under the previous version of the law, the penalty was simply to make airtime available for public interest announcements and the like.

¹⁶⁰ See in this regard, IACHR. Democracy and Human Rights in Venezuela (2009). Available at: <http://www.cidh.oas.org/countryrep/Venezuela2009eng/VE09.TOC.eng.htm>. See the recommendations in Chapter IV at paragraphs 555 *et seq*, especially paragraph 555(1).

¹⁶¹ See Law on Social Responsibility in Radio, Television, and Electronic Media. Article 28. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es

authorities charged with enforcing them enormous latitude and discretion to a degree that is incompatible with full observance of the right to freedom of thought and expression.¹⁶²

106. As previously observed, the new law authorizes the State to restrict access to Internet content or web sites that, in its judgment, violate the ambiguous provisions of the law.¹⁶³ Specifically, the law authorizes CONATEL to order electronic media “to refrain from circulating the kinds of messages that the law prohibits”.¹⁶⁴ The law also requires Internet service providers to create mechanisms “that enable them to restrict (...) the dissemination” of messages of this kind and holds a service provider liable for messages circulated by third parties when the service provider fails to take the necessary measures to restrict those messages when so requested by CONATEL which, as previously observed, is an agency of the executive branch.¹⁶⁵ This means that a service provider, like for example a business that provides data hosting or storage services, would have to take immediate steps to eliminate content that CONATEL deems to be prohibited whenever CONATEL simply issues an administrative order to that effect. The digital media that violate these regulations could face fines of up to 13 thousand bolivars (three thousand United States dollars). Furthermore, those that do not comply with CONATEL’s orders regarding prohibited content could be fined as much as four percent of the gross profits earned in the year prior to the one in which the violation was committed.¹⁶⁶ Service providers that do not respond to the government’s requests could face fines based on “10 percent of the previous year’s gross earnings” as well as “suspension of service for 72 uninterrupted hours.”¹⁶⁷

¹⁶² This has been the Commission’s finding when similar provisions were examined. In effect, the Office of the Special Rapporteur for Freedom of Expression wrote that “vague, ambiguous, broad or open-ended laws, by their mere existence, discourage the dissemination of information and opinions out of fear of punishment, and can lead to broad judicial interpretations that unduly restrict freedom of expression” (IACHR, 2008 Annual Report. Volume II. Chapter III, paragraphs 65-66. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>).

¹⁶³ See Law on Social Responsibility in Radio, Television, and Electronic Media. Article 28. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es

¹⁶⁴ See Law on Social Responsibility in Radio, Television, and Electronic Media. Article 33. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es. See, in particular, Article 33 of the law, which reads as follows: “In the course of the penalty phase of the proceedings, or even when the case is opened, the National Telecommunications Commission may, either *ex officio* or at a party’s request, order the following precautionary measures: 1.- Order the providers of radio, television, cable or electronic media services to refrain from circulating messages that violate the provisions of this law. (...)”.

¹⁶⁵ See Law on Social Responsibility in Radio, Television, and Electronic Media. Article 28. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es. The pertinent part of Article 28 reads as follows: “Electronic media providers shall be liable for any prohibited information and content to which the present article refers, in those cases in which they were the originators of the transmission, altered the data, selected the receivers or neglected to limit access to them, when so requested by the organs with competence in this matter.”

¹⁶⁶ See Law on Social Responsibility in Radio, Television, and Electronic Media. Article 27. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es. The pertinent part of Article 27 provides as follows: “Paragraph One. The owners of the electronic media shall face a fine of from 50 to 200 tax units when they violate any of the bans contained in this article. Paragraph Two: Electronic media providers that fail to heed requests from the competent authorities to comply with the provisions of this law, shall face a fine of up to 4% of the gross earnings in the year immediately preceding the year in which the violation was committed.”

¹⁶⁷ See Law on Social Responsibility in Radio, Television, and Electronic Media. Article 29. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es. The pertinent part of Article 29 reads as follows: “The subjects to whom this law shall, whenever warranted, face the following penalties in the circumstances indicated: 1. A fine of up to 10% of the gross earnings in the year immediately preceding the year in which the violation was committed,

107. The possibility of the government excluding any electronic media content when, in its judgment, the ideas or information stored might cause anxiety and fear in the public, promote intolerance, ignore the authorities, or promote noncompliance with the legal system, without any guarantee of due process, appears to constitute a restriction on the right to freedom of expression on those who transmit that content and those who receive it, as well as a violation of due process and of freedom of expression in the case of those who originated the banned message, whose views are silenced and excluded from the Internet without understanding clearly what the prohibited content is and without ever having had the opportunity to defend themselves before an impartial authority separate from the executive branch. In order to avoid the possible abuses that can be committed via the Internet, there are general standards that apply in cases in which a message has done unwarranted harm. These provisions should apply only to the authors of Internet content, i.e., those who are directly responsible for the offending content. Only in very rare cases can an independent judicial authority order certain network content removed, and then only in strict and complete conformity with international human rights norms. To do so, the provisions applied must conform to international law and must be fully respectful of the guarantees of due process; adequate and effective control and oversight must be in place.¹⁶⁸

108. For these reasons, the IACHR and its Office of the Special Rapporteur for Freedom of Expression questioned the reform. They expressed that “[b]y holding service providers responsible and extending the application of vague and ambiguous norms that have been questioned by the IACHR and the Office of the Special Rapporteur in their 2009 report *Democracy and Human Rights in Venezuela*, the draft law targets freedom of expression on the Internet in an unprecedented fashion. The initiative includes ambiguous norms that sanction intermediaries for speech produced by third parties, based on assumptions that the law does not define, and without guaranteeing basic elements of due process. This would imply a serious restriction of the right to freedom of expression enshrined in the American Convention on Human Rights.”¹⁶⁹

109. The National Assembly also passed a bill amending the Organic Law on Telecommunications.¹⁷⁰ The bill declares “telecommunications, radio, television and domestic audiovisual production services” to be public interest services, which means that “they may be subject to the limitations and restrictions that the Constitution and law

and/or suspension for up to seventy-two uninterrupted hours of broadcasting, when they disseminate messages that: a) promote, justify or incite disruptions of public law and order; b) promote, justify or incite crime; c) incite or promote hatred or intolerance based on religion, politics, gender difference, racism or xenophobia; d) encourage discrimination; e) use anonymity; f) constitute propaganda for war; g) cause public anxiety or unrest; h) ignore the legitimately constituted authorities.”

¹⁶⁸ 2005 joint declaration of the rapporteurs for freedom of expression of the United Nations, the OSCE and the OAS. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=650&IID=1>

¹⁶⁹ IACHR. Press Release 122/10. December 15, 2010. IACHR Concerned about Law Initiatives in Venezuela that Could Undermine the Effective Exercise of Human Rights. Available at: <http://www.IACHR.oas.org/Comunicados/English/2010/122-10eng.htm>

¹⁷⁰ AFP. December 21, 2010. *New controls established on telecommunications and the internet in Venezuela*. Available at: <http://www.google.com/hostednews/afp/article/ALeqM5hVpCngs2i2MAWWTbatMQewyMMa2Q?docId=CNG.f7b316619e9b55b1cae698370b94f3cb.131>. ANSA. December 21, 2010. *Law regulating telecommunications passes*. Available at: <http://www.ansa.it/ansalatina/notizie/notiziari/venezuela/20101221155135194298.html>. El Nacional. December 21, 2010. *Telecommunications Law passed Monday night*. Available at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/173005/Naci%C3%B3n/Aprobada-Ley-de-Telecomunicaciones-en-horas-de-la-noche-del-lunes

establishes for the sake of the public interest.”¹⁷¹ Given the broad legislative power that has been given to the President through the “Enabling Law,” the Executive Branch now has the authority to institute any restriction or limitation that, in its judgment, is called for in the area of telecommunications. The amendment of the Law on Telecommunications also provides that it shall be the National Telecommunications Commission (CONATEL) that determines the “General conditions that those seeking to obtain a government license, concession or permit under the provisions of this law must meet,” which means that a government agency in the executive branch (CONATEL) is being given the authority to determine the conditions under which one can engage in radio broadcasting in Venezuela.¹⁷² The law provides that current providers of domestic audiovisual production services must re-apply to CONATEL in order to be able to remain in operation, even though they may already have valid, current operating licenses.¹⁷³ The law authorizes a government agency¹⁷⁴ to revoke licenses or concessions when “it deems such action to be in the Nation’s interest or when public order or security so demands.”¹⁷⁵ Finally, the provision stipulates that repeat offenders of any of the violations proscribed in the first section of Chapter II of the law shall face the possibility of losing their radio frequency concession if the repeat offense occurs within the space of one year from the date on which the first violation was definitively established.¹⁷⁶ This means that recidivism with respect to any of the offenses proscribed by

¹⁷¹ Organic Law on Telecommunications (on file with the Office of the Special Rapporteur for Freedom of Expression). See also, Report of the Permanent Commission on Science, Technology and Social Communications, for second round of debate. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2780&tmpl=component&format=raw&Itemid=185&lang=es

¹⁷² Organic Law on Telecommunications (on file with the Office of the Special Rapporteur for Freedom of Expression). See also, Report of the Permanent Commission on Science, Technology and Social Communications, for second round of debate. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2780&tmpl=component&format=raw&Itemid=185&lang=es. Article 20 reads as follows: “The National Telecommunications Commission shall establish, based on the distinguishing characteristics of the type of networks and services concerned, the General Conditions that those interested in obtaining a government license, concession or permit must meet under the provisions of this law.”

¹⁷³ Organic Law on Telecommunications (on file with the Office of the Special Rapporteur for Freedom of Expression). See also, Report of the Permanent Commission on Science, Technology and Social Communications, for second round of debate. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2780&tmpl=component&format=raw&Itemid=185&lang=es. Transitory regulation fourth reads as follows: “Current providers of domestic audiovisual production services shall apply to the National Telecommunications Commission for the necessary permit, within the time period and under the conditions that the National Telecommunications Commission establishes for that purpose. Only those natural or legal persons that apply for and obtain the corresponding permit, under the terms prescribed in this law, may continue to provide domestic audiovisual production services.” (On file with the Office of the Special Rapporteur for Freedom of Expression).

¹⁷⁴ The law simply states that “[a]s the appointed organ, the National Telecommunications Commission is in charge of telecommunications in the State, and as such establishes the policies, plans and general standards that are to be followed in the telecommunications sector, in accordance with this law and in keeping with the national development plans that the National Executive establishes” (Article 34).

¹⁷⁵ Organic Law on Telecommunications (on file with the Office of the Special Rapporteur for Freedom of Expression). See also, Report of the Permanent Commission on Science, Technology and Social Communications, for second round of debate. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2780&tmpl=component&format=raw&Itemid=185&lang=es. The pertinent part of Article 22 reads as follows: “The lead agency may, when it deems such action to be in the national interest or when public order or security so demand, revoke or suspend the government licenses or concessions.” (On file with the Office of the Special Rapporteur for Freedom of Expression).

¹⁷⁶ Organic Law on Telecommunications (on file with the Office of the Special Rapporteur for Freedom of Expression). See also, Report of the Permanent Commission on Science, Technology and Social Communications, for second round of debate. Available at:

the law, even those punishable by a fine, will lead to loss of the operating license. All decisions in such cases shall be taken by the Executive Branch.

110. The IACHR and its Special Rapporteurship for Freedom of Expression indicated their concern over these reforms, as the new law creates very powerful mechanisms for interfering in the communications media, but adds no guarantees to ensure that such mechanisms will not be used to prevent dissemination of information that may be unsettling for the authorities.¹⁷⁷ Furthermore, the law establishes very strict conditions for engaging in radio broadcasting which, when combined with enforcement by an agency in the executive branch and patently ambiguous provisions, renders broadcasters highly vulnerable to possible pressure or abuses on the part of State authorities.

ii) Other laws passed in December 2010 that restrict freedom of expression

111. The bill passed by the National Assembly, called Law on Defense of the Nation's Political Sovereignty and Self-Determination is also troubling.¹⁷⁸ This law makes it illegal for organizations charged with promoting citizen participation, overseeing the exercise of public power or defending the full exercise of political rights, to receive funds in the form of international cooperation. It also establishes severe penalties for the organizations and their members if such funding is received. Those penalties include political disqualification for periods ranging from five to eight years.¹⁷⁹ This bill is of great concern, because "of the possibility that non-governmental human rights organizations whose purpose is to monitor the exercise of public power (which is true of the vast majority of these organizations) will see their capacity to perform their important functions seriously compromised".¹⁸⁰ In Latin America, most non-governmental organizations dedicated to defending and promoting human rights and monitoring the government rely on the funding they receive through international cooperation in order to be able to function effectively, since there are few or no opportunities for financial independence at the local level. By prohibiting funding of this kind, the law proposed in the National Assembly would have the effect of shutting down all independent organizations, which in recent years have done important work in all countries in the region to defend and promote human rights, often by bringing cases to the inter-American system for the protection of human rights.

112. That same bill makes it illegal for any Venezuelan citizen to invite to the country any foreign person or organization that expresses views that may "[offend] the

http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2780&tmpl=component&format=raw&Itemid=185&lang=es. Article 170(10) provides that: "A repeat of any of the offenses to which this section refers and that occurs within the space of one year from the date when the previous violation was definitively established." (On file with the Office of the Special Rapporteur for Freedom of Expression).

¹⁷⁷ IACHR. Press Release 122/10. December 15, 2010. IACHR Concerned about Law Initiatives in Venezuela that Could Undermine the Effective Exercise of Human Rights. Available at: <http://www.IACHR.oas.org/Comunicados/English/2010/122-10eng.htm>

¹⁷⁸ *Radio Nacional de Venezuela*. December 22, 2010. *Head of State enacts laws on Parties and Defense of Sovereignty*. Available at: <http://www.rnv.gob.ve/noticias/index.php?act=ST&f=2&t=145270>. *La Crónica de Hoy*. December 23, 2010. *National Assembly approves law that prevents parties and NGOs from receiving foreign support*. Available at: http://www.cronica.com.mx/nota.php?id_nota=551474

¹⁷⁹ Bill on Defense of the Political Sovereignty and Self-Determination of the Nation. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2769&tmpl=component&format=raw&Itemid=185&lang=es

¹⁸⁰ IACHR. Press Release 122/10. December 15, 2010. IACHR Concerned about Law Initiatives in Venezuela that Could Undermine the Effective Exercise of Human Rights. Available at: <http://www.IACHR.oas.org/Comunicados/English/2010/122-10eng.htm>

institutions of the State, its high-ranking officials or attack its exercise of sovereignty.”¹⁸¹ It also stipulates that aliens who participate in such activities will be expelled from Venezuelan territory; sanctions will be imposed on the citizens who invited them to Venezuela.

113. Finally, the National Assembly passed a bill on University Education which, at the time this report went to press, had generated a broad national debate.¹⁸² This bill provides that university education is not just a universal human right, but also “an irrevocably public good that serves to transform society, (...) in the context of building a socialist society”¹⁸³ and “to build cultural hegemony to definitively do away with capitalist society.”¹⁸⁴ The State’s establishment of public policies in the area of university education is a legitimate State objective. However, that objective must be pursued within the boundaries that respect for human rights imposes. In the area of university education, those rights include, *inter alia*, the right to freedom of thought and expression, which is the very basis of academic freedom. Although the law establishes strong mechanisms for intervention in university affairs and in the content of instruction, the law does refer to the autonomy of universities and provides that their autonomy shall be exercised “through academic freedom, in order to debate the current trends in thinking.”¹⁸⁵ From that standpoint, the bill poses a serious contradiction since freedom of thought and expression, which is the basis of academic freedom, is to be strictly observed in the academic and university environment, and can in no way be limited by subordinating it to the ideological, religious or moral principles that the State imposes as an obligation.

¹⁸¹ Bill on Defense of the Political Sovereignty and Self-Determination of the Nation. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2769&tmpl=component&format=raw&Itemid=185&lang=es. Article 8. Representatives of political organizations, representatives of organizations for the defense of political or private individuals that invite, under their sponsorship, foreign citizens or organizations to express views that offend the institutions of the State, its high-ranking officials or attack their exercise of sovereignty, shall face a fine of between five and ten thousand tax units, apart from any penalties established in other laws. // Foreign citizens who participate in the activities described in this article shall be expelled from the territory of the Republic, in accordance with the provisions of the laws that regulate this subject.

¹⁸² According to the information received, at the time this report went to press, the President had vetoed the legislation. For original articles, see AFP. December 23, 2010. *Venezuela approves law that promotes socialism in universities*. Available at: <http://www.google.com/hostednews/afp/article/ALeqM5jMroNmzm-jj5jPOE72U9hdDBeoBQ?docId=CNG.50e279c89752000e7527bb02f044cce8.331>. La Nación. December 23, 2010. *Polémica ley sobre socialismo en Venezuela*. Available at: <http://www.nacion.com/2010-12-24/Mundo/NotasSecundarias/Mundo2631604.aspx>

¹⁸³ University Education Bill. Article 3.2. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2788&tmpl=component&format=raw&Itemid=185&lang=es

¹⁸⁴ University Education Bill. Article 3.6. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2788&tmpl=component&format=raw&Itemid=185&lang=es

¹⁸⁵ University Education Bill. Article 17. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2788&tmpl=component&format=raw&Itemid=185&lang=es